

# CHEMICALS IN COMMERCE ACT

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON ENVIRONMENT AND THE  
ECONOMY

OF THE

COMMITTEE ON ENERGY AND  
COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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MARCH 12, 2014  
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SUBMITTED MATERIAL

Discussion draft, dated February 27, 2014, Chemicals in Commerce Act, submitted by Mr. Shimkus <sup>1</sup>	
Letters of February 12 to March 14, 2014, submitted by Mr. Tonko <sup>2</sup>	
Letter of March 12, 2014, from Adhesive and Sealant Council, et al., to committee and subcommittee leadership, submitted by Mr. Shimkus .....	183

<sup>1</sup>The discussion draft is available at <http://docs.house.gov/meetings/IF/IF18/20140312/101890/BILLS-113pih-ChemicalsinCommerceAct.pdf>.

<sup>2</sup>The letters are available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=101890>.

## CHEMICALS IN COMMERCE ACT

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WEDNESDAY, MARCH 12, 2014

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2322 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Whitfield, Pitts, Murphy, Latta, Harper, Cassidy, McKinley, Bilirakis, Johnson, Upton (ex officio), Tonko, Pallone, Green, DeGette, Capps, McNerney, Barrow and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Charlotte Baker, Press Secretary; Sean Bonyun, Communications Director; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment and the Economy; Brandon Mooney, Professional Staff Member; Chris Sarley, Policy Coordinator, Environment and the Economy; Jacqueline Cohen, Democratic Senior Counsel; Greg Dotson, Democratic Staff Director, Energy and the Environment; Caitlin Haberman, Democratic Policy Analyst; and Ryan Schmit, Democratic EPA Detailee.

### **OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. SHIMKUS. I would like to call the hearing to order and welcome our guests. Obviously we have got a full committee room as there is interest in this, and I would like to start by recognizing myself for 5 minutes for an opening statement.

Over the past year we have participated in five hearings at which we have dug into TSCA, learning the issues section by section, and thinking about how we could make this law work better. In recent weeks we have had several conversations on the member level. We have exchanged thoughts on where we can find common ground. Our staffs have sat down on a bipartisan basis for many hours to discuss the language before us in the Chemicals in Commerce Act. Those conversations have helped us understand each other's perspectives much better. That work is continuing and I hope will help us as members to collaborate on a bill we can embrace going forward.

Today we give a wide variety of stakeholders the chance to weigh in. We will hear from big and small chemical makers and from those who use chemicals to make consumer products. We will hear from chemical distributors, labor unions, and other interested

groups. Their testimony will show that making laws is a very dynamic process. I unveiled the discussion draft because I think we need a collaborative process with diverse input.

That draft is likely to undergo changes as we work through the provisions to find consensus. If each member of this subcommittee sat down to write a TSCA bill, we would probably have 25 different versions, no two of which would look alike.

Our job is to craft a bill that reflects the best of all of us. So where might there be common ground?

So far, I think we agree that there are many chemicals already in the market that could use closer scrutiny by EPA. We need to be sure that EPA has the information it needs to decide on the safety of a chemical, but they should not delay action merely by asking for information that they don't really need.

We also agree that EPA should have the authority to impose requirements and restrictions on chemicals that pose risks, but those restrictions should be for the sake of improving the protection of human health and the environment, not simply for the sake of regulating.

We think that chemical manufacturers should be in a position to cooperate with EPA on its close scrutiny of their products, but they should still be able to protect confidential trade secrets in that process. Can we achieve all that? I know our committee members on both sides are not only willing to try, they are already doing their best to get there and I appreciate their hard work and I promise that I will do all I can to make the results the best law we can enact for the American people.

[The prepared statement of Mr. Shimkus follows:]

#### PREPARED STATEMENT OF HON. JOHN SHIMKUS

Over the past year we have participated in five hearings at which we've dug into TSCA, learning the issues section by section, and thinking about how we could make this law work better. In recent weeks we've had several conversations at the Member level. We've exchanged thoughts on where we can find common ground.

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Where is that common ground?

So far, I think we agree that there are many chemicals already in the market that could use some closer scrutiny by EPA. We need to be sure that EPA has the information it needs to decide on the safety of a chemical, but they should not delay action merely by asking for information that they don't really need. We also agree that EPA should have the authority to impose requirements and restrictions on chemicals that pose risks, but those restrictions should be for the sake of improving the protection of human health and the environment, not simply for the sake of regulating.

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[The discussion draft is available at <http://docs.house.gov/meetings/IF/IF18/20140312/101890/BILLS-113pih-ChemicalsInCommerceAct.pdf>]

Mr. SHIMKUS. With that, I still have some time. Anyone on my side? If not, I will yield back my time and turn to my ranking member, Mr. Tonko from New York.

**OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. TONKO. Thank you, Mr. Chair. Today we will hear the views of a diverse panel of witnesses on the discussion draft of the Chemicals in Commerce Act released by Chair Shimkus at the end of February. Reforming the Toxic Substances Control Act is a very important task. Chemicals are the fundamental building blocks for every substance, either natural or human-made. Years of research, development and investment have provided us with the tremendous number of products we use each and every day. But due to weaknesses in TSCA, some of the chemicals we encounter in the environment each day are exposing us to harm, and the list of chemicals in commerce has grown far more rapidly than knowledge of their environmental, health and safety risks.

We are all familiar with the old adage "The dose makes the poison." The father of toxicology, Paracelsus, introduced this concept in the 1500s. Well, we have learned a lot since that time about the many factors that influence toxicity of any given substance, but we have not been acting on that knowledge, at least not with respect to industrial chemicals.

Since the early 1990s, we have known that infants and children are more vulnerable to environmental exposures than adults, that the incidence of chronic diseases and other developmental disorders has increased and that we are being exposed to an increased variety and amount of chemicals in air, water, food, and consumer products.

In 2000, the National Academy of Sciences attributed 28 percent of neurological disorders to environmental exposures. Studies of human tissues, first through the National Human Adipose Tissue Study in the 1980s and now for the Center for Disease Control's National Health and Nutrition Examination Survey, have revealed that our bodies are retaining a number of chemical substances as a result of environmental exposures. Evidence is mounting that we are not regulating chemicals sufficiently. The costs of this inadequate regulatory system are being borne by the public, at times the youngest members of the public. TSCA was intended to provide information on the health and safety of manufactured chemicals and to give the Environmental Protection Agency the authority to regulate chemicals that had the potential to harm human health or the environment.

Well, after 40 years, there has been very little regulation of chemicals under TSCA. We have insufficient health and safety information about many of the chemicals we encounter every day, and even when a chemical presents a known serious risk, EPA has insufficient authority under TSCA to act to protect the public.

This situation must change. For older chemicals, we need to reduce the list of chemicals that are on a perpetual to-do list in terms of having basic health and safety information as a basis for informed decision-making. For newer chemicals we need a more robust review process that offers real assurance that new products are safe.

We need more than an information system or a regulatory system. We need a chemicals program that incentivizes innovation, good environmental stewardship and the integration of human health and sustainability in the product development process. In fact, I think these concepts are all included in the chemical industry's Responsible Care Program. Frankly, that is what consumers are seeking, products that they know are safe.

Finding the formula that will satisfy all stakeholders in this issue is a tall order. Mr. Chair, you have taken on a tough issue, one that is substantively complex and politically contentious. You are to be commended for starting down this road. I want to work with you and the other members of this committee. I believe other members of the minority are eager to participate constructively in this process also, and I thank you for providing us an opportunity to engage in this effort.

These are early days. I understand staff members have had some good opening discussions. I am indeed encouraged. But the current draft does not yet strike the right balance or meet the needs of all stakeholders. I think my observation will be borne out by the range of testimony that we will hear today.

I am hopeful that with constructive input from the entire stakeholder community we can produce a bill that will define a robust, efficient and effective program for the regulation of industrial chemicals offered in our market. I believe if we work together, we can offer legislation that will serve the public and the industry well and that all the members of this committee will be proud to support.

Thank you, Mr. Chair, for calling this hearing, and to our distinguished panel of witnesses, thank you for appearing today and for offering your comments on what is a very important topic. Thank you. I yield back.

I have a few seconds remaining—

Mr. SHIMKUS. You may.

Mr. TONKO [continuing]. If I could yield to Representative Green.

**OPENING STATEMENT OF HON. GENE GREEN, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Ranking Member. I appreciate your time. I just want to like the ranking member, thank our chair for putting together the discussion draft. I just want to caution, though, this is not a sprint. This is a marathon, and there are a lot of issues. And I know we are going to have additional hearings over the next few months to do this because if we are going to real-

ly reform this law with everybody on board, it is going to take that effort.

And I just appreciate Chairman Shimkus in your effort to do it and look forward to continue working with you. The discussion draft is a work in progress, and I know our staffs have met and will continue to work together.

Mr. SHIMKUS. The gentleman yields back his time, and the Chair thanks my colleagues for their kind words.

The Chair now recognizes the chairman of the full committee, Mr. Upton, for 5 minutes.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Thank you, Mr. Chairman, and we do welcome all of our witnesses today, especially Jennifer Thomas of the Alliance of Automobile Manufacturers for taking the time to join us from Brussels. So we know, Jennifer, that you are sharing our Buy America message with Europe, and we wish you very much success.

You know, today is an important milestone in our efforts to modernize current law regulating the management of U.S. chemicals, a law that has been on the books since 1976. The discussion draft before us, the Chemicals in Commerce Act, begins our committee conversation on how to craft reforms to our Nation's chemical regulatory system.

We have got two objectives, one, to increase public confidence in the safety of chemicals that are in U.S. markets, and to streamline commerce among States and with other countries to further our manufacturing renaissance.

Put simply, the Chemicals in Commerce Act is in fact a jobs bill. Why? Just put yourselves in the shoes of someone contemplating whether to invest in a new factory that produces or uses chemicals and what location maximizes opportunity. With options that span the globe, one would look critically at three factors to help in the decision, the cost and supply of feed stocks, especially oil and gas; availability of capable and reliable workers; and ease of market access.

Market access has two parts. First, is the buyer confidence in the product, the second is market rules free of trade restrictions. The Chemicals in Commerce Act will improve confidence in chemical products because EPA will apply sound science to its safety determinations.

If EPA determines that a chemical does pose risks, EPA will detail those risks and will write a rule placing any necessary requirements or restrictions on it, which will apply in all 50 States. This will allow producers to operate in a seamless U.S. market.

So let us go back to the investor's decision. Access to oil and gas? The U.S. is looking pretty good. Reliable workforce? Our workers are the best and many are available right now. Market access? The Chemicals in Commerce Act completes the package, giving the United States green lights on all three factors.

We need to do all that we can to promote America's manufacturing sector and create the jobs that we want. This bill will help create those jobs not only in plants that manufacture chemicals but

also in plants that use them to make cars, computer chips, and thousands of other goods.

So the bill is good news for jobs, the economy, and for a safer America. We need to roll up our sleeves and get it done. We need to work in a bipartisan basis. And my prediction is we can get to the finish line. We need to do it, and I appreciate the leadership of both sides as we begin to move the ball down the field. And I yield back the balance of my time.

[The prepared statement of Mr. Upton follows:]

#### PREPARED STATEMENT OF HON. FRED UPTON

Today is an important milestone in our efforts to modernize current law regulating the management of U.S. chemicals—a law that has been on the books since 1976. The discussion draft before us, the Chemicals in Commerce Act, begins our committee conversation on how to craft reforms to our Nation's chemical regulatory system. We have two objectives: to increase public confidence in the safety of chemicals that are in U.S. markets, and to streamline commerce among States and with other countries to further our manufacturing renaissance.

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We need to do all we can to promote America's manufacturing sector and create jobs. This bill will help create manufacturing jobs in not only those plants that manufacture chemicals, but also in plants that use them to make cars, computer chips, and thousands of other goods.

This bill is good news for jobs, for the economy, and for a safer America. Let's roll up our sleeves and get it done.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes.

#### OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman. Today this subcommittee is examining a new proposal to amend the Toxic Substances Control Act. According to the National Cancer Institute, researchers have estimated that as many as two and three cases of cancer are linked to some environmental cause. Half of those are linked to tobacco and diet, but toxic chemicals are also an important factor.

The President's Cancer Panel found that reform of the Toxic Substances Control Act is critically needed to reduce the incidents and burden of cancer in this country. The Centers for Disease Control

conducts biomonitoring in order to understand when chemicals end up in human bodies, and CDC has found that chemical exposures are ubiquitous. For example, according to the Center's most recent data, 75 percent of the people tested have the commonly used chemical, triclosan, in their bodies. That chemical has been shown to interfere with hormone levels in animals.

The CDC also found five different PBDEs in more than 60 percent of the participants. These chemicals have been linked to serious health concerns including rising autism rates, and these chemicals are showing up in the bodies of Americans at levels 3 to 10 times higher than found in European populations.

This is an issue we must get right. Unfortunately, this bill would take us in the wrong direction. Letters of opposition have poured in. It has been called a "gross disappointment" and another quote, "wish list tailored to ensure regulatory inaction."

If enacted, this proposal would weaken current law and endanger public health. That is why I cannot support the bill in its current form.

For many years, the public health, labor and environmental communities have worked to improve EPA's ability to require testing of chemicals under TSCA. But this draft would restrict existing testing authority so that EPA could only require testing in the limited set of circumstances. On top of that, the Catch-22 of current law would remain. The Agency would be required to identify risk before being authorized to test for risk. This is the roadblock that has stymied the Agency for years.

When new chemicals are brought to market, the draft creates a new exemption for industry and applies new procedural requirements to limit EPA action. For existing chemicals, the draft would arbitrarily limit what risks EPA could consider in assessing safety. And for dangerous chemicals, EPA would be blocked from taking action unless alternatives are already available. On preemption, the draft goes well beyond even the Senate bill which has been rightfully criticized for preempting essential State-level protections.

The current law is not working. The suffering and uncertainty we saw in West Virginia when hazardous chemicals spilled into the water supply has demonstrated the need for a more effective TSCA. That is why I want to work with Chairman Shimkus and Chairman Upton on TSCA reform. I am a realist. I know House Democrats can pass a TSCA bill without Republican support. But I also believe, Mr. Chairman, that House Republicans cannot enact a law without the support of House Democrats.

There is a lot of work that needs to be done to get a bill we can all support. But I am committed to making this effort. I hope we pay close attention to the testimony today and then renew our efforts to find common ground. And I would be pleased to yield time, yes, to Ms. DeGette.

**OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Ms. DEGETTE. Thank you very much, Mr. Chairman. I just want to add my comments to those of all the people on our side of the aisle. Mr. Chairman, I want to thank you for introducing this dis-

cussion draft and then having hearings and discussions. It feels kind of fun to be back to regular order now, and I am happy about it. I am also happy that you have worked with a group of us on the other side of the aisle to really help do this.

I agree with the ranking member that this is a Herculean effort, one that we have tried for many decades now to revitalize and reauthorize TSCA in a way that makes sense from a scientific perspective.

I agree with many on this side of the aisle. This discussion draft is not perfect, but I am hoping that we can continue to work together in a bipartisan fashion to craft legislation that is really going to protect the health of the citizens of this country.

Thank you, Mr. Chairman, and thank you, Mr. Waxman, for yielding.

Mr. WAXMAN. Thank you. And Mr. Chairman, our TV screen shows a woman in a box with earphones on her head. Hi. How are you doing? I yield the balance of my time to her.

Mr. SHIMKUS. The chairman yields back his time. She will have her own time, Mr. Waxman. So I appreciate again my colleague's nice promise and just pledge to keep working. It is a draft, and I want to remind people, and that is the purpose of this hearing, is to get your comments to help us then go back and start working on this.

So we have a lot of individuals to testify. We have two panels, so we are going to get started, and I will introduce your whole bio across the board first so everyone knows, and then I will direct your time specifically to you. You will have 5 minutes. There are a lot of folks here, so if you could keep to 5 minutes as close as possible, that would help us all. Then we will go to the question-and-answer period of time, and then we will get the second panel up.

So at the first panel we have Dr. Carol Duran, Director of the Chemical Risk and Compliance, Global Sourcing and Procurement with Intel Corporation. Also joining her is Ms. Connie Deford, Director of Product Sustainability & Compliance of Dow Chemical Company. Mr. Barry Cik, Founder of Naturepedic on behalf of the Companies for Safer Chemicals. We have Mr. Roger Harris, President of Producers Council on behalf of the National Chemical Distributors. Mr. Michael Belliveau, Executive Director, Environmental Health Strategy Centers and then the lady in the box, Ms. Jennifer Thomas, Director of Federal Government Affairs for the Alliance of Automobile Manufacturers. And just a side story, this hearing was originally scheduled for last week. We did postpone it at the request of my colleagues to give more time to go over the discussion draft. Ms. Thomas was scheduled to be here, and unfortunately she is in Brussels. So it is probably pretty late there. But that is why we are doing this over new technology.

So with that, I would like to ask Dr. Duran to give her opening statement. You are recognized for 5 minutes. OK. Let us make sure the mike is on and pull it as close as you can to you.

Ms. DURAN. OK. Better?

Mr. SHIMKUS. That is better. Thank you.

Ms. DURAN. Thank you.

**STATEMENTS OF CAROLYN DURAN, DIRECTOR, SUPPLY CHAIN RAMP AND REGULATIONS, INTEL CORPORATION; CONNIE L. DEFORD, DIRECTOR, GLOBAL PRODUCT SUSTAINABILITY AND COMPLIANCE, DOW CHEMICAL COMPANY; BARRY A. CIK, CO-FOUNDER, NATUREPEDIC, ON BEHALF OF COMPANIES FOR SAFER CHEMICALS; ROGER T. HARRIS, PRESIDENT, PRODUCERS CHEMICAL COMPANY, ON BEHALF OF NATIONAL CHEMICAL DISTRIBUTORS; MICHAEL BELLIVEAU, PRESIDENT AND EXECUTIVE DIRECTOR, ENVIRONMENTAL HEALTH STRATEGY CENTER; AND JENNIFER THOMAS, DIRECTOR, FEDERAL GOVERNMENT AFFAIRS, ALLIANCE OF AUTOMOBILE MANUFACTURERS**

**STATEMENT OF CAROLYN DURAN**

Ms. DURAN. Mr. Chairman and Ranking Member Tonko, thank you for the opportunity to testify on behalf of Intel. My name is Carolyn Duran, and I am responsible for supply chain regulatory risk mitigation for chemicals used in Intel's manufacturing technologies globally.

I appreciate your work to consider legislation to modernize the regulation of chemicals in commerce. Founded in 1968, Intel Corporation is the world's largest semiconductor company with net revenues in 2013 of \$52.7 billion. Intel continues to invest in U.S. manufacturing with over half of our roughly 100,000 person employee base residing in the United States.

Intel's latest manufacturing technologies are developed and implemented in Oregon and Arizona, and roughly  $\frac{3}{4}$  of our microprocessor manufacturing is domestic.

Since our inception, Intel has developed and implemented the revolutionary technologies necessary to achieve the transistor scaling known as Moore's Law resulting in the smaller, faster, more efficient electronics that drive today's economy. Advancements in chemistry and material science and an ability to experiment with novel materials in a timely fashion are key to these successes. As an example, our recent changes in transistor structures require the development of many novel materials, and we continue to research new materials and processes to develop the radical innovations necessary to deliver the integrated circuits that meet the needs of tomorrow.

Fundamentally, we believe that these advancements should go hand in hand with environmental sustainability. It is from this background that Intel supports chemical management approaches that enable environmental protection, safe use of chemicals and U.S. technology innovation. Additionally, Intel works closely with industry partners, including the Semiconductor Industry Association and the Chemical Users Coalition. While I will share specific examples from my own experience, many of the concepts are also applicable to a wide range of industries that are downstream users of chemicals.

We are interested in chemical legislation through companies that supply us with chemicals and also as a downstream user or processor of chemicals. With regard to the former, the ability of our chemical suppliers to get new chemicals approved in a timely way,

to ensure the continuity of supply, and to have intellectual property protected are all essential for Intel manufacturing competitiveness.

With respect to the latter, our processes are tightly controlled and perform to exacting standards. In order to ensure quality and consistency in the production process, chemicals used in semiconductor manufacturing is subject to significant and redundant controls and safety measures. Accordingly we appreciate a risk-based approach to chemicals management policy which will allow the continued safe use of innovative chemicals to produce leading-edge technologies.

We offer specific comments on the draft discussion in two areas, first, managing transitions to alternatives. When the EPA determines that a particular chemical is likely to result in an unreasonable risk of harm to human health or the environment, we recognize that the EPA may decide to consider replacement of that chemical for particular uses. In this scenario, we appreciate an approach that allows downstream user companies to first develop a technically feasible alternative that can be demonstrated to be safer than the existing chemical and also allows for a reasonable implementation timeline.

In the interim, EPA can adopt appropriate measures for reducing exposure and mitigating the chemical's risk. The discussion draft includes these concepts in Section 6(f) and these are critically important for highly technical, complex manufacturing processes.

As an example, in 2006, the semiconductor industry announced a plan to end non-critical uses of perfluorooctyl sulfonates, or PFOS, in our manufacturing processes and to develop substitutes in critical applications. At the time the work began, PFOS was used pervasively throughout the industry. EPA provided the transition time necessary for us to develop and implement safer alternatives while maintaining product quality and technical requirements. This allowed Intel to successfully replace PFOS in over 300 discreet applications across 11 manufacturing technologies.

Second, articles. The treatment of articles under TSCA is important to Intel and many other industries that market products in finished form that are classified as articles. Our products are comprised of many chemicals and materials used in extremely small volumes. These materials are typically bound in a monolithic fashion and cannot be separated from the device and are not released to the environment during normal use. Accordingly, we believe the nature of the chemical and article should be taken into account in regulatory decision-making. Where there is minimal risk of release or consumer exposure, articles should be treated differently than in cases where this likelihood of exposure is high.

For this reason, Intel supports language in Sections 5 and 6 of the discussion draft that allows EPA to address chemical substances and specific articles when warranted, targeting situations where there is risk from exposure to the chemical in the article and where the risk cannot be managed through a focus on the chemical itself. This provides a valuable roadmap that will allow EPA to provide protection for health and the environment while also providing important predictability for the many industries that manufacture products considered articles in the context of TSCA.

We look forward to working with this subcommittee and the Congress as a whole as it continues its review of U.S. chemicals legislation. Thank you for the opportunity to submit this testimony on behalf of Intel.

[The prepared statement of Ms. Duran follows:]

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Testimony of

Carolyn Duran, Ph.D.

Director of Supply Chain Ramp and Regulations, Intel Corporation

Before the

Environment and the Economy Subcommittee of the

House Energy and Commerce Committee

Hearing on

A Discussion Draft Entitled the "Chemicals in Commerce Act"

March 12, 2014

Testimony of

Carolyn Duran, Ph.D.

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Before the

Environment and the Economy Subcommittee of the

House Energy and Commerce Committee

March 12, 2014

**Summary Points**

- Intel Corporation is the world's largest semiconductor company. Intel continues to invest in U.S. high tech manufacturing, with over half of our roughly 100,000 employees residing in the United States. Intel invested over \$8.9B in capital in the U.S. in 2013 alone, and three-fourths of our microprocessor manufacturing is done here at facilities in Arizona, Oregon, New Mexico and Massachusetts.
- Intel supports chemical management approaches that align environmental protection, the safe use of chemicals, and U.S. technology innovation. An aspect of this is an approach that allows downstream user companies to develop a viable alternative that has clear benefits to public health and the environment before an existing chemical is banned for a particular use and provides for a reasonable transition timeline enabling business to continue while pursuing the conversion to a viable alternative.
- We also support an approach that allows EPA to address chemical substances in finished products or "articles" when warranted, targeting situations where there is exposure to the chemical substance in the article and where the risk of concern cannot be managed through a focus on the chemical substance.

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Testimony of  
Carolyn Duran, Ph.D.  
Director of Supply Chain Ramp and Regulations, Intel Corporation  
Before the  
Environment and the Economy Subcommittee of the  
House Energy and Commerce Committee  
March 12, 2014

Mr. Chairman and Ranking Member Tonko, thank you for the opportunity to testify on behalf of Intel on the **Discussion Draft of the Chemicals in Commerce Act of 2014**. My name is Carolyn Duran, and I am the Director of Supply Chain Ramp and Regulations at Intel Corporation. In this capacity I am responsible for supply chain regulatory risk mitigation for chemicals and gases used in our manufacturing technologies globally. I appreciate your work to consider legislation to modernize the regulation of chemicals in commerce.

Founded in 1968, **Intel Corporation is the world's largest semiconductor company**, with net revenues of \$52.7 Billion in 2013. Intel continues to invest in US manufacturing, with over half of our roughly 100,000 employees residing in the United States. Intel's latest technologies for microprocessor fabrication, assembly and test are developed and implemented in Oregon and Arizona. In 2013 alone, Intel invested over \$8.9B in capital in the United States. As a global corporation, more than three-fourths of Intel's revenue comes from outside the U.S., yet roughly three-fourths of the company's microprocessor manufacturing is done here at facilities in Arizona, Oregon, New Mexico, and Massachusetts.

Since our inception, Intel has developed and implemented the revolutionary technologies necessary to achieve the transistor scaling known as Moore's Law, resulting in the smaller, faster, more efficient electronics that drive today's economy. Advancements in chemistry and materials science are a key to these successes. As an example, our recent changes in transistor structures, including high-k metal gate and the tri-gate transistor, represented significant advances and required the development of many novel materials to enable these technologies. This new transistor architecture provides an unprecedented combination of improved performance and energy efficiency. Our ability to experiment with novel materials in a timely fashion was critical to this success, and we continue to research new materials and processes to develop the radical innovations necessary to deliver the integrated circuits (IC's) that meet the needs of tomorrow.

Fundamentally, we believe that this **technological advancement should go hand in hand with environmental sustainability**. We've been the largest voluntary purchaser of green power in the U.S. since 2008 (according to the U.S. Environmental Protection Agency), and our commitment continues to grow. Over the last decade, we've worked with suppliers and customers in efforts to eliminate lead and halogenated flame-retardants from our products. We incorporate our environmental performance goals throughout our operations, and have made them public since 1994. Specifically in regard to chemical innovation, in 2012 we established a goal to implement an enhanced green chemistry screening and selection for 100% of our new chemical and gas purchases by 2020.

It's from this background of technology and environmental sustainability leadership that **Intel supports chemical management approaches that align environmental protection, safe use of chemicals, and U.S. technology innovation.** We are interested in chemical legislation from two perspectives. First, chemicals legislation impacts us indirectly through the companies that supply us with the materials used in our manufacturing processes. As I mentioned earlier, Intel manufactures three-fourths of our microprocessors here in the U.S. The ability of our chemical suppliers to get new chemicals approved in a timely way, to ensure the continuity of supply of existing chemicals and to have their intellectual property protected are all essential for Intel manufacturing competitiveness. In addition, as a downstream user or processor of chemicals, we are also directly impacted by certain aspects of chemicals management rules. This may involve uses of chemicals in our manufacturing processes or in our final products, which are considered "articles" in the context of TSCA. It's these areas where we have the most direct experience and where I'll focus today.

At this point I would also like to mention that in the area of chemicals management policy, **Intel works closely with industry partners including the Semiconductor Industry Association (SIA) and the Chemical Users Coalition.** While I'll share specific examples from our experience as a U.S. high tech manufacturer, many of the concepts are also applicable to a wide range of industries that are downstream users of chemicals.

**The semiconductor manufacturing process is highly controlled and performed to exacting standards.** In order to ensure quality and consistency in the production process, chemicals and materials used in semiconductor manufacturing are subject to significant and often redundant controls and safety measures. The highly controlled systems in a fab include enclosed

processes, automation, and chemical delivery systems. These systems result in high levels of protection of both the environment and fab workers because potential exposure to chemicals used in our processes is tightly controlled. Accordingly, we appreciate a risk-based approach to chemicals management policy which will allow the continued, safe use of innovative chemicals to produce leading edge technologies while protecting people and the environment.

**We offer specific comments on the Draft Discussion in two areas:**

**1. Managing transitions to alternative chemicals**

When the EPA determines that a particular chemical is likely to result in an unreasonable risk of harm to human health or the environment, we recognize that the EPA may decide to consider replacement of that chemical for particular uses. In this scenario we appreciate an approach that allows downstream user companies to a) develop a technically feasible alternative that can be demonstrated to be safer than the existing chemical and b) provides a reasonable transition timeline for implementation that enables us to continue our business while pursuing the conversion to feasible alternatives. The Discussion Draft includes these concepts in Sections 6(f)(4)(B) and 6(f)(4)(C), and these are critically important for highly technical, complex manufacturing processes such as integrated circuit manufacturing.

Each technology developed by Intel makes use of hundreds of different chemicals, utilized in advanced processing equipment resulting in a complex, highly integrated process flow that is comprised of several hundred individual process steps. Depending on the complexity of the new technology (i.e. tri-gate transistor development), the initial development of the technology can take anywhere from two to ten years. Once implemented in high volume manufacturing

for a given technology node, the chemical can be utilized ten or more years, and a significant percentage of chemicals used in one technology node are utilized again in a subsequent technology. A change in one step in the process can cause a significant impact to subsequent process steps, such that every change made to our process is done in a highly controlled fashion. As we seek to replace chemicals in already established manufacturing processes, it is often necessary to make additional changes to the subsequent process steps to ensure that the final product matches the technical performance.

As an example, in 2006, the semiconductor industry announced a plan to end non-critical uses of perfluorooctyl sulfonate (PFOS) chemicals in manufacturing and to work to identify substitutes for PFOS in critical uses even though the risk of exposure was small relative to the use of PFOS in other industries. At the time this work began, PFOS was used in over three hundred applications across all of Intel's manufacturing lines. EPA provided the transition time necessary for the industry to both develop safer alternatives and implement them into existing processes while maintaining product quality and technical requirements and this led to the desired result: over the past decade Intel has replaced PFOS in over 300 discrete applications across eleven different manufacturing technologies.

I would like to note the importance of identifying a viable alternative exists that has clear benefits to public health and the environment before an existing chemical is banned for a particular use. Such a policy assures that there will be a technological path forward that represents a positive improvement for the environment. In the interim, while a transition to alternatives is occurring, EPA can adopt appropriate restrictions for reducing exposure and otherwise mitigating the chemical's risk.

## 2. Articles

The treatment of “articles” under TSCA is important to Intel, as well as many other industries that market products in finished form that are classified as “articles.” Our integrated circuits, along with the packages and peripherals that make up the final products sold in market, are comprised of many chemicals and materials used in extremely small volumes, including but not limited to metals, organic-metallic complexes, and organics. These materials are typically bound in a monolithic fashion and cannot be separated from the device. The chemicals incorporated into a semiconductor are not released to the environment during their normal use.

Accordingly, we believe the nature of the chemical in a finished products or “articles” should be taken into account in regulatory decision making. An article, such as semiconductor, where there is minimal risk of release of materials and of consumer exposure should be treated differently than those uses of chemical substances in products which have a high likelihood of exposure. For this reason, Intel supports that EPA should have the authority to regulate chemical substances in articles under both Sections 5 and 6, following the risk-based approach outlined in the Discussion Draft. In particular, Sections 5(a)(3) and 6(f)(2)(A)(ii), relating to significant new uses and to existing chemicals respectively, would focus the regulation of articles to situations where EPA:

- a) defines specific types of articles that are, or likely will be, in United States commerce;
- b) determines that an unreasonable risk of harm to human health or the environment may result from exposure to a chemical substance in the article; and

c) determines that placing requirements on the article is required because the risk of concern cannot be addressed adequately through requirements placed on the chemical substance or mixtures.

This language provides a valuable roadmap that will allow EPA to address chemical substances in specific articles when warranted and do so in a targeted manner. Such an approach allows EPA to provide protection for human health and the environment while also providing important predictability for high tech companies and the many other U.S. industries that manufacture products that are considered "articles" in the context of TSCA.

We look forward to working with this subcommittee and the Congress as a whole as it continues its review of U.S. chemicals legislation and consideration of the Discussion Draft of the Chemicals in Commerce Act of 2014.

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Thank you for the opportunity to submit this testimony on behalf of Intel Corporation. For more information, please contact Carolyn Duran at [carolyn.duran@intel.com](mailto:carolyn.duran@intel.com).

Mr. SHIMKUS. Thank you. The Chair now recognizes Ms. Connie Deford from the Dow Chemical Company. You are recognized for 5 minutes.

**STATEMENT OF CONNIE L. DEFORD**

Ms. DEFORD. Chairman Shimkus, Ranking Member Tonko and members of the subcommittee, I am pleased to testify today and offer comments on an issue that is critically important to the Dow Chemical Company, reforming of the Toxic Substances Control Act.

Reforming this important piece of legislation would allow for a more modernized regulatory process and a stronger and more effective Federal program for the chemicals we manufacture. As the Global Director for Product Sustainability & Compliance for Dow, I am responsible for ensuring that thousands of products that we put out on the marketplace are safe for our employees, our customers and the environment. On behalf of Dow, I am here to offer our support for the Chemicals in Commerce Act.

Dow is a leading global manufacturer of advanced materials. We supply customers in over 160 countries and really strive to connect chemistry and innovation with the principles of sustainability to help provide solutions, improve solutions, for everyday lives. Our diverse chemistry can be found in applications that range from food ingredients to electronics to water purification, alternative energy including solar and wind and personal care products.

Dow is committed to sustainability. Our ambitious 2015 goals underscore this commitment along with our actions to ensure product safety. We also have product stewardship management systems in place to ensure that our products are safe for their intended uses.

As a global company, Dow strives to go beyond compliance with multiple regulatory programs across different countries. We have developed and adhere to our own high standards for product safety as well as voluntary industry initiatives like Responsible Care. Our policy is to comply with that highest standard of safety, whether regionally or our own, to ensure that each of our products are safe for their intended uses and ultimately for our customers and the environment.

In order to build upon our collective effort, we believe that the United States does need a stronger and more effective Federal program to ensure that chemicals in commerce are safe for their intended uses. This is why we are in support of TSCA reform. Since 1976, the chemical industry has grown dramatically, and yet, TSCA has remained the same. Therefore, Dow supports a TSCA that creates a chemical management system that will be effective and efficient, not just now but long into the future. We believe reforming this outdated law will improve public confidence in the safety of chemicals produced and used in our country, will encourage innovation and ultimately help create jobs and continue fueling America's manufacturing renaissance.

Overall, we would highlight a reformed TSCA should include the following. We believe it is critical that existing chemicals as well as new chemicals meet the safety standard. We think it is critical that there is objectivity and EPA's evaluation of safety using the best available scientific information. We believe EPA should be al-

lowed to take actions that are both timely and effective. We think it is critical that the Agency is in a position to take timely decisions. Provide incentives for innovation and sustainable chemistry and enhance the U.S. competitiveness of companies manufacturing here.

We have evaluated the Chemicals in Commerce Act and feel strongly that this criterion has been met, and we agree with the approaches and recommendations. We have also concluded that it represents a significant step forward for our Federal chemical management system and allows us to further support this vital piece of legislation.

Dow urges the subcommittee to move this bill forward so that the enactment of TSCA reform becomes a reality this year. By modernizing TSCA, we can foster public confidence on how chemicals are evaluated for safety in their applications. We can help the United States maintain its competitive advantage as the global leader in innovation for manufactured products and provide certainty for business investment. We stand ready to assist Congress in its efforts so that we at Dow are able to ensure the benefits for society that can really be made possible through the science of chemistry. Thank you.

[The prepared statement of Ms. Deford follows:]

# **The Dow Chemical Company**

STATEMENT FOR THE RECORD

SUBCOMMITTEE ON ENVIRONMENT & ECONOMY  
COMMITTEE ON ENERGY & COMMERCE

U.S. HOUSE OF REPRESENTATIVES HEARING  
ON THE DISCUSSION DRAFT,

Chemicals in Commerce Act

March 12, 2014

Submitted By:  
Connie L. Deford  
Director, Global Product Sustainability & Compliance

## **Introduction**

The Dow Chemical Company is pleased to offer our comments relating to the March 12, 2014 Subcommittee hearing on the Discussion Draft, Chemicals in Commerce Act, which would amend the Toxic Substances Control Act (TSCA).

Dow, founded in Michigan in 1897, has become one of the world's leading manufacturers of chemicals and plastics. We supply products to customers in 160 countries around the world, connecting chemistry and innovation with the principles of sustainability to help provide everything from fresh water, food, and pharmaceuticals to paints, packaging, and personal care products.

Dow is committed to sustainability. Our ambitious 2015 sustainability goals underscore this commitment<sup>1</sup>, along with our actions to ensure product safety (see Appendix).

As a global company, Dow complies with multiple regulatory programs across different countries and regions, has developed and adheres to its own high standards for product safety<sup>2</sup>, as well as voluntary industry initiatives<sup>3</sup> including Responsible Care®, and leads in international efforts to improve the safe management of chemicals. Our policy is to comply with regional standards or our own standard, whichever is greater, with a management system in place to ensure that each of our products is safe for its intended use and meets or exceeds the requirements of our customers. Furthermore, we have adopted and published principles upon which product safety legislation or regulation should be based.<sup>4</sup> For many years now, these principles have guided our efforts and our advocacy in the USA and abroad.

## **Reform TSCA**

The United States needs a stronger and more effective federal program for ensuring that chemicals in commerce are safe (for the public and for the environment) for their intended uses. Such a federal program should be complementary to, and coordinated with, voluntary programs designed to promote the safety of chemical products. Any system must foster public confidence, through a consistent approach to chemicals in commerce, and provide certainty for business investment, while maintaining the benefits for society associated with the use of chemical products.

Toward that end, Dow supports reform of the Toxic Substances Control Act (TSCA). We have been active participants in stakeholder dialogues and processes dedicated to improving chemical safety in general and TSCA in particular. We are not alone in our view; there is a consensus among stakeholders to modernize this 38-year-old statute by

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<sup>1</sup> To learn more about Dow's commitment to sustainability, go to our website at <http://www.dow.com>

<sup>2</sup> To learn more, go to <http://www.dowproductsafety.com>

<sup>3</sup> For an example, go to <http://www.icca-chem.org/en/Home/ICCA-initiatives/Global-product-strategy/>

<sup>4</sup> To learn more, go to <http://www.dow.com/commitments/goals/principles.htm>

leveraging the best available science and to create a chemical management system that will be effective long into the future.

We urge the Subcommittee to improve the federal chemical management regulatory system for safe use of chemicals in commerce. A reformed TSCA ought to (1) ensure that existing chemicals as well as new chemicals meet the safety standard, (2) ensure objectivity in EPA's evaluation of safety using the best available scientific information, (3) allow EPA to take actions that are both timely and effective, (4) provide incentives for innovation in sustainable chemistry, and (5) enhance the competitiveness of US companies. Such a system must be transparent and instill public confidence in its implementation and execution.

With these criteria in mind, Dow has evaluated the discussion draft Chemicals in Commerce Act and has concluded that it represents a significant step forward for our federal chemical management system. The remainder of this testimony describes our perspective on the bill and some suggested improvements. Our perspective is influenced by S.1009, the Chemical Safety Improvement Act, which is currently under consideration in the United States Senate.

#### **Ensure Existing Chemicals Meet the Safety Standard**

An ideal federal chemical safety program would screen all current chemicals in commerce to determine further information needs, prioritized in a tiered, risk-based fashion. An approach that focuses on initial screening of chemicals based on existing information and a tiered approach to gather additional hazard and exposure information needs will allow the development of necessary and appropriate safety information in a way that informs regulatory action, conserves resources, and accelerates the evaluation process. Because a typical chemical has multiple uses/applications, each posing a unique safety profile, the focus should be on those chemical uses/applications where exposures could be expected to be higher.

There should be a systematic gathering of available validated hazard and exposure information to be used in chemical management decisions by EPA. This includes utilizing information gathered on similar chemicals through the use of validated non-animal test methods, computer modeling and/or quantitative structure-activity relationship (QSAR) activities.

Chemicals that have strict controls and have limited exposure and environmental release potential (e.g., intermediates in a chemical process) or limited potential to enter commerce are likely to require less information.

There should be a cooperative effort among producers, distributors, and users of chemicals (e.g., appropriate sharing/compensation systems) that ensures the information necessary in chemical safety assessment is developed, shared as appropriate, and applied.

The discussion draft aligns with this approach. Prioritization of existing chemicals in commerce based on available information and on considerations of risk, and EPA is given order authority for gathering information necessary for it to make a safety determination for high priority chemicals. Provisions are added to ensure a fair and equitable testing burden among affected parties.

### **Ensure a Scientifically Objective Evaluation of Safety**

An ideal chemical safety program would base its decisions on a consistent scientific evaluation of both hazard and potential exposure (an evaluation of risk), using a weight-of-evidence approach. The Presidential/Congressional Commission on Risk Assessment and Risk Management, in a 1997 report required under the Clean Air Act, concluded that “a good risk management decision is based on a careful analysis of the *weight of scientific evidence* [italics added] that supports conclusions about . . . risk to human health and the environment.” The importance of a weight-of-evidence approach was further explained in the EPA’s report on reference dose and reference concentration processes in 2002. “A weight of evidence approach . . . requires critical evaluation of the entire body of available data for consistency and biological plausibility.” The report further states that “If the mechanism or mode of action is well characterized, this information is used in the interpretation of observed effects in either human or animal studies.” In other words, the cornerstone of a weight-of-evidence approach is to evaluate and use all available, valid, scientific information.<sup>5</sup>

Studies conducted and funded by Dow are necessary and valuable contributions to the understanding of potential public health and environmental effects related to the manufacture and use of its products. Our scientists have expert knowledge of the chemicals we manufacture, especially as this relates to the development and interpretation of the science needed to comply with governmental requirements around the world. Research has a long and accepted history that it can be done transparently (capable of being reproduced). Information should be judged on the basis of scientific merit and not de-selected simply based on the funding source or where the studies are conducted (e.g. academia, government, or industry). A number of practices and procedures are in place by which policymakers and the public can be assured that studies performed by or funded by Dow and the rest of industry meet high scientific standards.

The discussion draft aligns with this recommendation to use a weight-of-evidence approach to making safety determinations. The draft also sets neutral quality criteria for evaluating studies, and does not discriminate against a study based on the source of funding.

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<sup>5</sup> In a 2007 memorandum, the Office of Science and Technology and the Office of Management and Budget asked each federal agency to employ the best reasonably obtainable scientific information to assess risks to health, safety, and the environment. Pursuant to the 1996 amendments to the Safe Drinking Water Act, EPA is directed to use the best available, peer-reviewed science and supported studies conducted in accordance with sound and objective scientific practice.

**Allow EPA to Take Timely and Effective Action**

An ideal chemical safety program ensures that the safety determination process is solely focused on the expected impact on human health and the environment and is separate from decisions about risk management. Such a program would ensure a role for cost/benefit analysis in risk management decisions. If warranted, substitution should be considered only after a comparison of substances based on performance, health, environmental and socio-economic aspects in the relevant applications.

To instill public confidence and provide regulatory certainty for business planning purposes, it is important that appropriate risk management actions be taken expeditiously and consistently.

This discussion draft aligns with these recommendations to have a separate safety assessment and determination process. The discussion draft requires EPA to consider the costs and benefits before selecting a risk management option. It requires EPA to choose a risk management option that is “proportional” to the risk, provides a net benefit, is cost-effective, and for which chemical alternatives are available.

Statutes designed to reduce risk to human health or the environment typically include “decisional criteria” that prescribe or guide the regulatory agency when making risk management decisions. As the Subcommittee considers this issue, please note that EPA and other regulatory agencies currently follow principles for regulatory analysis that are spelled out in Presidential executive orders and OMB guidance: EO 12866 (Clinton), EO 13563 (Obama), and OMB Circular A-4. To summarize, these documents advise an agency to identify a manageable number of regulatory options, and to select the option that maximizes net benefits, and to make a determination that the benefits justify the cost. As a rule of thumb, the bigger the impact of the rule, the more robust the supporting analysis should be.

Unfortunately, because these principles are contained in executive orders and guidance documents, they do not allow for enforcement as provided by a statute, and so it will be critical to incorporate decisional criteria into any bill to reform TSCA.

We recommend that the long-standing executive orders and OMB guidance – adopted by Republican and Democratic Presidents alike – be used to inform the Subcommittee as it seeks to strike the right balance.

**Include Incentives for Sustainable Chemistry**

An ideal chemical safety program would provide incentives for sustainable chemistry. Dow uses the term “sustainable chemistry” to describe a concept that drives us to use resources more efficiently and safely, address the total lifecycle of the product while

providing value to our customers and stakeholders, delivering solutions for customer needs and enhancing the quality of life of current and future generations.<sup>6</sup>

We believe that chemical policy should provide incentives for investments in sustainable chemistry. Such incentives could include, but not be limited to, government support for research and development and for lifecycle assessment to promote sustainable chemistry, and government priority given to new products and processes that represent a significant improvement in sustainability over existing products and processes.

The discussion draft does not contain provisions explicitly labeled “sustainable chemistry” or “green chemistry”. Nevertheless, we believe the bill would advance sustainable chemistry by (1) requiring EPA to evaluate existing chemicals against a safety standard and, if necessary, to take risk management action, and (2) minimizing changes to EPA’s new chemicals program, which we know provides an effective entry point into commerce for more sustainable or “green” chemicals.

#### **Enhance US Competitiveness**

An ideal chemical safety program would ensure that chemicals are safe for their intended uses and would do so in a timely manner and with a minimum of additional resources. Such an ideal program would position the USA as a leader in chemical management, bringing safer products to market faster, and therefore enhance the competitiveness of US companies.

Chemistry is such an enabling science, that a poorly designed policy can impact the competitiveness of businesses through the entire chain of commerce. Therefore, Congress should consider the views of all businesses that rely on chemical products to provide value to their customers. We are encouraged that today’s hearing, and others held by the Subcommittee on the subject of TSCA, have featured a range of business witnesses that span sectors of the economy.

Under TSCA, EPA’s new chemical program has been largely successful in fostering innovation while providing EPA with the tools it needs to ensure safety. Dow urges Congress to maintain these attributes of the new chemical program, which is largely acknowledged to be a success story in the US chemical management system.

It is important that legitimate confidential business information (CBI) be protected under any chemical safety program that relies on information provided by commercial interests. Details that implicate proprietary interests, such as certain information on the ingredients in a product, should be protected as confidential business information to ensure stimulus for innovation.

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<sup>6</sup> Sustainable chemistry builds on the strong foundation of green chemistry and engineering (as developed by Warner and Anastas and supported by the American Chemical Society and EPA) to include social dimensions which recognizes the value of chemical products to enhance our quality of life and protect the environment.

An ideal federal chemical safety program should develop and support means to share relevant safety information with other governments, while protecting legitimate business interests in proprietary information.

If the information that is used to make a determination of safety is of commercial value, provisions should be made for protecting the commercial interest while ensuring public access to the information.

Companies that invest in the conduct of chemical, physical property or health and environmental safety testing should receive fair compensation from other companies who choose not to participate in such studies, but wish to use the information generated for registration or compliance purposes. Health and safety information such as would appear on a material safety data sheet or otherwise be used solely for risk management should be made publicly available.

The discussion draft meets these criteria. It largely maintains the successful new chemicals program, which is a model for the world. It would protect legitimate confidential business information (CBI). And it would ensure a fair and equitable testing burden among relevant parties.

#### **Conclusion**

Dow urges the Subcommittee to modernize TSCA so that it creates confidence by the public on how chemicals are evaluated for safety in their application and use and ensures that the United States remains a leader in innovation for manufactured products. We stand ready to assist Congress in its efforts to foster public confidence, ensure that existing chemicals in commerce meet the safety standard, and provide certainty for business investment, while maintaining the benefits for society through the science of chemistry.

The House discussion draft, Chemicals in Commerce Act, represents a significant advance over our current chemical management system, and we urge the Subcommittee to introduce, debate, improve, approve, and move this bill so that enactment of TSCA reform becomes a reality this year.

### **Appendix: Dow Commitment to Product Safety**

At Dow, chemical safety is a top priority, and it always has been. Dow first established a toxicology laboratory in 1934 to evaluate chemical hazards, and we continue to be a global leader in this field today. Dow was a pioneer when it established a formal product stewardship program in 1970. In the 1980s, Dow led in development of Responsible Care®, which represents the chemical industry's commitment to continuous improvement in environmental, health, and safety performance. Most recently, our 2015 Sustainability Goals emphasize our commitment to continually improve the safety of our products throughout their lifecycle. For example, we have committed to conducting safety assessments for all of our products and making the information publicly available. In developing these safety assessments, we will address relevant gaps in hazard and exposure information. See [www.dow.com/productsafety/index.htm](http://www.dow.com/productsafety/index.htm) to better understand our processes by which we evaluate the safety of our products for their intended uses and to access these safety assessments. We are also committed to continuous improvement in our product safety assessment processes and to increased stakeholder scrutiny and dialogue on these topics.

Via our product stewardship program, we strive to develop, manufacture, transport and market our products in a safe and responsible manner. We work to ensure our products are handled safely and recycled or disposed of appropriately. Dow welcomes appropriate review by governments to maintain and enhance public acceptance of its operations and products.

If any party within the value chain identifies improper practices involving a product, it should work to improve those practices and, if, in the party's independent judgment, sufficient improvement is not evident, then the party should take further measures up to and including termination of product sale or use. Dow routinely refuses to sell products into applications where we don't believe the conditions for safe use can be met.

Dow believes there should be widespread support for the development of capabilities (competency) in nations that need to build their chemicals management framework to support the protection of human health and environment. We are actively working to assist small- and medium-sized companies and governments in developing countries to improve their capabilities to assess and manage chemicals safely.

Mr. SHIMKUS. The gentlelady yields back her time. The Chair now recognizes Mr. Barry Cik. Sir, you are recognized for 5 minutes. There is a button. Yes, it is kind of hard to see.

#### **STATEMENT OF BARRY A. CIK**

Mr. CIK. Got it. Thank you, Mr. Chairman and members of this subcommittee. My name is Barry A. Cik. I am a Board Certified Environmental Engineer, a Certified Hazardous Materials Manager, a Certified Diplomate Forensic Engineer, a State of Ohio Professional Engineer, and an author of a textbook for Government Institutes on Environmental Assessments. I am a co-founder of Naturepedic, a manufacturer of certified organic mattresses and bedding products for children and adult.

More importantly, I am here as a representative of the American Sustainable Business Council which includes the Companies For Safer Chemicals Coalition, a project of ASBC. The American Sustainable Business Council is a growing coalition of business organizations and businesses committed to advancing market solutions and policies to support a vibrant, just and sustainable economy. Founded in 2009, ASBC and its organizational members now represent more than 200,000 businesses and more than 325,000 business leaders across the United States. The Companies For Safer Chemicals Coalition represents a new alliance of companies focused on chemical reform based on the principles of transparency, safety and innovation.

Forty years ago, when I was in engineering school, I was taught the solution to pollution is dilution. That was incorrect. I soon found out that Lake Erie, which is where I live close to, was dying. However, thanks to U.S. Congress, you passed RCRA. RCRA stopped the poor industry practices of disposing chemicals into the lake and many waterways across the country, of course. To this day, though, you cannot have any commercial fishing in Lake Erie because the mercury level is way too high. The price that we pay is too high.

A few years later, I realized, I observed where the gasoline companies were swearing that that can't make gas without lead. However, our environment was becoming contaminated with all that lead. Well, once again, U.S. Congress stepped into the picture and said no, you can't do this. And guess what? They stopped their crying and they made gas without lead, and our cars are doing just fine.

Eleven years ago, I walked into a baby store to buy a crib mattress for our first grandchild. What I encountered was vinyl with phthalate chemicals, antimony, perfluorinated compounds, flame retardants that included all kinds of really nasty stuff, pesticides, allergenic materials. I was shocked.

The moment of truth was when the salesperson told me, come on, knock it off. If the product wasn't safe, the government wouldn't allow it to be sold. Well, I knew better. I decided there and then it was time for me to stand up and say no to toxic chemicals in consumer products. I decided to use the power of business to make a difference and, together with my two sons, we created Naturepedic, whose products are now sold by over 500 retailers across the Nation.

On behalf of the American Sustainable Business Council, Companies for Safer Chemicals Coalition, and on behalf not only of my children and my grandchildren, but on behalf of your children and your grandchildren, I am asking you to do the right thing again, just like Congress did it in the past.

Our chemicals are, for the most part, are simply not regulated. Let us be honest, they are really not regulated. Industry reportedly produces about 250 pounds of chemicals every year for every man, woman, and child in this country, and there are over 80,000 chemicals available for industry to use, with very little regulation for any of it. This is not good for business.

Industry stopped polluting our lakes when the law, supported by science, told them to stop. Industry stopped adding lead to gasoline when the law, supported by science, told them to stop. We need a system-wide change now to tell industry to stop using toxic chemicals in consumer products.

Many business leaders, myself—

Mr. SHIMKUS. Mr. Cik, your time is almost out, if you could wrap up.

Mr. CIK. All right.

Mr. SHIMKUS. I would be very generous in allowing you to keep going.

Mr. CIK. I will wrap up within 1 minute. We are asking—

Mr. SHIMKUS. Well, how about 30 seconds?

Mr. CIK. We are asking you to—

Mr. SHIMKUS. You already ran over.

Mr. CIK. Fine. We are asking you to restrict or eliminate toxic chemicals, incentivize the manufacture of safer chemicals, create the clarity needed in the marketplace, remove this unreasonable risk criteria which just doesn't work, hasn't worked ever. And you know it. Create some deadlines minimum requirements for identifying, assessing and regulating high-priority chemicals; disclose all ingredients to the public, provide health and toxicity testing, and avoid providing regrettable substitutes when changing ingredients.

Feel free to communicate with me or the American Sustainable Business Council. As well, we have given you some written information. Thank you for your time and consideration.

[The prepared statement of Mr. Cik follows:]

**Updating the Toxic Substances Control Act (TSCA):  
Reforming the Use of Toxic Chemicals in Consumer Products**

**Testimony Presented to the United States Congress – House Energy and Commerce,  
Environment and the Economy Subcommittee, Chairman John Shimkus**

**Wednesday March 12, 2014**

Thank you, Mr. Chairman and members of this subcommittee:

My name is Barry A. Cik. I am a Board Certified Environmental Engineer, a Certified Hazardous Materials Manager, a Certified Diplomate Forensic Engineer, a State of Ohio Professional Engineer, and an author of a textbook for Government Institutes on Environmental Assessments. I am a co-founder of Naturepedic, a manufacturer of certified organic mattresses and bedding products for adults and children.

More importantly, I'm here as a representative of the American Sustainable Business Council (ASBC) which includes the Companies For Safer Chemicals Coalition, a project of ASBC. The American Sustainable Business Council is a growing coalition of business organizations and businesses committed to creating a vision and framework and advancing market solutions and policies to support a vibrant, just and sustainable economy. Founded in 2009, ASBC and its organizational members represent more than 200,000 businesses and more than 325,000 business leaders across the United States. The Companies For Safer Chemicals Coalition represents a new alliance of companies focused on chemical reform based on the principles of transparency, safety and innovation.

Forty years ago, I was taught in my Engineering classes that "the solution to pollution is dilution". But, it soon became evident that Lake Erie and other water-bodies were dying from the chemicals, even in diluted amounts. The better solution was to eliminate toxic chemicals from these inappropriate places. Fortunately, the U.S. Congress agreed and did the right thing with the passage of RCRA.

Years later, I observed how the gasoline manufacturers swore that gasoline could not be made without lead. But it was evident that our environment was being seriously contaminated with all that lead. Fortunately, the U.S. Congress agreed and did the right thing by prohibiting lead from gasoline, and our automobiles are working just fine.

Eleven years ago, I walked into a baby store to buy a crib mattress for our first grandchild. It quickly became apparent that the various offerings contained phthalate plasticizers, brominated and/or organophosphate fire retardants, antimony, perfluorinated compounds, allergenic materials, pesticides and /or other chemicals. The turning point in my life was hearing the salesperson tell me that *"if the product wasn't safe, the government wouldn't allow it to be sold"*. However, I knew better. Due to my training I know that this is not necessarily the case, and I also know that regulations often lag behind scientific understanding.

I refused to buy any of the products. Instead, I decided that it was now time for me to stand up and say no to toxic chemicals in consumer products. I decided to use the power of business to make a difference and, together with my two sons, created Naturepedic, whose products are now sold by over 500 retailers across the nation.

On behalf of the American Sustainable Business Council, Companies For Safer Chemicals Coalition, and on behalf not only of my children and grandchildren, but on behalf of your children and grandchildren, I'm asking you to do the right thing again. Our chemicals are, for the most part, not regulated. Industry reportedly produces 250 pounds of chemicals every year for every man, woman, and child in this country, and there are over 80,000 chemicals available for industry to use, with very little regulation or oversight for any of it. This is not good for business.

Naturepedic and many other businesses are working hard to eliminate all toxic chemicals from our supply chain, but that is not enough. Market forces alone are not able to create widespread safer products in commerce. Industry stopped polluting our lakes when the law, supported by science, told them to stop. Industry stopped adding lead to gasoline when the law, supported by science, told them to stop. We need a system-wide change to deal with toxic substances.

Many business leaders, myself included, are committed to working with government to create comprehensive chemical policy reform. Such reform should work from the best science to properly restrict or eliminate toxic chemicals, incentivize the manufacture of safer chemicals, and create the clarity needed in the marketplace for businesses and for the American public.

The EPA needs to be given the ability under TSCA to remove chemicals without being hindered by what is known as the "unreasonable risk" standard, which has been unworkable since TSCA was originally enacted, and which is so unworkable that no chemicals at all have been banned in decades. TSCA needs to include deadlines and minimum requirements for identifying, assessing and regulating high-priority chemicals. Manufacturers need to be required to disclose

all ingredients, provide health and toxicity testing for all chemicals, and to avoid providing “regrettable substitutes” when changing ingredients.

The EPA needs to be permitted to follow the recommendations of the National Academy of Sciences and the American Academy of Pediatrics which call for focusing on the toxic effects of chemicals and of assessing the risks of chemicals “in aggregate” – adding up the different exposures. This is particularly of concern with vulnerable populations like children, pregnant women, and the elderly. The federal government also needs the authority to restrict imported products containing restricted chemicals. And, the federal government should not block the right of states to protect air, water or soil or for consumer product warning and labeling programs or any other state chemical safety oversight. The federal government can work with business to make the transition to safer chemicals and products a priority for this nation. This is good for business.

The public is increasingly becoming educated about the risks of consumer products containing untested toxic chemicals. Consumers deserve access to transparent information and full disclosure regarding the products that they buy. Consumers do, in fact, believe that if it wasn't safe, the product would not be allowed to be sold. The public, and a large segment of the business community expects you – the U.S. government - to ensure that toxic chemicals are removed from commerce as evidenced by the strong bi-partisan small business support in independent polling.

Whenever there is a ban on harmful technology, there is innovation. When the gasoline companies were told to eliminate lead, they found innovative ways to make gasoline without the lead. It's no different with any other toxic chemicals. American businesses can and will innovate, but we also need a government commitment to passing meaningful reform, which we presently do not see represented by the bills before Congress.

Please feel free to communicate with the American Sustainable Business Council and with me for more information. As well, helpful written information has been included with this presentation. Thank you for your time and consideration.

## Companies for Safer Chemicals

Current chemical regulation is outdated and inadequate. Now is the time to change it. As business leaders we urge Congress to pass chemical safety reform legislation that protects all families from toxic chemicals, and incentivizes the production of cleaner and safer chemicals and products.

The Toxic Substances Control Act (TSCA) was passed in 1976, and unlike other major environmental laws, has never been updated. As it currently stands, TSCA is a broken law. As a result, tens of thousands of potentially harmful chemicals continue to be used in the marketplace since the 1970's without proper testing and without disclosure by the companies that produce them.

We believe this has to change.

As companies and business leaders we're asking Congress to pass comprehensive and effective chemical safety reform legislation now. Chemical policy reform must protect the most vulnerable among us, and require public access to

information regarding the safety of chemicals. Reform must respect the rights of states to protect their residents when the federal government fails to do so, and require the Environmental Protection Agency to take fast action on the most harmful chemicals. Right now the Chemical Safety Improvement Act does NOT meet these criteria. Guided by good science, legislation can drive business innovation and success and protect public health.

Parents and families should not have to worry about harmful chemicals in our everyday products. That's why we're working together to encourage Congress to pass chemical safety reform now.

This is good for business and for our economy.

For more information about Companies for Safer Chemicals, please contact the American Sustainable Business Council at [bmgannon@ascouncil.org](mailto:bmgannon@ascouncil.org) or 202-595-9302 x106

See reverse for coalition logos.

Affordable Portable Housing  
Aloha Services  
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Annie's  
Ava Anderson Non Toxic  
Aubrey Organics  
Babee Talk  
Badger  
Sarrett International Technology  
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sysTame  
THE ADDED EDGE  
The Essence Way  
The Honest Company  
The lollipop tree inc.  
The Nature of Beauty  
The Specialty Sleep Association (SSA)  
Think Dirty Inc.  
Think Local First of Washtenaw County  
Thinkbaby / Thinksport  
Total Balance Health & Fitness  
Triple Ethos  
Village Bakery & Cafe, Della Zona Pizzeria, Catalyst Cafe  
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Westport River Watershed Alliance  
Whole Dogz, Inc.  
Zarbee's Naturals  
Zoeganics

American Sustainable Business Council

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## The Business Case for Comprehensive TSCA Reform

Leading companies from electronics manufacturers to health care providers are highly motivated to identify and use safer alternatives to chemicals of high concern to human health and the environment. Today's business leaders are concerned about the health and business impacts that could arise if the products they use or sell contain chemicals of high concern. They recognize that safer chemicals protect human and environmental health and cut the costs of regulation, hazardous waste storage and disposal, worker protection, and future liabilities. Such steps also offer new business opportunities for innovation, by making U.S. businesses more competitive in a global marketplace and creating new jobs.

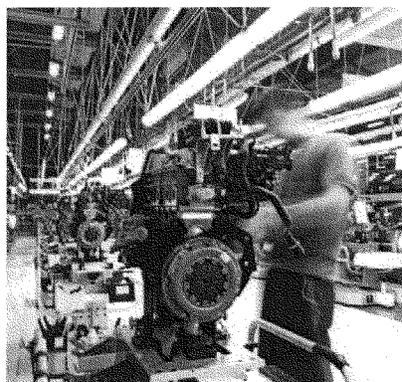
**"We've taken a cautious approach to materials, meaning that where there is credible evidence that a material we're using may result in environmental or public health harm, we should strive to replace it with safer alternatives."**

Kathy Gerwig, Vice President Workplace Safety and Environmental Stewardship Officer, Kaiser Permanente

The Toxic Substances Control Act (TSCA), which is intended to give the U.S. Environmental Protection Agency (EPA) the power to identify and regulate hazardous chemicals, simply does not work. In the absence of federal government action to ensure the safety of chemicals, leading American businesses are changing how they use chemicals. Companies in the healthcare, building, retail, electronic and cleaning product sectors are at the forefront of this movement. Dignity Health, Construction Specialties, Hewlett-Packard, Kaiser Permanente, Method, Novation, Perkins+Will, Premier, Naturepedic, Seventh Generation, Staples, and Bioamber are among the business leaders that have endorsed and are implementing a set of core principles on how to manage the use of chemicals in their own operations and their supply chains.

The failures of TSCA place significant burdens on downstream users of chemicals in products. They must:

- Research for themselves what chemicals are in products and what hazards they could pose to human health and the environment.
- Identify and test the safety of alternatives.



- Continue to use chemicals of high concern because producers do not offer safer alternatives.
- Make chemical and product selection decisions in the absence of adequate hazard information.
- Constantly respond to emerging health concerns about products from the public.
- Face potential liability from the use of hazardous materials.
- Steer through an unpredictable and constantly changing regulatory climate.

Two recent surveys of small businesses owners reveal that small business owners generally believe toxic chemicals pose a threat to people's health, and support stricter regulation and greater disclosure of toxic chemicals: 75% support stricter regulation of chemicals used in everyday products; 93% of small business owners see regulations as a necessary part of a modern economy and believe they can live with them if they are fair and reasonable; and 78% of owners want to see disclosure and regulation of toxic substances that are used in products (<http://absCouncil.org/toxic-chemicals-poll>).

**"We think of chemicals policy as guiding us and helping us to be a better company."**

Roger McFadden, Senior Scientist, Staples

**The business case for safer chemicals**

Using safer chemicals makes sense for our economy, health, and environment. The benefits of comprehensive TSCA reform to businesses are significant and include:

- Leveling the playing field, by requiring existing chemicals to meet the same testing requirements as new chemicals.
- Expanding markets for safer and greener chemicals and products.
- Creating a more predictable regulatory system.
- Reducing the costs and risks associated with managing chemicals in products across supply chains.
- Lowering expenses from chemically-induced employee illness and enhancing productivity from improved employee health.
- Identifying chemicals of high concern to human health or the environment.
- Increasing trust among consumers, employees, communities, and investors.
- Improving transparency and communication throughout the supply chain, leading to increased confidence for downstream users.
- Creating a more competitive, innovative, and economically sustainable chemical industry in the U.S.\*

**What downstream users need from TSCA reform**

Using common sense principles and current science, downstream users should work with Congress to repair our broken chemical management system. Downstream users of chemicals need TSCA reform to:

1. **Require chemical manufacturers to develop and submit hazard, use and exposure data on chemicals in commerce, and require the EPA to make such data readily available to the public.**

Chemical manufacturers should be held responsible for the safety of their products and should be required to provide full information on the health and environmental hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed. Comprehensive information on all chemicals is essential to avoid the mistake of "regrettable substitutions

2. **Take immediate action to reduce the use of persistent, bioaccumulative and toxic (PBT) chemicals and other chemicals of very high concern.**

Exposure to PBT and other toxic chemicals, such as formaldehyde, that have been thoroughly studied need to be reduced and substituted with safer alternatives. Increasingly, downstream users incur reputational risks and a large financial burden for controlling and supervising the use of PBTs and other chemicals of high concern manufactured. The most cost-effective method for controlling the use of these chemicals is to limit their use.

3. **Clearly identify chemicals of high and low concern to human and environmental health, based on robust information.** We need a credible, transparent source of information that clearly communicates what we know and don't know about chemicals on the market. TSCA reform can enhance the ability of companies to build and maintain the value of their brands by avoiding chemicals of concern and selecting safer alternatives.

**Simply put, it's time for a change. We have a very clear mandate to think differently about human health and take responsibility to move that agenda forward. When two thirds of consumers of the American public are concerned about their human health, it is very clear we need to act and behave differently. It's time to reform the weak and outdated Toxic Substances Control Act.**

John Replogle, President & CEO, Seventh Generation

4. **Require greater disclosure from producers of chemicals of high concern in products.** This Federal policy requirement will directly address a significant barrier to implementing green chemistry at the user level: the lack of information on the chemical constituents in products.

5. **Promote safer alternatives.** Green chemistry research should be prioritized and policy incentives developed by the federal government to promote and facilitate the use of safer chemicals over those with known health hazards. All too often the movement away from chemicals of high concern is impeded by the lack of safer alternatives. By fostering the development of green chemicals we invest in sustainable businesses, safer jobs and healthier products for Americans. Together, these elements of comprehensive TSCA reform will create an effective and trusted regulatory system that enhances the value of products across their supply chain.

\* On the benefits to downstream users of chemicals policy reform, see: ChemSec, 2005, *What we Need from REACH: Views on the Proposal for a New Chemical Legislation within the EU*. [www.chemsec.org/images/stories/publications/ChemSec\\_publications/What\\_we\\_need\\_from\\_REACH.pdf](http://www.chemsec.org/images/stories/publications/ChemSec_publications/What_we_need_from_REACH.pdf). Accessed October 15, 2009.

For more information and resources:

**Business-NGO Working Group for Safer Chemicals and Sustainable Materials** • [www.BizNGO.org](http://www.BizNGO.org)  
**American Sustainable Business Council** • [www.asbcouncil.org](http://www.asbcouncil.org)



## Small Business Owners on Toxic Chemicals

Findings From A National Online Survey of 511 Small Business Owners

September 27<sup>th</sup>-October 2<sup>nd</sup>, 2012

Prepared by David Mermin, Maxx Caicedo and Christine Matthews



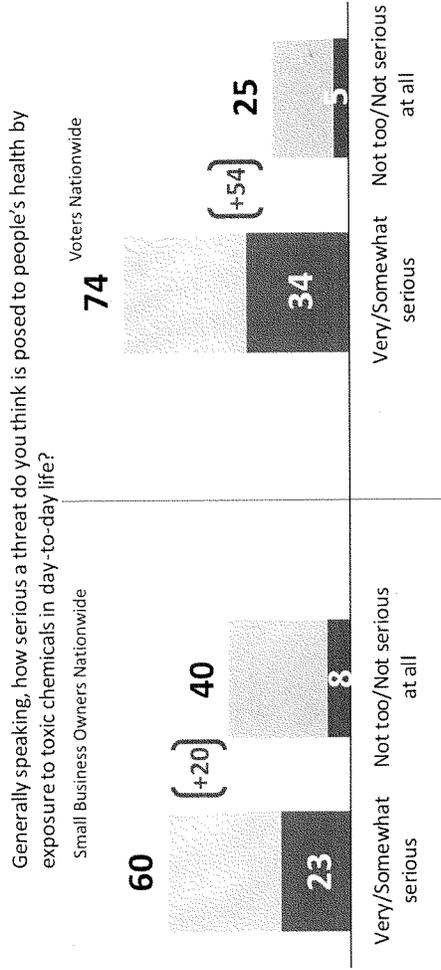
## Methods

- Lake Research Partners conducted a National online survey from September 27<sup>th</sup>- October 2<sup>nd</sup> , 2012 with analysis from Bellwether Research.
- Geographically stratified sample of 511 small business owners across the U.S.
- The margin of error for this survey is +/- 4.4%.
- The data were weighted slightly by gender, region, ethnicity, industry type and business size to match the sample to the national population of small business owners.

## Key Findings

- Small business owners generally believe toxic chemicals pose a threat to people's health, and support stricter regulation and greater disclosure of toxic chemicals. Three-quarters support stricter regulation of chemicals used in everyday products.
- The values driving the views of small business owners in this area are responsibility, safety, and accessible information. Nearly all SBOs believe there should be a publicly accessible database identifying toxic chemicals, and nearly all believe manufacturers should be held responsible for chemical safety.
- Most business owners explicitly support government regulations of the products companies buy and sell, and nearly three out of four support a proposed reform of the Toxic Substances Reform Act requiring manufacturers to show their chemicals are safe.
  - Three-quarters also support tax incentives for companies that innovate to provide safe chemicals.

60% of small business owners believe the threat posed to people's health by exposure to toxic chemicals is very/somewhat serious, while 40% believe it is not too/not serious at all. Voters believe the threat is even more serious.



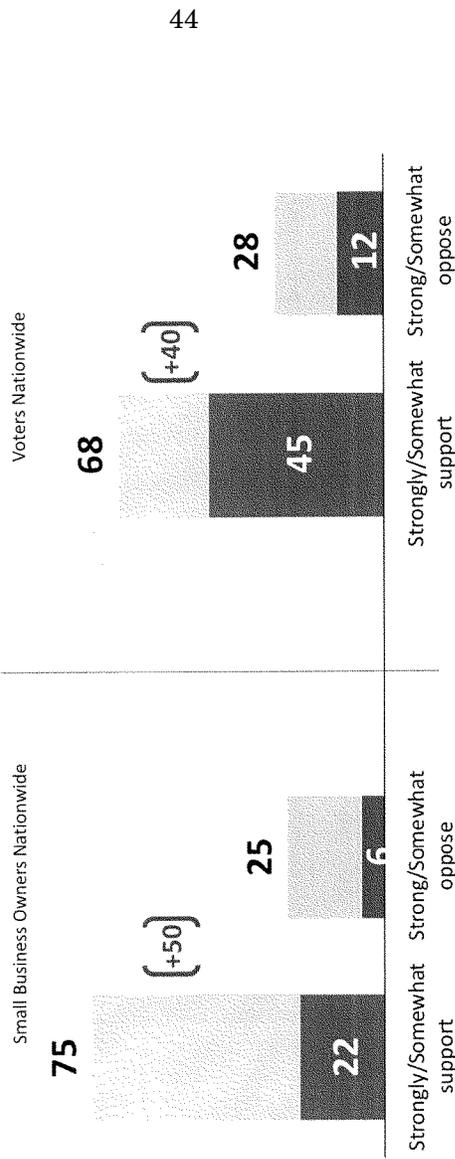
Public Opinion Strategies: National Omnibus Survey of 800 Voters (N=600 Landline/ N=200 Cell) June 25-27, 2012 Margin of Error = + 3.46%

Lake Research Partners: National online survey of 511 Small Business Owners also w/ analysis from Bellwether Research September 27<sup>th</sup>-October 2st, 2012. Margin of error = +/-4.4%.



Three-fourths of SBOs support stricter regulation of chemicals used in everyday products. Two-thirds of voters are also supportive of stricter regulation.

Do you support or oppose stricter regulation of chemicals produced and used in everyday products?



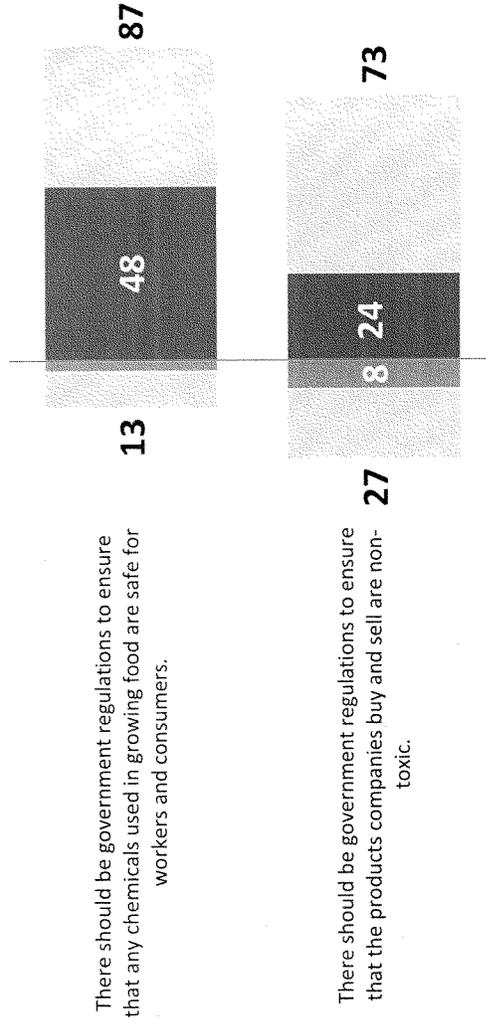
Public Opinion Strategies: National Omnibus Survey of 800 Voters (N=600 Landline/ N=200 Cell) June 25-27, 2012 Margin of Error = + 3.46%

Lake Research Partners : National online survey of 511 Small Business Owners also w/ analysis from Bellwether Research September 27<sup>th</sup>, October 2<sup>nd</sup>, 2012. Margin of error = +/-4.4 %



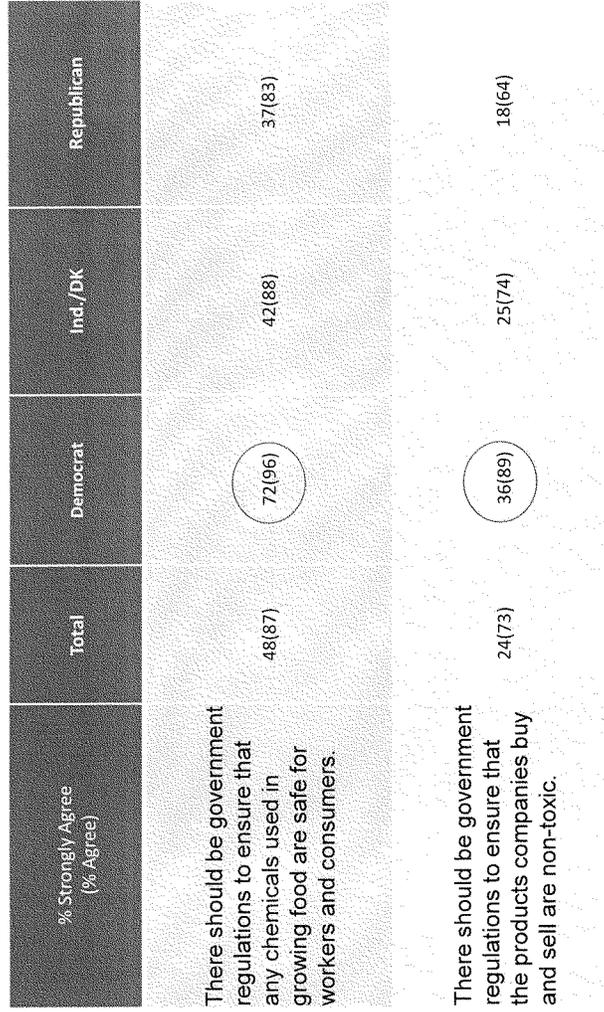
87% of SBOs support government regulation of chemicals used in growing food and 73% support government regulation to ensure the products companies buy and sell are non-toxic.

45



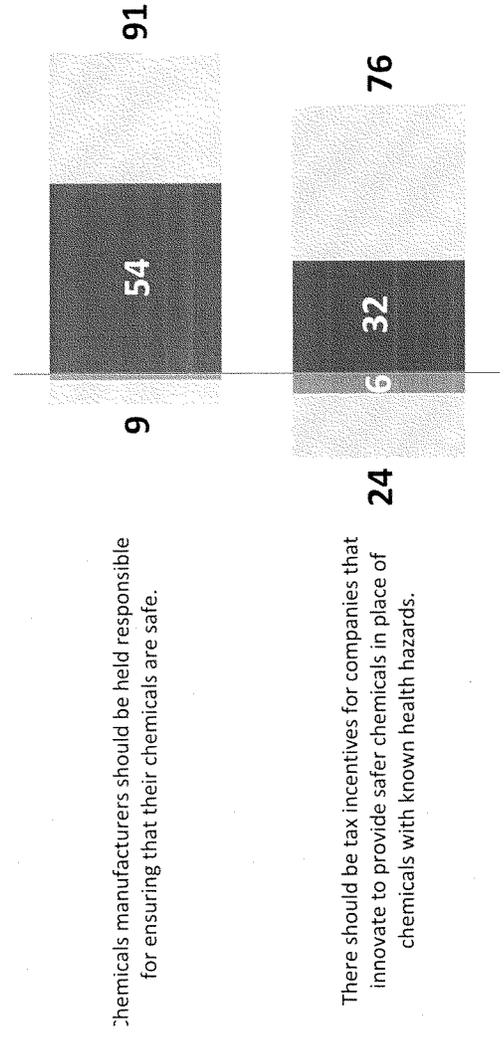
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

An overwhelming 96% of Democrats and 83% of Republicans are supportive of regulating chemicals used in growing food.



For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

9 in 10 SBOs believe chemical manufacturers should be held responsible for ensuring their chemicals are safe, while 76% believe there should be tax incentives for companies that innovate to provide safer chemicals.



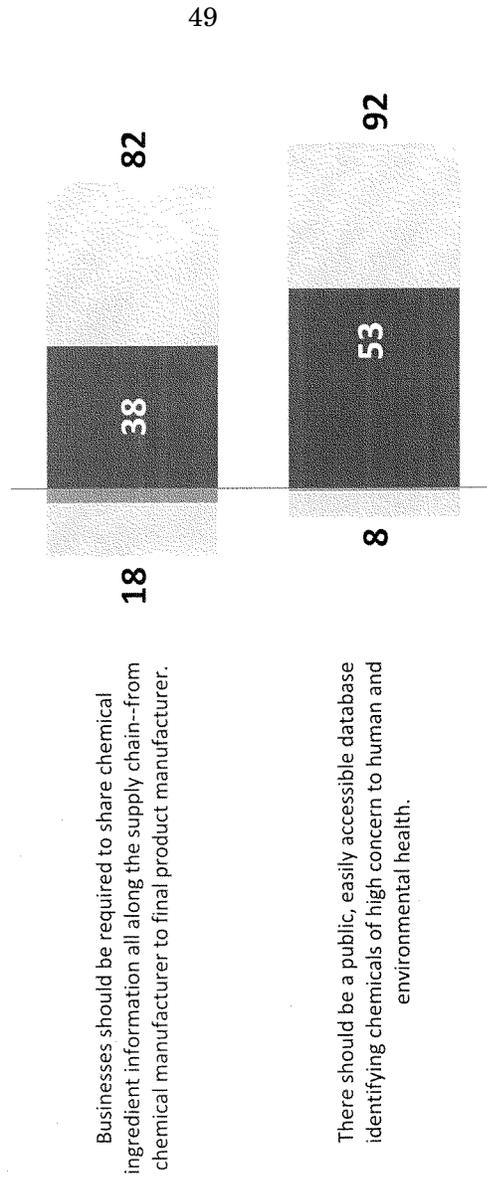
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Across partisan lines, SBOs support holding chemical manufacturers accountable and creating tax incentives for companies that innovate to make safer chemicals.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
Chemicals manufacturers should be held responsible for ensuring that their chemicals are safe.	54(91)	64(96)	56(87)	46(89)
There should be tax incentives for companies that innovate to provide safer chemicals in place of chemicals with known health hazards.	32(76)	41(86)	26(69)	31(74)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

SBOs are also very open to increasing transparency, to the public and along the supply chain, with regard to the chemicals being used and their possible health risks.



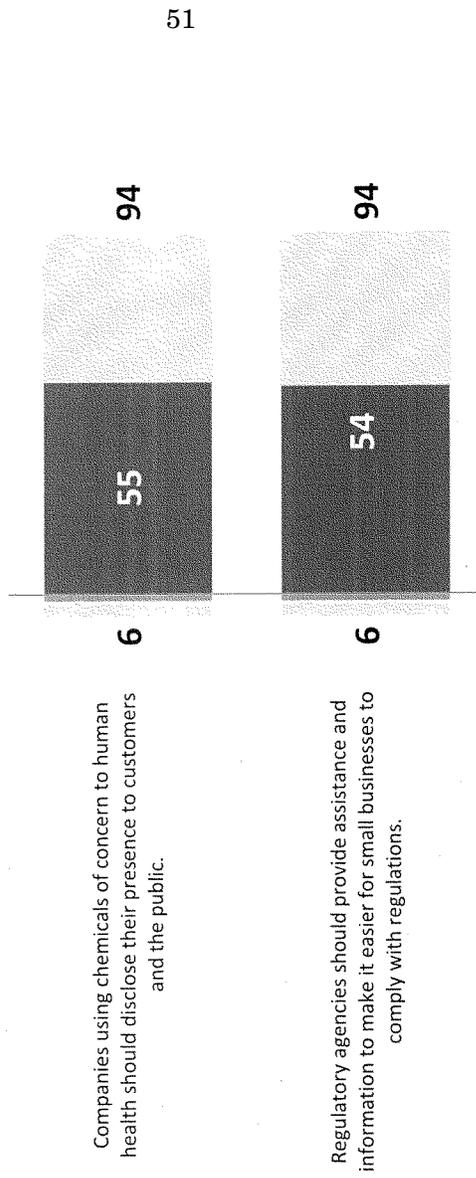
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Across partisan lines, there is support for increased transparency along the supply chain and to the public.

	Total	Democrat	Ind./DK	Republican
<b>% Strongly Agree (% Agree)</b>				
Businesses should be required to share chemical ingredient information all along the supply chain—from chemical manufacturer to final product manufacturer.	38(82)	51(93)	39(81)	30(77)
There should be a public, easily accessible database identifying chemicals of high concern to human and environmental health.	53(92)	66(96)	52(89)	46(91)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Almost all SBOs agree that companies using chemicals of concern to human health should disclose their presence to customers and to the public, and that agencies should provide assistance to help businesses comply with these regulations.



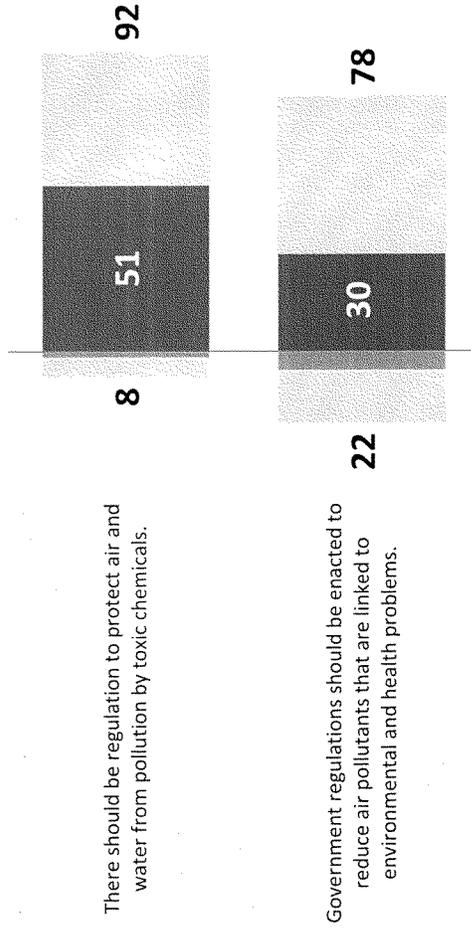
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Republicans very much agree with both the disclosure, and agencies providing assistance, but with less intensity than Democrats and Independents.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
Companies using chemicals of concern to human health should disclose their presence to customers and the public.	55 (94)	66 (96)	53 (91)	50 (93)
Regulatory agencies should provide assistance and information to make it easier for small businesses to comply with regulations.	54 (94)	54 (96)	57 (94)	53 (93)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

SBOs believe government regulations should exist to reduce air pollutants that are linked to environmental and health problems, and that regulations should be enacted to protect both air and water. The statement without the word “government” has stronger support.



53

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Democratic SBOs strongly agree that government regulations should be enacted to reduce air pollutants that are linked to environmental and health problems.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
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There should be regulation to protect air and water from pollution by toxic chemicals.

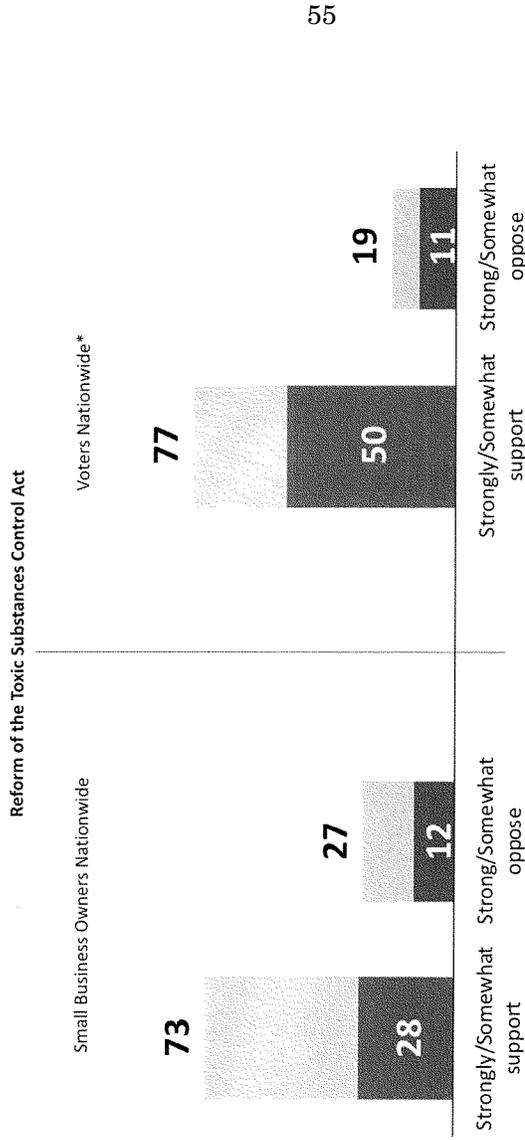
51(92) 78(98) 50(92) 37(90)

Government regulations should be enacted to reduce air pollutants that are linked to environmental and health problems.

30(78) 52(97) 30(79) 17(69)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Small business owners overwhelmingly support the reform that would strengthen the Toxic Substances Control Act, though with less intensity than voters nationwide.

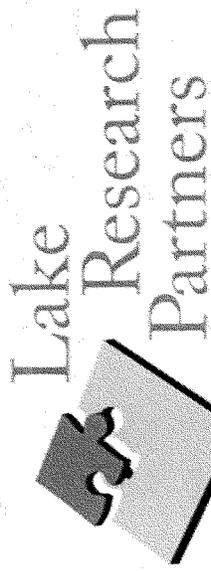


One proposal that may be considered in Congress is to reform the Toxic Substances Control Act that was passed in 1976, which provides the Environmental Protection Agency, or EPA, with the authority to regulate chemicals. Under this proposal, all chemical manufacturers would be required to show their chemicals are safe in order to sell them; the EPA would be able to limit some or all uses of a chemical that may harm the public health and would be able to provide support for research and development to help business innovate in producing safer chemicals.

Public Opinion Strategies: National Omnibus Survey of 800 Voters (N=600 Landline/ N=200 Cell)  
 June 25-27, 2012 Margin of Error = + 3.46% \*Slightly different wording on this question than Small Business Owners Survey  
 Lake Research Partners : National online survey of 511 Small Business Owners also w/ analysis from Bellwether Research .  
 September 27<sup>th</sup>, October 2<sup>nd</sup>, 2012. Margin of error = +/-4.4 %.

## Conclusions

- In general, small business owners are concerned about the threat posed by chemicals to the health of humans and the environment, and are supportive of regulation aimed at mitigating that threat.
- Concern over the health risks posed to human and environmental health by toxic chemicals is shared among Democratic and Republican SBOs, as well as support for stricter government regulations to increase transparency and accountability so health risks can be minimized.



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Mr. SHIMKUS. The gentleman's time expired. The Chair now recognizes Mr. Roger Harris. You are recognized for 5 minutes. Welcome.

#### **STATEMENT OF ROGER T. HARRIS**

Mr. HARRIS. Chairman Shimkus, good morning Ranking Member Tonko, and members of this subcommittee, I appreciate this opportunity to testify. My name is Roger Harris. I am President of Producers Chemical Company, and I am here today on behalf of the National Association of Chemical Distributors for which I currently serve as Chairman of the Board. NACD supports TSCA reform and believes the discussion draft is a significant step forward.

Producers Chemical is a small business located near Chicago that generates approximately \$20 million in annual revenue and employs 25 workers which is an average-sized NACD member. Chemical distributors are a critical link in the industrial supply chain. The typical distributor buys chemicals in bulk, breaks them down into smaller packaging, in some cases blending them, and then delivers them to an estimated 750,000 industrial customers. Our customers turn these chemicals into products like paints and coatings, cosmetics, food and pharmaceuticals and numerous other products that are essential to our everyday lives.

NACD members make deliveries every 7 seconds while maintaining a safety record that is twice as good as all manufacturing combined. NACD members are leaders in environment health, safety and security through implementation of NACD's Responsible Distribution program, a third-party verified management practice system established in 1991 as a condition of membership. We would welcome the opportunity to discuss with you why we take Responsible Distribution so seriously.

I will briefly discuss several issues in my written remarks to make clear we support the draft's approach and spend the rest of my time on the testing and reporting provisions which, with some very important clarifications, would also be positive steps forward.

By allowing States to regulate chemicals until EPA has taken action and making clear that citizens may still have their day in court if they have suffered damages because of another's actions, the draft's preemption provision strikes the right balance and improves on the Senate version. Likewise, the draft protects confidential business information which is critical to innovation and competitive markets while ensuring emergency responders and doctors have access to lifesaving information.

The draft also creates a 1-year guidance deadline that will prod EPA to action and prioritizes chemicals as high or low to focus EPA's resources on substances of the highest concern.

We also have some suggestions. Under the existing statute, the EPA has been limited in its ability to order testing of chemicals and mixtures. Under Section 4 in the draft EPA is given significantly enhanced authority to require testing. That authority is guided by Section 4(b) requiring the Administrator to issue a Statement of Need. We fully anticipate EPA's primary focus would appropriately be on chemicals in commercial, not the millions of mixtures.

Nevertheless, we recommend that the introduced bill specifically clarify Section 4(b) so that if the Administrator were to require testing of a mixture, she explain her Statement of Need why testing only the chemicals comprising the mixture, rather than the mixture itself, is either infeasible or provides insufficient information.

This would keep the focus on the chemicals of concern rather than on millions of mixtures, reduce unneeded testing and would place no additional hindrance on EPA in carrying out this section.

NACD strongly supports a risk-based approach to chemical management, which means EPA needs information not only about hazards but exposures under chemicals and intended conditions of use. Currently manufacturers and importers are required to provide that but often do not know the end uses of the products. We agree with the testimony in your last TSCA hearing that to accomplish the aim of a risk-based regulatory scheme the law should expressly allow the Agency to collect necessary use-related information from downstream processors who are formulators of consumer and industrial products. At the same time, reporting obligations should not simply be shifted to distributors who do not manufacture the end-use products but are simply the middleman in the chemical supply chain for thousands of products. But the draft is unclear on its requirements. We recommend clarifying that EPA has the authority to require the information from downstream processors who are formulators of consumer and commercial products but also explicitly state EPA should minimize duplicative reporting under this section. Downstream formulators have the best understanding of how they use the chemicals they buy from us.

Requiring upstream distributors to report who have sometimes thousands of different industrial customers would generate massive amounts of paperwork and get little useful information for the EPA. If duplicative reporting were required of our companies, which average 26 employees, we estimate that more of a third of the overall reporting burden would fall on our sector alone.

Lastly, current law does not define small processor. While not a significant issue under existing law, it will become extremely important for small business in numerous industry sectors under expanded reporting provisions. That definition should reflect the normal definitions of a small business as outlined by the Small Business Administration.

Thank you very much for your time and attention.

[The prepared statement of Mr. Harris follows:]

Testimony of Roger Harris  
On behalf of the

National Association of Chemical Distributors

Before  
The House of Representatives  
Subcommittee on Environment and Economy  
Of the Committee on Energy and Commerce

“Discussion Draft of the Chemicals in Commerce Act of 2014”

Chairman Shimkus, Ranking Member Tonko, and members of this subcommittee, I appreciate the opportunity to testify before you today on the discussion draft of the Chemicals in Commerce Act of 2014 (CICA). My name is Roger Harris and I am President of Producers Chemical Company. I am here on behalf of the National Association of Chemical Distributors (NACD), for which I currently serve as chairman of the board. NACD supports Toxic Substances Control Act (TSCA) modernization and believes the Chemicals in Commerce Act of 2014 discussion draft is thoughtful and a significant step towards the enactment of sensible chemicals management policy. I am here today to commend you for addressing this important issue, to highlight key improvements to existing law contained in this draft and to offer several suggestions.

Producers Chemical is a small business located near Chicago, Illinois, that generates approximately \$20 million in annual sales, employs 25 workers and sells approximately 40 million pounds of chemicals a year. We are active in our local community and have a mutually constructive and cooperative relationship with our local officials. While I am justifiably proud of the work my company does every day, it is not unique within our industry. The typical NACD chemical distributor generates sales of \$26 million, employs 26 employees and operates on low margins. A significant portion of these companies are also multi-generational, family run businesses.

Chemical distributors are a critical link in the industrial supply chain. The typical distributor buys chemicals in bulk from manufacturers, transports them domestically by rail or truck to our facilities, breaks them down into smaller packaging, in some cases blending them, and then transports them by truck to an estimated 750,000 industrial customers. Our customers turn these chemicals into a diverse array of products like paints and coatings, fabrics, carpeting, cosmetics, food, pharmaceuticals and numerous others that are essential to our everyday lives.

We serve a highly specialized and essential function in the chain of manufacturing our nation's goods. Our industry is the predominant supplier of chemicals to small industrial businesses around this nation. Our existence and the health of our industry ensure hundreds of thousands of small industrial users and manufacturers are able to operate and produce necessary products for the nation's end-users.

The National Association of Chemical Distributors was founded in 1971. Health and safety are not mere buzz words in our industry. They are a critical part of the foundation of our culture. NACD's more than 400 members make deliveries every 7 seconds while maintaining a safety record that is twice as good as all manufacturing combined. NACD members are leaders in health, safety, security, and environmental performance through implementation of NACD's Responsible Distribution® program, a third-party verified management practice system established in 1991 as a condition of membership. We are proud of this industry-leading program, and we would welcome the opportunity to meet with and talk to you and your staff about why we take continuous improvement through Responsible Distribution so seriously.

Today, I would like to discuss positive aspects of the discussion draft related to preemption, confidential business information, deadlines, prioritization, testing, and reporting. For the last two issues, I will also offer recommendations to clarifying these provisions that are of high importance to my industry.

**Preemption:**

As has been thoroughly explored by this subcommittee, current federal law has failed to provide a workable national framework to assess the safety of chemicals. As a result, successful or ongoing efforts to impose chemical restrictions at the state level have been initiated to fill the gap. This fragmented approach is equally unworkable. NACD supports congressional action to develop a federal approach that minimizes the need for state laws and ensures potentially conflicting state approaches do not interfere with national markets.

If the U. S. Environmental Protection Agency (EPA) has acted, it does not make sense to allow a state to take contradictory action. While preemption is needed, however, it is equally critical states are not hamstrung in their efforts to regulate chemicals in instances where the EPA has not acted. This discussion draft appropriately strikes a balance between these important interests.

Under the draft, when EPA has taken action, such as requiring information or concluding a chemical is safe for its intended use, it preempts related state action. This is of fundamental importance in maintaining national markets and retaining business support for reform. But the

CICA discussion draft balances this preemption by preserving the authority of states to take action on chemicals until EPA determines the chemical is not likely to cause an unreasonable risk or promulgates a rule restricting the chemical.

Similarly, in an improvement from the language of the Senate bill, this discussion draft makes clear it does not “preempt any cause of action under State law for damages....” Hopefully, this clarification eliminates what has been a distracting controversy as to whether the intent of this legislation is to bar private rights of action, a major concern of the trial bar.

**Confidential Business Information:**

Confidential Business Information (CBI) is a foundation of innovation in much of our economy. The health of many of our businesses as well as our customers’ businesses is supported by the protection of proprietary information. The CICA discussion draft accomplishes the goal of maintaining the confidentiality of proprietary information in the marketplace while ensuring the EPA has the information it needs to make decisions as well as providing needed access to CBI by those with a legitimate need for the information who are required to keep it confidential. While this draft expands upon the exceptions under the Senate bill, extending to emergency responders and doctors with an urgent need are reasonable expansions that serve a legitimate purpose without unduly endangering CBI.

**Deadlines:**

This draft represents an improvement over the Senate version in its establishment of deadlines for policies, procedures and guidance from EPA. Established deadlines will encourage greater confidence from industry and the public that EPA will promptly implement the law, which is a key element of reform.

**Prioritization:**

Similar to the Senate version, although with some differences, the CICA discussion draft requires the EPA to assign chemicals as high or low priority for review and action. Prioritization is critical in that it focuses EPA resources on the substances of highest concern, provides business more certainty for low priority chemicals and provides a clearer picture of the immediate efforts necessary to implement the law.

**Testing:** The discussion draft helps solve an important flaw contained in the existing statute related to testing in which EPA has arguably been effectively limited in its ability to order testing. Under Section 4(a), EPA is provided significantly enhanced authority to require testing of chemicals and mixtures, but that authority is guided by Section 4(b) requiring the Administrator to issue a Statement of Need. Under this enhanced authority, we fully anticipate

the primary focus will appropriately be on chemicals in commerce, not mixtures – of which there are millions. Nevertheless, we recommend the introduced bill specifically clarify Section 4(b) so that, if the Administrator were to require testing of a mixture under 4(a), she explain in her Statement of Need under Section 4(b) why testing ‘only the chemicals comprising the mixture’ rather than ‘the mixture itself’ is either infeasible or provides insufficient information. This clarification would keep the focus on the chemicals of concern rather than on mixtures, reduce unneeded testing and avoid unnecessary burdens on government resources and the industry. We believe this clarification would place no additional hindrance on EPA in carrying out this section.

**Reporting:**

NACD supports a risk-based approach to chemical management. To implement a risk approach effectively, EPA needs appropriate information to evaluate both hazards and exposures under chemicals’ intended conditions of use. Under current law, manufacturers and importers bear the responsibility to provide use and exposure information to EPA, but that is often guesswork on their part because they frequently do not know the end uses of the products. We agree with previous testimony before this subcommittee that, to accomplish the aim of establishing a risk-based regulatory scheme, the amended statute should expressly enable the Agency to collect necessary use-related information from downstream processors who are formulators of consumer and commercial products.

At the same time, the reporting obligation should not simply be shifted to distributors, who do not manufacture the end-use products, but are simply the middlemen in the chemical supply chain for tens of thousands of products.

We recommend language in the draft be clarified to make clear EPA has the authority to require the information from downstream processors who are formulators of consumer and commercial products. But in so doing, it is critical that the draft explicitly state EPA should minimize any duplicative reporting of information under this section. Downstream formulators have a good understanding of how they use the chemicals they buy from us; distributors do not. Imposing this reporting burden on distributors, many of whom have hundreds or thousands of different industrial customers, would become a financial drain on these companies while yielding little or no additional useful information for EPA.

Let me be clear: it is entirely appropriate for our industry to be heavily regulated. But when half of our companies have 26 employees or fewer in a low margin business, it is critical those regulatory burdens are meaningful for these companies to comply and stay in the black. If duplicative reporting were required of our companies, we estimate more than a third of the

overall Section 8 reporting burden would fall on our sector alone. Clarifying the term would not eliminate our burden completely, but would reduce it to those instances where we have meaningful information to provide.

For purposes of reporting, the small processor definition under TSCA should mirror the normal meaning under the North American Industry Classification System and these companies should be allowed to provide information voluntarily but should not be mandated to do so. While not a significant issue under existing law, it will become very important for small businesses in numerous industry sectors under expanded reporting provisions.

Small processor has not been defined under current TSCA, but EPA has treated the term on two occasions as identical to that of a "small manufacturer," which is a fundamentally different business model. Processors differ greatly and even processors many times smaller than my company would fail to qualify for the small business exemption under the current small manufacturer definition.

Mr. Chairman and Ranking Member Tonko, thank you again for allowing me to testify today before this subcommittee on behalf of NACD. I hope I have provided a helpful perspective on the Chemicals in Commerce Act of 2014 discussion draft and the critical issues as they relate to the chemical distribution industry.

Mr. SHIMKUS. Thank you. And now I would like to recognize Mr. Michael Belliveau. You are recognized for 5 minutes.

**STATEMENT OF MICHAEL BELLIVEAU**

Mr. BELLIVEAU. Thank you, Mr. Chairman, Ranking Member Tonko—

Mr. SHIMKUS. Again, yes. Let us make sure that the mike is—

Mr. BELLIVEAU. There we go. The green light is on.

Mr. SHIMKUS. Just check our transcriber. If he is happy, everybody is happy.

Mr. BELLIVEAU. Chairman Shimkus, Ranking Member Tonko, members of the committee, thank you for this opportunity to testify today. My name is Mike Belliveau. I am the Executive Director of the Environmental Health Strategy Center, a public health organization, and serve as senior advisor to Safer Chemicals, Healthy Families, a national coalition.

I appreciate the efforts of this committee to work for TSCA reform. I have spent many hours over the last decade working toward the same goal, and it is worthy of achieving. Unfortunately, the Chemicals in Commerce Act as drafted, like its Senate counterpart, would endanger public health. In its quest for meaningful TSCA reform, the discussion draft takes two steps forward but 12 steps backwards. Those 12 fundamental problems with the draft legislation are detailed in my written testimony. They include rollbacks in existing TSCA authority, retention of fatal flaws in current TSCA and aggressive overreach that would chill other needed protections.

Now, let me illustrate just a few of the worst features of this bill draft by way of example. Imagine your family at home after a long day. Your kids or your grandchildren are jumping up and down on the couch. Your pregnant daughter or niece plops down and curls up to rest on the couch, very normal activities, each of which sends a puff of invisible dust into the air that is laden with flame-retardant chemicals that come from the couch. Those chemicals can be measured in the bodies of your family members, and scientists have shown that those chemicals disrupt thyroid hormones and can harm the developing brain.

Now, the House draft fails to protect those vulnerable populations including pregnant women and children. It requires that when a safety determination is made that such groups be considered but does not explicitly require that the chemical be found to be safe for those vulnerable populations. Consideration is not enough. Protection of the health of pregnant women and children should not be optional. It should be mandatory.

Now, coming back to couches, Dr. Heather Stapleton, a chemistry professor at Duke University, has analyzed the flame-retardant chemicals added to couch cushions. Based on her research, your couch falls into one of two groups based on its age. If you bought the couch more than 10 years ago, it likely contains Penta, one of the PBDE flame retardants. These chemicals don't break down in the environment. Now, the House bill retains TSCA's flawed, unreasonable risk standard and includes the same onerous or similar onerous burdens in current TSCA that prevented EPA from banning asbestos. Applied to Penta 10 years ago, EPA would not have

been able to restrict this flame-retardant chemical in couches for the same reason.

The House bill would also roll back existing authority to regulate chemicals in consumer products like couches. It makes it more difficult to regulate significant new uses of chemicals. This is in direct response to EPA's proposed actions on the chemical cousin of Penta known as Deca. It also would prevent and take away EPA's authority to regulate the disposal of old couches, even though they likely pose significant risks of health.

The bill also violates states' rights from day one of enactment of the law. More than 1,600 chemicals would be taken off the table. States would be preempted immediately. It would get worse over time. States would not be able to collect information on flame retardants and chemicals.

Now, if you have one of the newer couches, it contains some other chemicals that have not been adequately tested, including a new chemical that EPA let into the market mistakenly called TBB. Under the House draft, it would make it easier for hazardous new chemicals to enter into the market, and it would make it more difficult to require testing of those chemicals or their effects over the environment and public health. Similarly, it would maintain grandfathered confidential claims without justification.

Now, I have spent over the last 4 years or so more than 1,000 hours sitting across the table with chemical manufacturers, including Ms. Deford, including flame-retardant manufacturers, including consumer product manufacturers, including big box retailers, all discussing our common interest in TSCA reform. Unfortunately, this draft bill does not reflect that dialogue. It will not restore consumer confidence in the safety of chemicals in everyday products. Just the opposite. The bill in fact is far outside the mainstream of the chemical management policies in place today in major U.S. corporations, in many States, among our trading partners and internationally. This unfortunately can't be considered a serious starting point for meaningful TSCA reform.

The good news is that like other stakeholders, we are ready to roll up our sleeves and develop a consensus approach that is feasible that would protect public health and the environment, and we look forward to the opportunity to work with you toward that end. Thank you, Mr. Chairman.

[The prepared statement of Mr. Belliveau follows:]

**Testimony of Michael Belliveau**

**President and Executive Director  
Environmental Health Strategy Center**

on the

**Discussion Draft of**

**The Chemicals in Commerce Act**

before the

**Subcommittee on Environment and the Economy**

**Committee on Energy and Commerce**

**U. S. House of Representatives**

Wednesday, March 12, 2014

2322 Rayburn House Office Building

Washington, D.C.

Summary of the Testimony of Michael Belliveau,  
President and Executive Director of the Environmental Health Strategy Center  
on the Discussion Draft of the Chemicals in Commerce Act  
before the Subcommittee on Environment and the Economy, House Energy and Commerce Committee  
March 12, 2014

I direct the Environmental Health Strategy Center, a nonprofit organization that promotes human health and safer chemicals in a sustainable economy, and serve as Senior Advisor to the Safer Chemicals, Healthy Families coalition. I have an environmental science degree from MIT and thirty-five years experience on chemicals management issues in California, Maine and nationally. For the last decade, I've worked with many other stakeholders toward achieving reform of the Toxic Substances Control Act of 1976 (TSCA). I appreciate the efforts of this Committee in pursuit of that same goal.

Unfortunately, the Chemicals in Commerce Act as drafted, like its Senate counterpart the Chemical Safety Improvement Act (CSIA), would endanger public health and the environment, if enacted. Among the many problems with the proposed TSCA reform legislation are the following:

1. The House bill abandons the consensus for a health-based safety standard
2. Both bills fail to protect pregnant women and children from toxic chemicals
3. Both bills roll back current law: Many chemicals will remain untested
4. Both bills roll back current law: Weakening the review of new chemicals
5. The House bill rolls back current law on chemicals in consumer products
6. Both bills fail to require expedited action on chemicals of high concern
7. Both bills set aside thousands of chemicals as "low priority" without safety data
8. Both bills maintain an onerous burden on EPA to restrict existing chemicals
9. Both bills violate States' rights to protect their citizens from toxic chemicals
10. Both bills maintain a veil of secrecy over critical chemical information
11. Both bills lack adequate deadlines and resources to drive serious progress
12. Both bills restrict EPA's ability to timely exercise its scientific judgment

If the Committee remains committed to the goal of restoring public confidence of the safety of chemicals in commerce, then considerable effort will be needed to overcome the fundamental flaws of this bill. A fresh start based on past stakeholder dialog would offer a more fruitful path to TSCA reform.

Chairman Shimkus, Ranking Member Tonko and members of the Committee, thank you for this opportunity to testify today. My name is Michael Belliveau. I am the President and Executive Director of the Environmental Health Strategy Center, a national nonprofit organization that promotes human health and safer chemicals in a sustainable economy, headquartered in Portland, Maine. I also serve as Senior Advisor to Safer Chemicals, Healthy Families, the national coalition of more than 350 organizations working to protect American families from toxic chemicals. I hold an environmental science degree from the Massachusetts Institute of Technology. I have thirty-five years of experience working on chemicals issues at the state and national levels, including twenty years based in California.

For the last decade, I've worked with many other stakeholders toward achieving reform of the Toxic Substances Control Act (TSCA). I appreciate the efforts of this Committee to pursue the same goal. Unfortunately, the Chemicals in Commerce Act as drafted, like its Senate counterpart the Chemical Safety Improvement Act (CSIA), would be disastrous for public health and the environment, if enacted.

The House Discussion Draft would roll back existing TSCA authority on new chemicals, chemicals in products, and testing of chemicals, which are among the few areas where the U.S. Environmental Protection Agency (EPA) has been able to make limited progress using outdated policy tools. The House bill would also maintain the most universally recognized fatal flaws of TSCA, including an unworkable cost-benefit standard that prevented EPA action on asbestos, failure to ensure the safety of vulnerable populations, and unjustified secrecy about chemicals. Reaching further, the House bill would preempt states' rights to regulate product safety and set aside potentially thousands of so-called "low priority" chemicals without adequate safety data to justify placing them off limits to future scrutiny.

The House bill finds that "public confidence in the Federal chemical regulatory program is important." §2(a)(3).<sup>1</sup> Yet rather than restoring public confidence, the bill would further undermine it. The House bill lies so far outside the mainstream of chemicals policy in the private sector, in the states,

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<sup>1</sup> Citations are to the TSCA sections amended by the draft Chemicals in Commerce Act, unless otherwise indicated.

among our trading partners and internationally, that the draft legislation cannot be considered a serious TSCA reform proposal. Unfortunately, the Senate bill contains most of these same fundamental flaws.

### **1. The House Bill Abandons the Consensus for a Health-Based Safety Standard**

The lack of a health-based safety standard has plagued the implementation of current law. In *Corrosion Proof Fittings*, the court held that EPA had failed to adequately assess costs and benefits in determining that asbestos posed an unreasonable risk of injury to human health.<sup>2</sup> Even though asbestos is a known human carcinogen that kills an estimated 10,000 Americans per year,<sup>3</sup> EPA's proposed asbestos restrictions were thrown out. This decision chilled EPA's ability to protect public health from dangerous chemicals. Even the chemical industry joined the growing consensus for health-based TSCA reform, stating that: "the benefit of chemicals being evaluated, the costs of methods to control their risks, and the benefits and costs of alternatives ... should not be part of (EPA's) safe use determinations."<sup>4</sup>

However, the House discussion draft contains no definition of or requirement to meet an explicit safety standard. Instead, it abandons the consensus call for a risk-based approach by applying the current TSCA test of whether a chemical presents an "unreasonable risk." §6(b). The courts have held that this standard triggers an upfront cost-benefit analysis rather than protection of human health and the environment as the primary consideration in making a "safety" determination.

The House bill's archaic embrace of the failed "unreasonable risk" standard has profound implications. For new chemicals, it means that EPA must consider costs and benefits before requiring testing to determine potential dangers or imposing conditions on chemical use. §5(c)(3). It means that even in the absence of adequate data, EPA can set aside a chemical as "low priority" because the cost associated with potential regulation is perceived to be greater than the benefits. §6(a)(1)(C). Under the

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<sup>2</sup> *Corrosion Proof Fittings v. EPA*, 947 F. 2d 1201 – Court of Appeals, 5<sup>th</sup> Circuit (1991)

<sup>3</sup> EWG Action Fund, Deaths from Asbestos-related diseases, <http://www.ewg.org/asbestos/facts/fact1.php#table1>

<sup>4</sup> American Chemistry Council, 10 Principles for Modernizing TSCA, August 2009

“unreasonable risk” standard, “making safety determinations” for all high priority chemicals amounts to false advertising. §6(b). Instead of ensuring the public that the chemical is “safe” for its intended uses, the real message will be that the chemical is “safe enough,” given the costs and benefits to the industry.

## **2. Both Bills Fail to Protect Pregnant Women and Children from Toxic Chemicals**

Everyone recognizes that TSCA’s failure to require EPA to determine the safety of hazardous chemicals to which Americans are routinely exposed is one of the greatest shortcomings of current law. Credible scientific evidence consistently shows that certain groups are inherently more susceptible and/or more exposed to chemicals, including pregnant women, children, communities of color, workers and others. Federal law needs to explicitly apply a safety standard to protect vulnerable populations.

Although both the House and Senate bills require EPA to make safety determinations for an unspecified number of high priority chemicals over time, the legislation fails to require that the chemical be found to meet the safety standard for all vulnerable populations. It’s not enough to define and analyze “potentially exposed populations.” §3(12), §6(c)(3). Unless EPA is explicitly required to apply a health-based safety standard to vulnerable populations, and to determine whether a chemical is safe for those most vulnerable, then protecting the health of pregnant women and children will not be assured. Unless the House bill is revised, such vulnerable groups can be legally, and too readily, ignored. EPA could simply decide that the serious health risk to vulnerable populations is not “unreasonable,” considering the lower population-wide risks and the costs to industry of protecting the most vulnerable.

Under other authorities, the federal government has protected young children from exposure to lead dust from old paint and pregnant women from methylmercury in fish. A group of toxic chemicals known as phthalates illustrate the need to explicitly protect vulnerable groups under TSCA. Congress previously banned six phthalates from use in toys and the European Chemicals Agency will phase-out all uses of four phthalates in 2015. Yet American women of childbearing age continue to be significantly

exposed to phthalates. The strongest scientific evidence from human health studies shows that pregnant women exposed to the highest levels of phthalates give birth to children with higher rates of birth defects of male sex organs, learning and behavioral problems, and asthma and allergies. When a revised TSCA requires EPA to determine the safety of phthalates, the safety of pregnant women and children should be a guarantee, not an option.

**Neither bill requires EPA to follow the National Academy of Sciences' recommendations on risk assessment, including the importance of considering aggregate risks of exposure to the same chemical from multiple sources, as well cumulative risks from simultaneous exposure to multiple chemicals and other risk factors.<sup>5</sup> Without adhering to modern principles of risk assessment, EPA's safety determinations, when they are able to make them under the constraints of the House bill, will likely be "wrong," that is they won't be fully protective of the health of vulnerable populations.**

### **3. Both Bills *Roll Back* Current Law: Many Chemicals Will Remain Untested**

The Government Accountability Office and others have decried the lack of adequate data on the health hazards of and exposures to most chemicals in commerce. EPA has required testing of chemicals for only about 200 of the 62,000 chemicals 'grandfathered in' when TSCA was signed into law in 1976, and fewer than 15% of new chemicals have adequate health and safety data.<sup>6</sup> The large number of poorly tested chemicals in everyday products alarms parents nearly as much as the known hazardous chemicals that are still in widespread use.

Arguably, the correct policy response would be to ***require chemical manufacturers to provide minimum data sets for all chemicals***, sufficient at least for screening level assessments of hazard, exposure and risk. That's the policy principle embodied in the 2007 REACH legislation in Europe, which

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<sup>5</sup> National Academy of Sciences, *Science and Decisions: Advancing Risk Assessment*, August 2009

<sup>6</sup> U.S. Government Accountability Office, *CHEMICAL REGULATION: Options Exist to Improve EPA's Ability to Assess Health Risks and Manage Its Chemical Review Program*, GAO-05-458, June 2005

warns of “no data, no market,” and is similar in principle to the data requirements now imposed by Walmart and Target, among others, who are requiring suppliers to provide information on chemicals.

Paradoxically, however, the House discussion draft, like the Senate bill, would actually greatly weaken EPA’s current authority to require testing of chemicals. Under current law, EPA can require testing of *any* chemical, if the chemical *may present* an unreasonable risk *or* it’s a chemical produced in substantial quantities that may result in substantial environmental releases or significant human exposure. TSCA §4(a)(1). Both bills significantly narrow that broad chemical testing authority. EPA could only require testing of chemicals when information is needed to perform a safety determination or to ensure compliance, based on a finding that an existing chemical *results* in an unreasonable risk (or a new chemical *will likely result* in an unreasonable risk). §4(a)(1). The bills shrink the chemical universe for testing to a small portion of the thousands of poorly tested chemicals to which people are exposed.

Even when testing is warranted, the proposed legislation creates new burdens that EPA must meet before it could justify a new testing requirement. EPA must first consider all available information, including exposure potential and screening level hazard and exposure information, and if insufficient may require that by rule, before requiring new testing on chemicals. §4(a)(3), (a)(4), (a)(5)

The legislation does allow EPA to issue an order to require testing, a less burdensome hurdle than the full rulemaking required by current TSCA. §4(a)(2). However, that authority is immediately diminished by an extensive, onerous, and upfront justification that EPA would have to make before it could use its new order authority, rather than a rulemaking, to require chemical testing. §4(b)

The bottom line: the House bill would keep Americans in the dark about health hazards and exposures for the vast majority of chemicals in commerce today. Just like in the recent Elk River

chemical spill where no data were available on the hazards of MCHM,<sup>7</sup> the Chemicals in Commerce Act would keep Americans guessing about the dangers of the many untested or poorly tested chemicals.

#### 4. Both Bills *Roll Back* Current Law: Weakening the Review of New Chemicals

Under current TSCA §5(e), EPA may restrict manufacturing of new chemicals pending the development of testing information, if the new chemical *may present* an unreasonable risk to human health and the environment or will be produced in substantial volumes and have substantial environmental release or significant or substantial human exposure. Most new chemicals lack adequate data to make that determination, minimum data sets are not required, and EPA has only 90 days to complete its initial review before manufacturing of the new chemical can begin. However, EPA has often mustered its limited TSCA authority to enter into negotiated consent agreements with chemical manufacturers that require additional testing, worker protections, restrictions on environmental releases and pollution control equipment for new chemicals.<sup>8</sup>

The Chemicals in Commerce Act would significantly curtail EPA's authority to review and regulate new chemicals. Both the House and Senate bills raise the bar higher before action can be taken, requiring EPA to determine whether or not the chemical *is likely to result* in an unreasonable risk of harm to human health and the environment. §5(c)(3). Further, because of the lack of a health-based safety standard in the House bill (see #1 above), EPA must now weigh costs and benefit factors before taking action on a new chemical under the House bill.

Both bills further limit EPA's authority to require testing of new chemicals that lack sufficient data to determine whether or not they are "likely" to present an unreasonable risk. This roll back

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<sup>7</sup> Richard Denison, Failed TSCA collides with the real world in West Virginia chemical spill this week, January 11, 2014, <http://blogs.edf.org/health/2014/01/11/failed-tsc-a-collides-with-the-real-world-in-west-virginia-chemical-spill-this-week/#more-2891>

<sup>8</sup> U.S. Environmental Protection Agency, New Chemical Consent Orders and Significant New Use Rules (SNURs), <http://www.epa.gov/oppt/newchems/pubs/cnosnurs.htm>

eliminates EPA's ability under TSCA §5(e) to block manufacturing of the chemical until such additional testing information is developed. Under the House bill, in evaluating a new chemical during the 90-day pre-manufacturing review period, if EPA determines that additional information is needed to make an "unreasonable risk" determination, the agency can request that the manufacturer submit such additional information. §5(c)(2)(B). EPA can extend the review period for the development of additional information but only "by agreement with the submitter." §5(c)(2)(B)(ii). If the submitter is not cooperative, it is free to submit a notice of commencement of manufacture pursuant to §5(c)(4) unless EPA determines that the chemical is "likely" to present an unreasonable risk. But if data are inadequate to support such a determination, the new chemical enters commerce with poorly understood hazards.

##### **5. The House Bill *Rolls Back* Current Law on Chemicals in Consumer Products**

Parents are concerned about the safety of products and alarmed by credible scientific reports that indicate that consumer products are a major source of toxic chemical exposure. Under existing law, EPA has considerable authority to regulate chemicals in "articles," which is the TSCA term for consumer products. For existing chemicals, EPA can restrict a particular chemical use, require an article to be accompanied by warnings and instructions, or regulate the disposal of an article containing a chemical. TSCA §6(a)(2), (a)(3), (a)(6).

Current law also provides EPA with similar authority to restrict uses or disposal of new chemicals and significant new uses of chemicals, including chemicals in articles. TSCA §5(e). When a new chemical of uncertain safety is introduced into commerce, or an existing chemical is "voluntarily" phased out due to scientific concern and public outcry, EPA often uses its current authority to issue a Significant New Use Rule (SNUR), which is a rule that requires any new uses of that chemical to be reported to EPA so that the agency can evaluate whether to impose restrictions. TSCA §5(a)(1)(B). Historically, EPA has used its discretion to exempt articles from SNURs. However, in recent years, EPA has increasingly

recognized that for many chemical substances the greatest risks to human health and the environment result when toxic chemicals escape from consumer products during their use and disposal.

**The proposed Chemicals in Commerce Act would make it significantly more difficult for EPA to restrict new uses of chemicals in products.** Before EPA could adopt a SNUR that included articles, EPA must determine *in advance* whether the targeted chemical in the specific product may pose an unreasonable risk, *and* determine that the risk cannot be addressed adequately through requirements placed on the chemical substance rather than on the article. §5(a)(3). The first requirement creates a Catch-22, since EPA needs the notifications to determine whether there may be an unreasonable risk. But, in order to adopt the rule to require the notifications, EPA must first determine that an unreasonable risk may result. The second requirement discourages EPA from regulating new uses of toxic chemicals in articles, even though the products may result in a major source of chemical exposure. The House bill invites industry lawsuits alleging that EPA has not met its steep new burden of proof.

This provision of the Chemicals in Commerce Act seems aimed directly at reversing EPA's growing reliance on SNURs to address legitimate and growing concerns about chemicals in consumer products. In 2012, EPA proposed a SNUR that would require notification of new uses of Deca, the widely used PBDE flame retardant, in articles.<sup>9</sup> This proposed rule followed an announcement by chemical manufacturers they would phase out production of Deca by December 31, 2013. EPA proposed that any new uses after that date, including the import of articles containing Deca, must be reported to EPA. This SNUR has not yet been finalized. Last year, EPA adopted a final SNUR that also regulated chemicals in articles.<sup>10</sup> That SNUR requires notification of any new uses of specified perfluorinated chemicals (PFCs) when used as stain repellants on carpets. This follows a voluntary agreement negotiated with DuPont and other chemical manufacturers to reduce their production of PFOA and related C8 PFCs. Under the SNUR, any person who manufactures or imports carpets containing the specified PFCs must first notify

<sup>9</sup> 77 Fed. Reg. 19862 (April 2, 2012)

<sup>10</sup> 78 Fed. Reg. 62443 (Oct. 22, 2013)

EPA of their intended new use. That will provide EPA with time to determine whether the use of the chemicals, which are persistent, bioaccumulative and toxic, may pose an unreasonable risk to human health and the environment and should be restricted.

**As with SNURs, the House bill also restricts EPA's ability to regulate existing chemicals in articles.** When EPA finds that an existing chemical results in an unreasonable risk, it can adopt rules to restrict articles containing that chemical only where EPA "identifies specific types of articles that are, or likely will be, in U.S. commerce" and determines that protecting against unreasonable risks requires regulation of articles and cannot be accomplished only by regulating the restricted chemical. §6(f)(2). EPA may be able to satisfy these criteria in particular instances but they will add more work to the rulemaking process and discourage necessary action to protect the public from chemicals in products.

**In another product-related roll back, the House bill would eliminate existing EPA authority to restrict the disposal of articles containing chemicals of concern.** When EPA finds that a chemical presents an unreasonable risk to human health and the environment, TSCA authorizes various risk management actions, including restrictions on the disposal of articles containing the chemical. TSCA §6(a)(6). In a related TSCA authority, state governments are always authorized and can never be preempted from regulating the disposal of articles containing a chemical. TSCA §18(a)(2)(B).

The House bill takes away both of those current authorities. EPA would no longer have in its toolbox the authority under TSCA to restrict the disposal of articles containing a chemical that presented an unreasonable risk. And states would no longer have explicit authority to regulate the disposal of articles containing similar chemicals. Instead, the House bill would newly preempt states from regulating the disposal of articles containing a chemical, whenever EPA names that chemical as a low priority, completes a safety determination on a high priority chemical (even if it results in no action), or if at any time in the past EPA has named that chemical in an order or rule, including the more than 1,600 SNURs that EPA has issued to date. §18(a)(1), (a)(2). (See also #9 below).

If the House bill became law, then product and chemical manufacturers could never be held financially responsible for collecting and safely managing the disposal of the millions of old couches containing Penta, the now-banned, notorious PBDE flame retardant, even though they still pose serious health and environmental risks. Reasonable restrictions on the recycling of old computers, TVs and foam containing PBDEs could never be imposed, jeopardizing the health of recycling workers, consumers of recycled materials, and the environment.

In addition, dozens of state product stewardship laws could be preempted or severely curtailed. Many states are passing laws requiring product manufacturers to assume physical and/or financial responsibility for safely managing their products at the end of their useful life.<sup>11</sup> Some of those products contain toxic chemicals such as lead, PBDEs and petrochemicals. If any of those chemicals are touched by a past or future EPA action, under the House bill those product laws could be overturned.

#### **6. Both Bills Fail to Require Expedited Action on Chemicals of High Concern**

Although the House and Senate legislation requires EPA to name an unspecified number of chemicals as “high priority” for safety determinations (without specific deadlines to drive the priority setting and decision making), both bills fail to recognize a category of substances of very high concern. Nor does the proposed legislation establish specific requirements for substances that are persistent (long-lived in the environment), bioaccumulative (building up in the food web) and toxic, also known as PBTs. Such PBTs as lead, methylmercury, PBDEs and PFOA have long been recognized as requiring expedited action to reduce their use and exposures to the maximum extent practicable.

The failure of the legislation to accelerate solutions to chemicals of very high concern places these TSCA reform bills well outside the mainstream of chemicals management policy in the private sector, in the states, among our trading partners and internationally. Major multinational companies

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<sup>11</sup> Product Stewardship Institute, Extended Producer Responsibility State Laws as of January, 2014, <http://productstewardship.us/displaycommon.cfm?an=1&subarticlenbr=280>

like Nike and Walmart are phasing out chemicals of high concern in their supply chain based on Restricted Substances Lists. More than thirty states has passed laws prohibiting specific uses of mercury, lead, PBDEs, phthalates, BPA and other flame retardant chemicals. Under REACH, the European Chemicals Agency will begin phasing out Substances of Very High Concern in 2015, except for critical uses for which there are not yet safer alternatives or which raise extraordinary socio-economic concerns. Internationally, under the Stockholm Convention, Persistent Organic Pollutants (POPs) must be phased out in favor of safer alternatives. Such actions together represent the policy mainstream.

Any serious TSCA reform proposal would require expedited action on PBTs and other chemical substances of very high concern, with a much lower burden on EPA to take protective action.

#### **7. Both Bills Set Aside Thousands of Chemicals as “Low Priority” without Safety Data**

The House and Senate bills dedicate inordinate attention to requiring EPA to affirmatively ferret out “low priority” chemicals, at the expense of taking away limited resources from addressing “high priority” chemicals. One can envision a new EPA Office of Low Priority Chemicals full of bureaucrats wasting precious taxpayer dollars chasing down unimportant chemicals. But a far more insidious fate will logically follow from the implementation of the proposed “low priority” provision.

The House bill requires EPA to designate all chemicals as either “high priority” or “low priority” as soon as feasible. §6(a)(1), (a)(2). Since the Chemicals in Commerce Act does not contain a health-based safety standard, substances can be listed as low-priority based on a combination of risk and economic factors when EPA determines that a chemical is “not likely to result in an unreasonable risk of harm to human health or the environment under intended conditions of use.” §6(a)(1)(C). A chemical could meet this standard where EPA concludes that a chemical’s benefits outweigh its risks or where, in the absence of adverse health and safety data, the Agency determines that an unreasonable risk is not “likely.” Further, low-priority substances “shall not be subject to a safety determination” and “shall be

considered not likely to result in an unreasonable risk of harm to human health or the environment.” §6(a)(5). States are also preempted from restricting any low priority substances. §18(a)(2)(A)(iv).

It’s unclear whether EPA’s decisions on low priority chemicals can be challenged. High-priority listings are deemed not to be final agency action subject to judicial review. §6(a)(10). However, the House bill is silent on whether low-priority listings are subject to judicial review. They are not explicitly identified in the revised section 19 judicial review provisions. This is an important omission given the ease with which EPA can make low priority listings and their preemptive effect on state regulation.

Thousands of untested or poorly tested chemicals like MCHM, which recently contaminated the water supply of hundreds of thousands of West Virginians, are likely to be declared “low priority” under both bills. Once EPA sets aside low priority chemicals, they can’t take a second look unless new information appears. But where will those new data come from? Not from EPA-required testing. And states could never act. Maybe that’s why low-priority is such a high priority for the chemical industry.

#### **8. Both Bills Maintain an Onerous Burden on EPA to Restrict Existing Chemicals**

Under the House bill, and similarly in CSIA, EPA remains shackled to a heavy burden that will prevent timely, health-protective action on existing chemicals of high concern. The TSCA handcuffs on EPA, which the court so clearly emphasized in *Corrosion Proof Fittings*, fully remain. Only some of the words have been changed to protect the innocent from remembering EPA’s failed asbestos regulation.

Proponents have touted both bills’ removal of the TSCA requirement that any restrictions on chemicals that may present an unreasonable risk be applied “using the least burdensome requirements” to industry. TSCA §6(a). In *Corrosion Proof Fittings*, the court excoriated EPA for not exhaustively evaluating all the risk management options for reducing asbestos risk and not choosing the one that was demonstrably least burdensome to the industry.

The Chemicals in Commerce Act requires that EPA undertake a safety determination for all high-priority chemicals and to regulate those chemicals found to result in an unreasonable risk. §6(b), §6(f). However, as discussed above (see #1), since the safety determination under the House bill is based on the unreasonable risk standard and not a health-based safety standard, the determination will likely involve a weighing of health and economic factors. Thus, chemicals raising serious safety concerns could be dropped from further action because their benefits are perceived to outweigh their risks.

Since a risk-based safety standard is absent from the House bill, there is no requirement that restrictions imposed under section 6(f) be sufficient to assure the safety of the restricted chemical. Instead, the House bill imposes “least burdensome” type requirements on EPA under another name. EPA would face an equally heavy burden to demonstrate that any chemical restrictions are “proportional to the risks” of the restricted substance (i.e. do not impose burdens that are excessive in light of the risks reduced); will result in “net benefits” (i.e. benefits that exceed the costs); are “cost-effective” in reducing risks “compared to alternative requirements or restrictions” that the Agency might adopt; prohibit or substantially prevent specific uses only where “technically and economically feasible alternatives” are available and likely to be used and these alternatives “materially reduce risk to health or the environment” compared to the restricted use; and provide “for a reasonable transition period for implementation.” §6(f)(4).

The combination of these constraints will make it challenging for EPA to adopt chemical restrictions and will impose analytical burdens on the Agency at least as great as under the current law. Even though the House sponsors have played up the absence of an express requirement to select the “least burdensome” alternative as an improvement in section 6, the hurdles that EPA must clear are likely to be equally if not more onerous.

## **9. Both Bills Violate States’ Rights to Protect Their Citizens from Toxic Chemicals**

Existing law permits all state regulation of chemicals except for restrictions on chemicals where EPA has imposed a testing rule under section 4 or restrictions under sections 5 or 6 that address the same risk as the state regulation. In those limited cases, TSCA preempts state restrictions. Even so, notwithstanding such federal action, TSCA always allows states to restrict disposal, ban use of a chemical, co-enforce restrictions identical to federal rules, and take action under other federal laws. TSCA provides for a waiver from federal preemption if states make a compelling case to EPA. TSCA §18.

Both the House and Senate bill would unravel TSCA's delicate balance between state and federal authority to regulate chemicals. Both bills would preempt states from enacting or enforcing chemical restrictions *before* EPA has taken a *final* action to protect public health and the environment. Both bills would preempt states from restricting chemicals that EPA set aside as "low priority" even though such decisions would be made without adequate data, using an extremely low "safety" bar. (See #7 above).

The new House bill, if it became law, would take this violation of states' rights to new extremes by preempting state chemical regulation much more severely than either CSIA or existing TSCA.

**PREEMPTION OF STATE INFORMATION LAWS.** Once EPA completes a safety determination or imposed a restriction on any chemical, the House bill would preempt all existing and new state laws that require chemical use reporting, alternatives assessments, toxics use reduction plans and goal, warnings of exposure and other requirements to develop or submit information for that chemical. §18(a)(1). As a result, the House bill would gut state chemical policies in California, Washington and Maine (and those proposed in several other states) that require chemical use reporting and alternatives assessments. The bill would prohibit a state law or regulation that "requires the development or submission of information" ... "relating to a chemical substance, mixture or article and its intended conditions of use with respect to which the Administrator has completed a safety determination." That means that once EPA completes a safety determination on a chemical, Washington state and Maine would be prohibited from adopting or enforcing rules under existing state law that require product manufacturers to report

which products they sell in the state contain that chemical, in what amount and for what purpose.

Maine would be prohibited from exercising its authority to require additional information to justify continued use of that chemical. California and Maine would be prohibited from using existing state authority to require product manufacturers to assess the availability of safer alternatives to that chemical in specific product categories. Other states would be prohibited from adopting similar new state laws that require chemical use reporting and alternative assessments.

The House bill would also gut state toxics use reduction laws in Massachusetts, New Jersey, Maine and elsewhere. By the same provision as above, once EPA has completed a safety determination on a chemical, none of these states could require a toxics use reduction plan or goals for that chemical. The House bill would also savage California's Proposition 65 warning requirements for exposures to chemicals known to cause cancer or reproductive toxicity, which would be interpreted as information requirements. By the same provision as above, once EPA has completed a safety determination, the development of a Prop 65 warning could not be required or enforced.

**PREEMPTION OF STATE RESTRICTIONS ON NEW CHEMICALS.** The House bill would preempt states from ever regulating a new chemical introduced into commerce under the new law. If either EPA determines that a new chemical is not likely to result in an unreasonable risk under section 5(c)(3)(B) or if the 90-day pre-manufacture review period expires (or extended review period) during which EPA must determine whether a chemical will likely result in an unreasonable risk, then a state is preempted from prohibiting or restricting the chemical in any way. §18(a)(2)(A)(i), (a)(2)(B). Since that covers all the bases, there's no way a state could ever restrict or prohibit a new chemical introduced under the new law, even if the chemical was later found to pose serious health or environmental risks.

**PREEMPTION OF STATE RESTRICTIONS ON EXISTING CHEMICALS.** The House bill would preempt states from enacting or enforcing restrictions that are strictly health-based or precautionary, once EPA makes a determination based on a cost-benefit analysis embedded in the "unreasonable risk"

standard. In what at first impression seems to be a slight improvement over CSIA, the House bill's preemption would kick in when EPA either determines that the chemical will not result in an unreasonable risk or when a rule or order is adopted based on a finding that the chemical will result in an unreasonable risk (in contrast to CSIA, which would preempt states shortly after a chemical was designated as a high priority chemical). §18(a)(2)(A)(ii), (iii). However, under the House bill, the safety standard of "unreasonable risk" retains the cost-benefit analysis of existing TSCA and case law, rather than being a strictly health-based standard, which CSIA is purported to be. Therefore, it's more likely under the House bill that EPA will determine that chemicals will not result in an unreasonable risk and therefore no federal restrictions are needed, or that the chemical does result in unreasonable risk but only token control measures are required. Under either scenario, states are preempted from restricting those same chemicals on a strictly health-basis or precautionary basis.

**RETROACTIVE PREEMPTION OF STATES BASED ON PAST EPA ACTION.** The House bill would retroactively preempt any state requirement on a chemical if EPA had taken action before the new law takes effect. §18(a)(4). The opposite of 'grandfathering in' existing state laws, the bill would reach back into history and define certain actions that EPA has taken in the past as now having a preemptive effect on any state restrictions for the same chemical. EPA actions include adoption of a rule, entering into a consent agreement, issuing an order or letting a significant new use review period expire, under either Section 5 or 6. Although EPA has a limited track record of success under TSCA, the agency has entered into many consent agreements (in lieu of actual regulation) and issued more than 1,300 SNURs (Significant New Use Rules) for new chemicals and more than 300 SNURs for existing chemicals (such as the flame retardants, PBDEs).<sup>12</sup> Basically, if EPA has touched any chemical under TSCA in the last 35 years, no matter how lightly, and it has done so many times, then any and all state requirements on that chemical are preempted. This could have a shockingly large preemptive effect. And industry doesn't

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<sup>12</sup> Burch LA, Auer CM and Bergeron LL, Significant New Uses: EPA's SNUR Authority and Key Points Regarding SNURs for Former New Chemicals, BNA Daily Environment Report, September 12, 2011.

have to wait for EPA to act. Simply enacting the bill will deliver state preemption to their doorstep.

**ELIMINATES ALL EXCEPTIONS TO PREEMPTION.** The House bill eliminates the CSIA exception from preemption for state information collection requirements (see above). The bill also eliminates the (weak) CSIA exception from preemption for existing state laws adopted to address air quality, water quality or waste treatment and disposal that may have the effect of restricting a chemical. Like CSIA, the House bill eliminates the existing TSCA exceptions for state requirements identical to the federal regulation, which allows state co-enforcement of federal requirements, and eliminates the existing TSCA exception that allows states to ban the use of a chemical regardless of EPA action on the chemical.

**ELIMINATES PROCESS TO EXEMPT STATES FROM PREEMPTION.** Under the House bill, there's no process provided at all whereby states can appeal a preemptive effect and seek to have federal preemption of state requirement waived. Although onerous and burdensome, both CSIA and existing TSCA provide a process whereby states can seek waivers from preemption. TSCA §18(b).

#### **10. Both Bills Maintain a Veil of Secrecy Over Critical Chemical Information**

Excessive and unsubstantiated claims of confidential business information (CBI) have plagued the TSCA program, resulting in a secret inventory of some 17,000 chemical substances whose identities are kept hidden from the public, and the withholding of chemical identity even when new health studies reveal substantial risks that trigger notice to EPA under TSCA section 8(e).<sup>13</sup>

Confounding these problems, and in contrast with existing law, the House bill perpetuates chemical secrecy by establishing broad presumptions that numerous categories of information are confidential whether or not they meet legal requirements for trade secret protection. Several listed

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<sup>13</sup> Richard Denison, Worse than we thought: Decades of out-of-control CBI claims under TSCA, February 12, 2010, <http://blogs.edf.org/health/2010/02/12/worse-than-we-thought-decades-of-out-of-control-cbi-claims-under-tsc/#more-432>

information categories are unequivocally barred from disclosure, with virtually no option for EPA to require substantiation of the basis for protection. §14(a).

The House bill also 'grandfathers in' all CBI claims made under TSCA over the last 35 years, eliminating any obligation for industry to justify the ongoing need for confidentiality, except under very narrow circumstances. The Chemicals in Commerce act bars EPA from requiring re-documentation of CBI claims made before the enactment of the law "unless the Administrator has a reasonable basis to conclude that the claim does not meet the requirements of this section for protection from disclosure." §14(f)(2). In other words, EPA must have a specific reason to question the validity of the CBI claim. It cannot require re-documentation because it believes disclosure would be beneficial to the public, the information would be useful to the scientific community or, with the passage of time, the validity of the CBI claim should be reconfirmed.

#### **11. Both Bills Lack Adequate Deadlines and Resources to Drive Serious Progress**

While EPA must develop a risk-based prioritization process within one year under section 6(a)(1), there is no schedule for issuing and updating the list of high-priority chemicals itself, and thus no assurance that chemicals threatening public health or the environment are assessed and regulated where warranted. While all active substances must be prioritized "as soon as feasible" under paragraph (a)(2), there is no time-line for completing this process. Further, no minimum number of chemicals must be listed as high-priority, again weakening the drivers for assessing and regulating chemicals of concern.

The House bill does not refer to any of the Work Plan chemicals EPA has already prioritized and contains no mechanism for automatically listing these chemicals as high-priority. No deadlines are provided for completing safety determinations and rulemakings restricting high-priority chemicals. On top of the absence of deadlines and minimum requirements for priority-setting, this will allow open-ended delays in addressing chemicals of high concern that should be assessed expeditiously.

**Neither bill provides the resources necessary for EPA to implement a modernized TSCA** program that will restore public confidence in the safety of chemicals in commerce. The absence of fees on industry to fund the program violate both the EPA's and the chemical industry's principles for TSCA reform. The chemical manufacturers have asserted that "EPA should have the staff, resources and regulatory tools it needs to ensure the safety of chemicals" and "EPA's budget should be commensurate with its chemical management responsibilities."<sup>14</sup>

EPA calls for fees on industry to fund the modernized TSCA program: "Principle #6: EPA Should be Given a Sustained Source of Funding for Implementation: Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers."<sup>15</sup> Both TSCA bills fail to answer the bottom-line question: "Where's the money?"

## **12. Both Bills Restrict EPA's Ability to Timely Exercise Its Scientific Judgment**

In the House bill, for example, EPA must divert resources to develop guidelines and procedures for "information quality" and "best available science" that will delay priority setting and assessment of chemical safety. These requirements will restrict EPA's ability to exercise scientific judgment in weighing available data and information on chemical risks. §26(h), (i), (j). These detailed requirements provide a new basis for legal challenges to EPA's science determinations, which could delay actions on chemicals.

**CONCLUSION:** The Chemicals in Commerce Act, as drafted, would endanger public health and the environment, in ways similar to the Senate bill, CSIA. The Committee should start all over from scratch.

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<sup>14</sup> American Chemistry Council, 10 Principles for Modernizing TSCA, August 2009.

<sup>15</sup> U.S. Environmental Protection Agency, Essential Principles for Reform of Chemicals Management Legislation, <http://www.epa.gov/oppt/existingchemicals/pubs/principles.html>

Mr. SHIMKUS. And I thank you. Now, last but not least, Ms. Jennifer Thomas, Director of Federal Government Affairs. She is the lady in the box. We appreciate your patience, and you are recognized for 5 minutes.

#### STATEMENT OF JENNIFER THOMAS

Ms. THOMAS. Thank you, Chairman Shimkus, Ranking Member Tonko and members of the subcommittee. I have a feeling that when I return to Washington, my new nickname is going to be Woman in the Box.

But my name is Jennifer Thomas, and I am the Director of Government Affairs for the Alliance of Automobile Manufacturers which is a trade association that represents 12 automakers that make roughly three out of every four new vehicles sold in the U.S. each year. Please accept my utmost apologies for not being there in person this morning, but I, as you know by now, I am currently in Brussels working on another four-letter acronym that begins with a T, TTIP, which is the Transatlantic Trade and Investment Partnership. And like TSCA, TTIP is a key priority for auto makers, and specifically, we are advocating for an agreement that aligns U.S. and E.U. automotive safety standards. So our objective here in Brussels is consistent with what auto makers hope to achieve through TSCA reform back home, a clear and consistent set of rules for manufacturers that protects the health and safety of all our customers. The Alliance appreciates the thoughtful and thorough approach the committee has taken on this important issue. We commend Chairman Shimkus for releasing a discussion draft that is a very good start to address the issues that were raised over the last year. We understand that the chairman has asked for input and that we are at an early stage in this process. We pledge to be a constructive partner and look forward to working with the subcommittee and other stakeholders as we move forward.

The draft Chemicals in Commerce Act recognizes the needs for a single, national regulatory program for comprehensively managing chemicals in commerce. We realize that inaction at the Federal level has created a situation in which States feel compelled to regulate chemicals on their own, creating a patchwork of State standards. But in many cases, States simply do not have the adequate resources to implement their own chemical regulatory programs.

Additionally, conflicting and inconsistent State regulatory programs present insurmountable obstacles to effective chemical management for large industry sectors, in particular, manufacturers of complex durable goods like automobiles. Auto makers design and build vehicles to meet an array of customer needs and demands and to comply with thousands of pages of Federal emissions and safety standards.

As a practical matter, auto makers simply cannot manufacture vehicle on a State-by-State basis. We believe the approach taken in this draft is more in line with today's manufacturing realities. The draft preserves the State's ability to take action on a chemical if the State believes that there is a risk present that has not yet been addressed by EPA, and we believe that is entirely appropriate. But

once EPA has taken action on a chemical substance, this decision should be viewed as the law of the land.

The Alliance also supports the manner in which this discussion draft seeks to regulate chemicals and articles. This discussion draft will allow EPA to target chemical substances in articles where the risk to health and environment cannot be addressed by placing restrictions on the chemical itself. This approach recognizes the challenges of regulating chemical substances and—products. The average automobile has 30,000 unique components, and each individual component is made up of multiple chemicals and mixtures. Most automotive components are obtained from suppliers of finished products and are integrated into the vehicle. Regulating the construction and the assembly of automobiles on a component-by-component basis is burdensome, inefficient and most importantly unnecessary to effectively manage chemical substances.

But we understand that there may be circumstances where EPA must prevent significant risk of exposure by issuing restrictions on chemicals in articles. In these instances, the draft proposes a reasonable process for identifying suitable alternatives and should allow sufficient lead time to implement any substitutions.

Additionally, we strongly believe that automotive replacement parts should be exempt from any TSCA requirements. In this regard, we urge the subcommittee to consider a full outright exemption for replacement parts rather than the narrow exemption for those parts manufactured prior to the compliance date which is proposed in this discussion draft. Such an exemption would avoid creating unnecessary disruptions to the supply of older model replacement parts, impacting the ability to fulfill consumer warranties, recalls and repairs of the existing fleet. This is a significant issue considering that the average age of a vehicle on U.S. roads today is more than 11 years old.

We appreciate the opportunity to offer our views on the draft Chemicals in Commerce Act. We stand ready to work with the subcommittee as this draft moves through the legislative process. Again, my apologies for not being there in person, and I thank you and I would be happy to answer any of your questions.

[The prepared statement of Ms. Thomas follows:]



**AUTO ALLIANCE**  
DRIVING INNOVATION™

STATEMENT  
OF  
*THE ALLIANCE OF AUTOMOBILE MANUFACTURERS*

BEFORE THE:  
ENERGY AND COMMERCE COMMITTEE  
THE SUBCOMMITTEE ON ENVIRONMENT  
U.S. HOUSE OF REPRESENTATIVES

March 12, 2014

PRESENTED BY:  
Jennifer Thomas  
Director, Federal Government Affairs

Executive Summary

Automakers have a long history of corporate responsibility with regard to identifying and reducing “substances of concern” in automobiles. For more than a decade, automakers have maintained a global substance of concern list and a tracking database to reduce industry-wide use of substances of concern in global production. Automakers have eliminated the use of mercury switches and lead wheel weights from automobiles; we continue to phase out the use of the flame retardant deca-BDE; and we are eliminating copper in brake pads. Most notably, automobiles are among the most recycled consumer products in the U.S.

But automakers recognize that there is more work to do and we want to be a part of the solution. We welcome the draft Chemicals in Commerce Act as it significantly enhances EPA’s ability to more effectively regulate chemical substances, while providing industry with a clear and consistent regulatory environment. In particular, this draft recognizes the need for a national regulatory program for comprehensively managing chemicals in commerce. This federal approach will more effectively regulate chemical substances in a way that protects the health and safety of *all* Americans.

The Alliance also supports the manner in which the draft Chemicals in Commerce Act seeks to regulate chemicals in “articles.” The approach taken is consistent with existing EPA policy, which has recognized the complexity of regulating chemicals in articles by exempting them from most TSCA requirements. This draft will allow EPA to regulate chemical substances in articles, but only if the risk to health and environment cannot be addressed by placing restrictions on the chemical substance itself.

Finally, we strongly believe automotive replacement parts should be exempt from any TSCA requirements. In this regard, we urge the subcommittee to consider a full outright exemption for auto replacement parts, rather than a narrow exemption for those parts manufactured prior to the compliance date, as prescribed in this draft. Such an exemption would avoid unnecessary disruptions to the supply of hundreds of thousands of replacement parts – impacting the ability to fulfill warranties, recalls, or repairs of the existing fleet.

The Alliance stands ready to work with the subcommittee as this discussion draft proceeds through the legislative process.

Testimony

Thank you, Chairman Shimkus, Ranking Member Tonko and members of the Subcommittee. The Alliance of Automobile Manufacturers (Alliance) is a trade association of twelve car and light truck manufacturers comprised of BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars, Toyota, Volkswagen Group and Volvo Cars. Together, Alliance members account for roughly three out of every four new vehicles sold in the U.S. each year.

On behalf of the Alliance, I appreciate the opportunity to offer our views on the draft Chemicals in Commerce Act. We commend the subcommittee for the thoughtful and thorough approach it has taken on this important environmental issue. The series of educational hearings this Subcommittee has held throughout the past eight months has been informative and productive, and has certainly influenced the discussion draft before us today.

The automobile industry is a massive employer -- reaching well beyond the iconic names of auto companies familiar to us all. Auto manufacturing depends on a broad range of parts, components and materials provided by thousands of suppliers, as well as a vast retail network of dealers, service providers and repairers. Nationwide, eight million workers and their families depend on the auto industry. Each year, the industry generates \$500 billion in paychecks, while generating \$70 billion in tax revenues across the country.

Automakers have a long history of corporate responsibility with regard to identifying and reducing specific chemicals or "substances of concern" in automobiles. For more than a decade, automakers have maintained an industry-focused global substance of concern list and a sophisticated tracking database to actively reduce industry-wide use of substances of concern in global production. The auto industry has invested more than \$30 million on this system, which now tracks more than 2,700 substances used in automotive components to ensure that restricted substances are not in our products. By way of example: automakers have eliminated the use of mercury-containing switches and lead wheel weights from automobiles; we continue to phase out the use of the flame retardant deca-BDE; and we are eliminating copper in brake pads. Most notably, automobiles are among the most recycled consumer products in the U.S.

Approximately 86% of a vehicle's material content is recycled, reused or used for energy recovery.<sup>1</sup>

But automakers recognize that there is more work to do and we want to be a part of the solution. Despite decades of rapid advancement in the science and technology of chemical use and management, TSCA remains the only major federal environmental statute that has not been substantively revised since its enactment in 1976. We welcome the draft Chemicals in Commerce Act as an important and necessary updating of the TSCA regime. It significantly enhances EPA's ability to more effectively regulate chemical substances in a way that better protects public health and the environment, while providing industry with a clearer and more consistent regulatory environment.

In particular, the draft Chemicals in Commerce Act recognizes the need for a single national regulatory program for comprehensively managing chemicals in commerce. The current regulatory environment has created a situation in which states feel compelled to regulate chemicals on their own, creating a patchwork of state standards. But in many cases, states simply do not have adequate resources – budgetary, expertise or otherwise – to implement their own chemical regulatory programs. Nor does it make sense for a chemical to be deemed harmful in one state, but not in another. The unified national policy promoted in this discussion draft of the Chemicals in Commerce Act will more effectively regulate harmful chemical substances in a way that equally protects the health and safety of *all* Americans.

Additionally, multiple conflicting or inconsistent state chemical regulatory programs present insurmountable obstacles to effective chemical management for large industry sectors, in particular manufacturers of complex durable goods that are sold nationwide, such as automobiles. Automakers design and build vehicles to meet an array of individual customer needs and demands, and to comply with thousands of pages of federal regulations. As a practical matter, automakers simply cannot manufacture vehicles on a state-by-state basis. We strongly believe that the approach taken in this discussion draft for a single national program – rather than a patchwork of state chemical regulatory programs – is more in line with today's

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<sup>1</sup> Society of Automotive Engineers (SAE). 2011. "Vehicle Recycling, Reuse, and Recovery: Material Disposition from Current End of Life Vehicles"

manufacturing realities and will better protect public health and the environment while supporting U.S. competitiveness, jobs and consumer interests.

The need for a single national program and federal preemption are paramount to automakers' ability to manufacture and distribute the safe and competitively priced automobiles that consumers demand. Some may claim the preemption language contained in this discussion draft erodes states' rights, yet this is simply not the case. States will continue to have a very important role to play in the process and, in this discussion draft, state action on a particular chemical substance is not preempted until EPA takes action on that particular chemical substance. EPA essentially validates the need for preemption on a chemical-by-chemical basis via a formal and scientific risk analysis process. This approach preserves a state's ability to take action if the state believes that there is a chemical risk present that has not yet been addressed by the national program.

Federal preemption also gives industry an incentive to assist EPA in taking action and completing the safety determination process in a timely manner. We believe EPA should continue to seek collaboration with states to achieve chemical and product safety, but that any federal action on a particular chemical substance should be viewed as the *law of the land*. This common sense approach will create a more efficient, effective, and predictable regulatory environment by reducing conflicts and inconsistencies that make compliance unnecessarily burdensome and costly for both the private and public sectors. To the extent that a "black and white" approach is possible, the chemical safety process **must** be designed to definitively address whether certain chemicals, under specific conditions of use or application, present a significant risk or not. A multi-state approach fails to achieve this level of specificity and allows an opportunity for conflicting conclusions and a lack of clarity that could result in the public's uncertainty about a product's safety.

The Alliance also supports the manner in which the draft Chemicals in Commerce Act seeks to regulate chemicals in "articles," as defined in TSCA. The approach taken is consistent with existing EPA policy, which has traditionally recognized the complexity of regulating chemicals in articles by exempting articles from most TSCA requirements. This discussion draft will allow EPA to regulate chemical substances in articles, but only if the risk to health and environment cannot be addressed by placing restrictions on the chemical substance itself.

To be clear, automakers are not seeking a statutory exemption from TSCA requirements. Rather, we believe that any legislation reforming TSCA should recognize the challenges of regulating chemical substances in complex durable goods – such as automobiles – and should target chemical substances in articles only in those circumstances where there is both a significant risk of exposure and that risk cannot be addressed by targeting the actual chemical substance. The average automobile has 30,000 unique components and each individual component is comprised of multiple chemicals and mixtures. Each automaker works with a global, multi-tiered network of more than 1,000 suppliers, spanning multiple sectors from electronics to textiles. Most automotive components are obtained from suppliers as finished products, which are then integrated into the vehicle. Regulating the construction and assembly of automobiles on a component-by-component basis is burdensome, inefficient, and unnecessary to effectively manage chemicals. The approach taken in the draft Chemicals in Commerce Act – by focusing on situations presenting a real potential for consumer exposure to substances of concern – is more effective than the alternative.

As noted above, there may be unique circumstances where EPA must prevent significant risk of exposure by issuing restrictions on chemical substances in articles. The approach proposed in the draft to address these instances seems reasonable, provided that EPA recognizes the operational constraints of the affected industry. For example, the process that EPA undertakes should allow ample involvement by the industry to identify suitable alternatives. Then EPA should allow sufficient lead-time to implement any needed changes. Depending on the extent of the changes needed, lead-times in the auto industry can be several years because a number of products or components may be affected and not all vehicles can be reengineered at the same time.

Additionally, we strongly believe automotive replacement parts should be exempt from any TSCA requirements. In this regard, we urge the subcommittee to consider a full outright exemption for automotive replacement parts, rather than a narrow exemption for those parts manufactured prior to the compliance date, as prescribed in this discussion draft. With roughly 250 million registered vehicles currently operating on U.S. roads,<sup>2</sup> it is untenable to reengineer

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<sup>2</sup> Polk. 2013. Polk Finds Average Age of Light Vehicles Continues to Rise [Press Release]. Retrieved from [https://www.polk.com/company/news/polk\\_finds\\_average\\_age\\_of\\_light\\_vehicles\\_continues\\_to\\_rise](https://www.polk.com/company/news/polk_finds_average_age_of_light_vehicles_continues_to_rise)

and substitute the chemical profile of affected parts on every vehicle model still in use. Thus, all service parts for vehicles manufactured prior to the compliance date should be exempted from any chemical substitution. Such an exemption would avoid creating unnecessary disruptions to the supply of hundreds of thousands of older model replacement parts – impacting the ability to fulfill consumer warranties, recalls, service campaigns, or repairs of the existing fleet. This is a significant issue since the average age of the typical automobile on U.S. roads is more than 11 years old.<sup>3</sup> That said, the fact that these “grandfathered” vehicles and parts will eventually be retired from service means that their chemical constituents will ultimately be phased out of use, as newer vehicles and safer reformulated parts come into the market.

We appreciate the opportunity to offer our views on the draft Chemicals in Commerce Act. Some may question why an industry that relies heavily on chemical substances would support legislation that would provide EPA more authority and better tools to regulate chemicals. But this is entirely in keeping with our overall desire as auto companies to offer the best and safest products possible to our customers in the most effective and efficient manner possible. We believe the draft Chemicals in Commerce Act will provide EPA the ability to more effectively protect the public and environment from harmful chemical substances, while providing industry a clearer and more consistent regulatory roadmap at the federal level. The Alliance stands ready to work with the subcommittee as this discussion draft proceeds through the legislative process.

Thank you again and I will be happy to answer any of your questions.

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<sup>3</sup> Ibid.

Mr. SHIMKUS. Thank you very much, and we have done this a couple times. And even though the time lag on the photo was a little disturbing, we heard you loud and clear.

So I am going to start, recognize myself for 5 minutes and start with you, Jennifer, because of the compelling testimony on U.S. manufacturing, the automobile sector, which is always credited as being one of our major manufacturing, showing sign of growth. American-made cars compete here in the U.S. against products made as far away as Asia and Europe. Isn't price a big factor in that competition?

Ms. THOMAS. Oh, absolutely, 100 percent.

Mr. SHIMKUS. And to compete on price, you have to be efficient. Is that correct?

Ms. THOMAS. Yes, sir.

Mr. SHIMKUS. And isn't inefficiency hampered if you can't predict government regulations or if regulations change from State to State?

Ms. THOMAS. Absolutely, yes.

Mr. SHIMKUS. And that is all part of this debate of what we are trying to raise. The first panel's testimony is very compelling, and it is trying to strike that balance. And I would just remind everyone, this is a draft. You would be angrier if it was a bill.

Mr. Harris, are you saying you don't think you should ever report use and exposure information or just not when a downstream formulator is already reporting?

Mr. HARRIS. That is—no, I am not saying we should never report, exactly what you said. We are a distributor for middlemen. We buy from manufacturers, we repack them, we resell. Our customers are varied and in many sorts of industries. We have an idea as a part of our responsibility under Responsible Distribution to understand what they are making with those products that we sell them, that they are being used responsibly. We don't always know and generally don't know how they are using them. So it is more appropriate for a downstream processor to be the one that actually reports on the actual hazard and exposure information of each of the chemicals that they are using.

Mr. SHIMKUS. Yes, I appreciate the testimony. I have been trying to deal with this issue of when you report, when you don't report.

Mr. HARRIS. Right.

Mr. SHIMKUS. When things are transported as a distinct entity or when they are maybe mixed in before the transportation. And it is a difficult challenge. I would encourage you to keep working—

Mr. HARRIS. Yes, and we certainly are not opposed to reporting if that information is not available anywhere else.

Mr. SHIMKUS. And Dr. Duran, you support the discussion draft's tailored treatment of articles? And you mentioned that in your opening statement. Another part of this debate is the finished product or the articles that go on. Can you elaborate a little bit more on the tailored treatment of articles?

Ms. DURAN. So I think it goes in line with what you were saying. When the finished product, in our case an integrated circuit, when it itself is not exposed to the public or has no risk of the chemicals used in that product getting into the public use, we would like the

restrictions to be in line with that use, whereas in the description over here with the couch, for example, where the exposure is quite obvious, then the restrictions and regulations around that particular use of the same chemical would be in line with that exposure.

Mr. SHIMKUS. And Ms. Deford, on your discussion on the net benefits and alternatives and new and burdensome requirement for the EPA, you know, the Obama administration has already done executive orders in line with trying to say that there should be an evaluation of, of our understanding, that they should, you know, an evaluation of net benefits and alternatives. Do you agree?

Ms. DEFORD. Absolutely. We see the Agency doing that today. I mean, most recently is their implementation of their TSCA work plan chemical approach. They really are focusing in on those applications, those areas representing greatest potential for exposure, setting aside areas where there is minimal and less potential benefit and considering the economic aspects as well.

Mr. SHIMKUS. And to follow up to you, Ms. Deford, how will the discussion draft change the practices of your company when it comes to assessing chemical risk?

Ms. DEFORD. As I noted in my testimony, Dow prides itself on having a really strong program, but we think the greatest opportunity is to have greater collaboration with the Agency, so also to be able to be in a position to share more of what we are doing with other stakeholders that are interested. Questions are out there about information that is available, and we see this discussion draft as an opportunity to share more.

Mr. SHIMKUS. Can you also follow up on advances in science and technology and how that would impact this debate?

Ms. DEFORD. You know, as noted by several of us today—

Mr. SHIMKUS. I think your mike—

Ms. DEFORD. Sorry. As noted by several of us today, chemistry is at the building block of any innovative products. And so it is critical that any policy allows that free flow of innovation. Certainly it needs to be in a controlled manner, and we support the need for management of that. But we certainly need to be mindful of in order to get—we know much more today than we did 20 years ago as we were developing materials. And so we need to have the opportunity to get those chemistries, those chemicals out there to support the innovative products that are going to keep the United States competitive.

Mr. SHIMKUS. Thank you very much. The Chair now recognizes the ranking member, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. We need TSCA reform because of the public's systematic exposures to industrial chemicals without sufficient safeguards to protect public health. With that in mind, Mr. Cik, your story drives this concern home. I share your instincts to do everything as a subcommittee and committee and Congress to protect our children and grandchildren.

When you went to purchase a crib mattress and saw that the available products contained phthalates, brominated flame retardants and other chemicals, alarm bells went off. What were some of the adverse health effects you were concerned about that could be caused by exposure to those compounds?

Mr. CIK. I learned not to talk medicine. I once testified in court and tried that, and they beat me up because I am not a doctor. I am an environmental engineer. However, that said, the information in the literature is pretty clear. As a matter of fact, if you will allow me, I have something here that I will quote. This is not from any tree-huggers or environmental extremists. This is going to be from the American Academy of Pediatrics, your regular, everyday pediatricians. I have a few quotes for you if you permit me. The American Academy of Pediatrics recommends that chemical management policy in the United States be revised to protect children. It is widely recognized to have been—this is from TSCA. It is widely recognized to have been ineffective in protecting children. The growing body of research indicates potential harm to child health from a range of chemical substances. There is widespread human exposure to many of these substances. These chemicals are found throughout the tissues and body fluids of children. Manufacturers of chemicals are not required to test chemicals before they are marketed, and I am going to just add to it, they are in baby products. They are everywhere.

Continuing, concerns about chemicals are permitted to be kept from the public. Those who propose to market a chemical must be mandated to provide evidence that the product has been tested. OK? That is not me. That is the American Academy of Pediatrics. They are everyday pediatricians. I agree with everything here. The literature is full of information.

Mr. TONKO. OK. And might I ask if we could have that admitted—

Mr. CIK. Absolutely.

Mr. TONKO [continuing]. Into the record. What role do State regulations, including consumer product laws and labeling requirements, have in informing consumers to choose safer alternatives?

Mr. CIK. Look, the fact of the matter is we have to stop using toxic chemicals in consumer products. If you are not going to do it, the States are going to do it. You can't deny the problem. And if you try to stop the States, you are just going to have some serious public issues, all right? Do not try this preemption thing. The States have the right to regulate their land and their air and their water and the chemicals used in whatever they need to regulate within their States. Please do not try to stop that.

Mr. TONKO. Thank you. My home State of New York has taken action to address several dangerous chemicals, and I would be concerned about any proposal that wiped out those protections.

Mr. Belliveau, you have worked at the State level to get consumer protections put in place, is that correct?

Mr. BELLIVEAU. Yes.

Mr. TONKO. And can you describe some of the important State protections that would be preempted by this draft?

Mr. BELLIVEAU. Yes, and they are very complementary to Federal actions. For example, two States require reporting of chemicals in everyday products. This is information that EPA does not have. Two other States require product manufacturers to assess the availability of safer alternatives. This is also information EPA does not have. The House bill would preempt both of those information collection requirements. In fact, tomorrow the State of California is

going announce its first product chemical priorities under its new State program which would be preempted if EPA took action on chemicals under the House draft.

Lastly, some States also require warnings of exposure. This is authority that EPA also does not exercise. So State regulation of chemicals is essential and complementary, and like other environmental statutes, there should be a partnership between the State and Federal Government.

Mr. TONKO. I think both of you gentlemen are highlighting one of the problems with the draft legislation. Under this proposal, a new chemical can be brought to market with no accompanying health and safety information. If it is a new chemical, is it likely that there would be studies available to enable EPA to assess potential health and safety problems within 90 days?

Mr. BELLIVEAU. Well, today under TSCA, the new chemicals program is touted as relatively more successful, even though fewer than 15 percent of new chemicals have adequate health and safety data when they are allowed to enter commerce. Yet, even with that record, the House draft would roll back authority to review new chemicals. It would raise the bar by making it harder to require testing of new chemicals. It would take away important authority that EPA has currently to require consent orders that impose conditions on new chemicals, making it more difficult to take those actions. So it goes backwards in the wrong direction.

Mr. TONKO. Mr. Chair, I see my 5 minutes are exhausted so I yield back.

Mr. SHIMKUS. The gentleman yields back his time. And the Chair now recognizes the gentleman from West Virginia for 5 minutes, Mr. McKinley.

Mr. MCKINLEY. Mr. Chairman, is Ms. Thomas still available?

Mr. SHIMKUS. I have no idea.

Mr. MCKINLEY. There she is.

Mr. SHIMKUS. Oh, there she is.

Mr. MCKINLEY. The lady in the box. Now we lost her again.

Mr. SHIMKUS. No, I think she can hear you.

Mr. MCKINLEY. We know that they are using less and less steel in our automobiles, and my area we have lost two major steel manufacturers to foreign steel. So I am curious about how much of the U.S. steel, American-made steel, not something that we have rolled that has come from Brazil or Japan, but how much is American steel in use in automobiles today? Do you have an idea of that?

Ms. THOMAS. Thank you for the question, Congressman. I believe the estimate is at 25 to 30 percent of U.S. steel is currently being used in automotive applications.

Mr. MCKINLEY. And do you concur that we are using less and less steel in our automobiles today?

Ms. THOMAS. Yes, because of the stringent fuel economy standards, we are having to light weight motor vehicles. So you have seen a trend towards more aluminum being used.

Mr. MCKINLEY. So what you are saying is, if I heard her correctly, was only about—of the steel that is used, 75 percent of it is coming in from off-shore and only 25 percent is American made, is that correct?

Ms. THOMAS. No, I don't think that is the correct figure. I believe that of the U.S. steel usage in the United States, 25 percent goes to automotive applications.

Mr. MCKINLEY. OK. I was just wondering how much steel in an automobile goes into it, but maybe I can take some percentages from that. So there are approximately, what, 8 million steel workers nationwide or 8 million workers dependent on the automobile. What percent would that be, of steel workers would be affected by this? Do you have an idea?

Ms. THOMAS. I am not sure of the correct percentage, the exact percentage, Congressman, but of the 8 million jobs that are tied to the auto industry, there are certainly—

Mr. MCKINLEY. Quite a few of them?

Ms. THOMAS [continuing]. More than a handful that are steel workers, yes. And I can work to get that exact figure for you.

Mr. MCKINLEY. I would appreciate that. Are you there promoting the global market accessibility for cars made in America or just what—can you share what your goal is in Europe today?

Ms. THOMAS. I would be happy to. So we are advocating for a strong regulatory convergence package in the transatlantic agreement in order to streamline and harmonize the United States' and E.U. safety regulations.

Mr. MCKINLEY. As a result of that, are you hearing from anyone there or what is the issue with chemical safety laws in the United States? Does it affect at all the marketability of our products overseas?

Ms. THOMAS. You know, I haven't spoken to anyone here directly on that issue, but I would say that the issue of multiple inconsistent State laws would certainly impact—would become a global issue because it diverts valuable resources from research and development of advanced technologies and safety technologies away from those technologies, more toward regulatory compliance.

Mr. MCKINLEY. There was testimony about replacement parts. Do you have thoughts about—have you been able to hear all the testimony?

Ms. THOMAS. Yes, I have.

Mr. MCKINLEY. Does the tracking system that has been discussed, does that all include replacement parts as well?

Ms. THOMAS. The tracking system that the auto industry has worked with—auto makers have worked with our suppliers to create that tracks all substances that go into our motor vehicles.

Mr. MCKINLEY. Do you agree with the testimony that has been presented so far on this?

Ms. THOMAS. Well, the replacement part issue is certainly very important to our industry because of the very large existing fleet on the roads. And we need to be able to continue to service them. As I mentioned in my statement, the average car on the road is more than 11 years old. So it is a real issue, and just grandfathering in already manufactured replacement parts as this discussion doesn't quite go far enough. And we would like to see a total exemption for automotive replacement parts.

Mr. MCKINLEY. OK. Thank you very much. My time has run out. But thank you for your testimony. Thank you.

Mr. SHIMKUS. The gentleman's time—

Ms. THOMAS. Thank you.

Mr. SHIMKUS [continuing]. Expired. The Chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and as I said earlier, I want to thank you for holding the hearing on the Chemicals in Commerce Act discussion draft. And thank you and the witnesses for being with us today.

We are likely today—the TSCA reform is a contentious issue, and toxic chemicals and how they are regulated touches millions of Americans from the industries who make the chemicals to the workers in the plants and the retailers, consumers and communities that live there. That speaks why TSCA hasn't been reauthorized for 4 decades. Nevertheless, we have had a number of hearings in our committee, and we are moving an effort down the road to do something.

But let me first ask a question of every witness. Yes or no, should TSCA safety standard be based solely on health? Ms. Duran? Dr. Duran?

Mr. SHIMKUS. Microphones, please remember. And Gene, can you pull yours a little bit closer to you, too?

Mr. GREEN. OK.

Ms. DURAN. So I would say no, we would also need to look at exposure, not—

Mr. GREEN. OK.

Ms. DURAN [continuing]. An inherent hazard, but exposure as well.

Mr. GREEN. I will amend my question then. Should it be based solely on health and exposure?

Ms. DEFORD. Yes, a safety assessment should be.

Mr. CIK. According to the National Academy of Science and the American Academy Pediatrics, the focus of TSCA needs to change, needs to focus—instead of biological mechanisms of effects, it needs to focus on the toxic effects. And it also needs to provide for an aggregate assessment of all pathways of chemical exposures that go along—

Mr. GREEN. I just need a yes or no. I only have 5 minutes. I don't need to hear that if you—

Mr. CIK. Well, that was—

Mr. GREEN. Could it be based on—

Mr. CIK. That was my—

Mr. GREEN [continuing]. Health or should it be based on health exposure, bottom line?

Mr. CIK. Based on—yes. Yes. The answer is yes.

Mr. HARRIS. Yes, sir, I would agree with that.

Mr. BELLIVEAU. Yes, sir.

Mr. GREEN. OK. One of the questions I have, and I know there is some concerns about access to the civil justice system that complements I think chemical regulation. Is it imperative that TSCA reform also ensure that an additional layer of accountability and public safety is protected, people being able to go to the civil justice system? Any or all can answer.

Mr. BELLIVEAU. Yes, sir, those rights should be protected.

Mr. GREEN. OK. One of the questions I had, and I might ask it of the next panel, because the draft raises the question if a sub-

stance is designated as a low priority by EPA and then several years later scientific study comes out that shows that substance may be hazardous to human health, and again, based on exposure, should the EPA have the authority to consider new information and authority to go back and recategorize the substance? Now again, we are talking about scientific data, not in—you know, that is peer reviewed, not something that somebody decides they want to have a result on. Should EPA be able to go back and visit those, those low-priority chemicals?

Ms. DURAN. I would say yes. If there is new information that says the risk that was currently determined is incorrect, then certainly they should be able to reopen the discussion.

Mr. GREEN. OK.

Ms. DEFORD. Absolutely. If there is new information, they need to assess it.

Mr. GREEN. Mr. Cik?

Mr. CIK. My understanding is that the current draft had some limitations on using new information. So my recommendation would be that the new information should apply to all chemicals, not just certain listed chemicals which as my understanding would be restricted right now. So yes, of course EPA has to be able to go back for everything.

Mr. GREEN. OK. Mr. Harris?

Mr. HARRIS. Yes, I would agree with that. I would think if there is new information available that is scientific information based on risk and exposure that it should be allowed to be revisited.

Mr. GREEN. OK.

Mr. BELLIVEAU. Yes. May I just say the EPA needs the authority up front to make sure they have adequate data before they designate a substance as low priority.

Mr. GREEN. Well, and one of our concerns is sometimes EPA takes a long time to make a decision. And so I know we have to do resources there to make sure those decisions can be made in a reasonable amount of time.

Let me—I have a minute left I think. Ms. Deford, I am glad to see Dow Chemical testifying today because a lot of my constituents work at the Dow Chemical plant in Deer Park and a great corporate citizen. For my question, is Dow Chemical supportive of government incentives for investments in sustainable chemistry?

Ms. DEFORD. Absolutely. We think it is key.

Mr. GREEN. Would Dow like to see TSCA to incentivize industry to develop more sustainable chemicals?

Ms. DEFORD. Yes. I mean, we think the discussion draft goes that direction with the attention around new chemicals. We think there are other opportunities for inclusion.

Mr. GREEN. What information do you believe manufacturers should provide the EPA in order to make an accurate prioritization of the decision?

Ms. DEFORD. I think the manufacturers need to provide all the information they have relative to hazards to human health and the environment as well as how the applications that they are used and what kind of exposure results from those applications.

Mr. GREEN. Should EPA have the authority to consider all information, scientific numeric studies by academia, government industries regardless of the funding source?

Ms. DEFORD. They should look at all sources, but they need to consider the weight of the evidence as they are doing their evaluations.

Mr. GREEN. Because that is a balancing act. That is what we get from a regulator, ultimately a court of law.

Ms. DEFORD. Absolutely.

Mr. SHIMKUS. Gentleman's time—

Mr. GREEN. Chairman, I know I am out of time.

Mr. SHIMKUS. You are.

Mr. GREEN. Thank you for your time.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. I appreciate the panel being here to speak with us today. Ms. Deford, continuing with you, your written testimony comments that chemistry is such an enabling science that a poorly designed policy can impact the competitiveness of business through the entire chain of commerce. Could you elaborate on that, tell us what you mean?

Ms. DEFORD. Well, if you look at it first from a new chemical standpoint, if the new chemical process is delayed, then it is preventing our customers' customers. Sometimes we are four or five steps removed from that product that our consumers use. And so we need to get that new chemistry out there that is based on the science understanding today. So that is a key aspect.

For existing chemicals, the other part of it is there is great confidence there is lots of information out there on existing chemicals that people don't understand, and we see treatment and certainty around existing chemicals to be critical.

Mr. JOHNSON. In layman's terms, you know, we talk about a resurgence of manufacturing. Am I understanding what you are saying correctly, if we don't do this part of it right and if we don't get new chemicals out there in a timely manner, responsibly, then it really affects the entire commerce chain, right? I mean, you have got manufacturers that are waiting on those chemicals. They are waiting for that as a raw material, perhaps in development in other innovations. Is that what you are talking about?

Ms. DEFORD. Absolutely. Essentially everything that we touch starts from a chemical building block.

Mr. JOHNSON. All right. Good. Ms. Deford, are the CBI projections afforded under CICA an improvement over current TSCA and if so, why?

Ms. DEFORD. We think they are because they provide greater clarity than what is in existing TSCA. And I think it provides more information. It gives stakeholders an increased confidence that those elements that we are protecting are deserving of being protected.

Mr. JOHNSON. OK. All right. And you know, some people have argued that making EPA look at the benefits and alternatives in a new and burdensome requirement is a new and burdensome requirement to the EPA, yet you state that these matters are sup-

posed to be routine for EPA under both Clinton and Obama administration executive orders. So in your experience does the EPA apply the intent and the requirement of those executive orders when implementing current TSCA?

Ms. DEFORD. Yes, we believe they are. We think the discussion draft will provide further opportunities for the Agency to apply those executive orders.

Mr. JOHNSON. OK. All right. Mr. Chairman, those are all the questions I have. I will be proud to relinquish my time.

Mr. SHIMKUS. The gentleman yields back his time. The Chair will now recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman. When this discussion draft was first released to the public, I indicated I couldn't support it in its current form. But I am open to working to improve it. Now 2 weeks later we haven't made much progress, and the purpose as you indicated of this hearing is to highlight some of the issues in this proposal that some of us feel might be flaws that need to be corrected.

Mr. Belliveau, I would like to ask whether this draft is stronger or weaker than current law on a number of points. Is this draft stronger or weaker than current law in terms of EPA's ability to require testing of chemicals?

Mr. BELLIVEAU. It is weaker.

Mr. WAXMAN. In terms of EPA's ability to assess risk, including risks from all uses of chemicals, stronger or weaker?

Mr. BELLIVEAU. It is weaker than it needs to be. Existing law is a little vague on that policy.

Mr. WAXMAN. So existing law needs to be clarified?

Mr. BELLIVEAU. Correct.

Mr. WAXMAN. Is it stronger or weaker in terms of EPA's ability to manage risk and actually regulate chemicals?

Mr. BELLIVEAU. It is equivalently burdensome and onerous to current law.

Mr. WAXMAN. And what would you change in that regard?

Mr. BELLIVEAU. In that respect, the burden needs to shift some to the industry. EPA needs to make a clear and clean safety determination based strictly on health. If a chemical fails to meet a safety standard, the burden needs to be in significant part on the industry to demonstrate why a potential solution may be too expensive or too technically difficult. The current draft puts all the burden on EPA, which would delay action.

Mr. WAXMAN. Is this draft stronger or weaker in terms of requiring an adequate review of new chemicals?

Mr. BELLIVEAU. It is weaker.

Mr. WAXMAN. How about on regulating articles?

Mr. BELLIVEAU. It is weaker.

Mr. WAXMAN. How about in how it provides for the sharing of information that ought to be in the public domain?

Mr. BELLIVEAU. It is weaker.

Mr. WAXMAN. Weaker? Hearing that, it should be no surprise to anyone that we have received so many letters of opposition to this draft. Hundreds of businesses, public health groups, unions and environmental groups have announced their opposition to this pro-

posal. But the industry is supportive of this draft, and to some extent I think that support is because the proposal would preempt State and local laws.

So in order to better understand that perspective, I would like to turn to our industry witnesses. Mr. Harris, can you identify for the record a specific State or local law that you believe is important that Congress preempt?

Mr. HARRIS. Well, I guess first of all, I look at preemption in this regard as similar to what the hazardous materials regulations are under the Department of Transportation. We ship product all over the country. If we had different regulations in every State that we went into, it would be impossible to operate. I see the same thing here. You know, we don't sell into California—

Mr. WAXMAN. Well, that is theoretical. Are there any specific laws that you think we ought to preempt because they interfere with interstate commerce?

Mr. HARRIS. Not that I can think of right off the top of my head, no, sir

Mr. WAXMAN. You can't think of a single one?

Mr. HARRIS. Not off the top of my head I cannot.

Mr. WAXMAN. Mr. Belliveau, what do you think about that? If he is unable to identify a specific law, that is troublesome. Why should we preempt?

Mr. BELLIVEAU. We shouldn't, Mr. Waxman. There have been no demonstrated impairment of interstate commerce, no undue economic impact on industry that will justify overturning more than 100 State laws that have been enacted in the last decade to regulate toxic chemicals.

Mr. WAXMAN. Ms. Deford or Dr. Duran, do you have any—can you identify a specific law that needs to be preempted?

Ms. DURAN. It didn't say we are looking for specific laws to be preempted but rather to drive consistency. So if the EPA takes action that addresses the concern of the specific State, applying nationally will then prevent minor modifications across State lines and easier for us to comply. So we are looking from a consistency perspective.

Mr. WAXMAN. So are you looking prospectively or is there some law that you think ought to be preempted now?

Ms. DURAN. More future looking.

Mr. WAXMAN. Uh-huh. Ms. Deford?

Ms. DEFORD. The laws out there today require reporting and—I mean, they are focused a lot on reporting. They are focused also on those materials that have been proven safe by other regulatory agencies. So again, I would look at we are looking forward to the potential for such laws to have an impact on flow of interstate commerce compared to where we are today.

Mr. WAXMAN. But the draft preempts all existing laws. So what are the existing laws that are troublesome?

Ms. DEFORD. OK. Our understanding is that the preemption would occur at a point when the Agency has made a determination as to whether or not that material meets the safety standard. So that is our understanding.

Mr. WAXMAN. Yes, well, I can see preempting future laws but preempting existing laws that can't be identified as troublesome as a problem.

TSCA reform represents an opportunity to strengthen protections for human health and the environment. I fear this bill would undermine what protections currently exist, and as we undertake this effort, I hope we can focus on the real problems with the law and not be sidetracked with hypothetical problems. And Mr. Chairman, I hope we can work together to improve this draft and make progress toward a bill that can garner support from a wide range of stakeholders and members on both sides of the aisle. My time has expired. Thank you.

Mr. SHIMKUS. I thank my colleague. The Chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5 minutes.

Mr. BILIRAKIS. Thank you very much and thank you for your testimony. First question for Dr. Duran, some people support a regulatory system based largely upon hazards. If exposure were not part of the regulatory determination, what would that mean for Intel and its ability to produce cutting-edge components? Thank you, for Dr. Duran.

Ms. DURAN. In some cases it could mean that we wouldn't—the pool of new chemicals and materials that we need to drive innovation would simply not be available to us. They would be restricted in any use and not allow for that innovation that we need to develop it for our products and our technologies if used in a safe and responsible manner. So exposure is critical to us.

Mr. BILIRAKIS. Thank you. Second question for Dr. Duran, CICA, the bill, provides that when EPA issues a new rule to restrict a chemical—pardon me, I have laryngitis—that it takes into account whether technically feasible alternatives would be available. It also provides for a reasonable transition timeline for implementation. Can you elaborate on that? Does this provision discourage innovation in your opinion?

Ms. DURAN. In this case I would say no. We used the example of PFOS in my oral and written testimony to say in some cases that can actually drive further innovation as long as we are given the capability and time to find that alternative. And in that case we work with chemical manufacturers on those innovations.

Mr. BILIRAKIS. What would be the typical lead time to develop and deploy an alternative chemical if one's use is restricted?

Ms. DURAN. There are no generic timelines. As Ms. Deford had said, many cases in the early development of a chemical we do look at alternatives that are available and are picking the one that meets technical needs with the lowest hazard profile. So the opportunity for a drop in replacement to be readily available is pretty much nil. So in the case of PFOS, it took over 10 years. For another case where it might be a single application and innovation has happened in parallel, it may be much shorter than that. But PFOS was over 10 years.

Mr. BILIRAKIS. OK. Next question for Dr. Duran. Does the draft TSCA provide the flexibility for manufacturers to transition to alternatives when a chemical is banned? If not, what improvements would you recommend to allow such flexibility?

Ms. DURAN. We believe the draft as written does provide for that opportunity for us to pursue alternatives and then transition them into our existing manufacturing processes.

Mr. BILIRAKIS. Thank you very much. I yield back—

Mr. SHIMKUS. Will the gentleman yield to me?

Mr. BILIRAKIS. Yes, I will.

Mr. SHIMKUS. A question for the panel. This is the Energy and Commerce Committee. And historically, do you know how we got our evolution as a committee? Dr. Duran?

Ms. DURAN. I do not, no.

Mr. SHIMKUS. Ms. Deford? Mr. Cik?

Mr. CIK. Never been here. I have no clue.

Mr. HARRIS. No, sir, I do not.

Mr. SHIMKUS. All right.

Mr. BELLIVEAU. No, sir.

Mr. SHIMKUS. OK. Well, as the new Constitution that we passed, States were close to fighting States. Part of the new Constitution that we are under today was the Interstate Commerce Clause with the sole purpose of making sure that States wouldn't block commerce flowing from State to State. So I would pose that as part of this debate. If you understand the history of this country and the union that we now are under and the Federal system that we have, it is based upon the national government incentivizing and supporting interstate commerce.

So I know my friends who will claim states' rights will make a proclamation of the indignation, but I would say historically, if you would look at the founding of this country, that the Interstate Commerce Clause is really the foundational principle that has unified these States, and I think allowing this whole preemption debate is Constitutionally pretty clear that we have the authority to do that.

And I thank my colleague for yielding his time, and I yield back. And I would now recognize my colleague from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I am pleased the committee has convened this legislative hearing, and I wanted to, you know, commend you for your efforts to address the severe flaws in the underlying TSCA statute. We all share a common goal, to ensure that the chemicals in everyday products that Americans use are safe.

But let me first say that I have some serious concerns with the Chemicals in Commerce Act discussion draft. I believe that Sections 5 and 6 need changes to ensure the proper review of new and existing chemicals. And I won't get into all my concerns, but I also hope to see greater protections for vulnerable populations and a refined preemption scheme.

But again, I don't see these concerns as insurmountable. I remain confident that both sides of the aisle can come together to craft a bipartisan bill that achieves our common goal of protecting Americans from dangerous chemicals.

Now, let me ask—TSCA requires that when EPA needs to regulate a chemical it must use the least burdensome option, and this least burdensome requirement is widely recognized as one of the biggest obstacles to effective implementation of TSCA. Since EPA's

failed attempt to regulate asbestos and the Corrosion Proof Fittings decision, EPA has been saddled with performing time and resource-intensive cost-benefit analysis on every potential alternative, not just the final regulatory control option selected. The draft removes the language least burdensome but it replaces this with a number of troubling similar terms like proportional to the risk, net benefits and cost-effective compared to alternatives.

I wanted to ask Mr. Belliveau, in your assessment, do these terms preserve the substance of the least burdensome requirement?

Mr. BELLIVEAU. Yes, they do. I believe they are equivalent in their impact.

Mr. PALLONE. And how will these changes affect EPA's ability to protect the public from substances known to be dangerous, like asbestos?

Mr. BELLIVEAU. Well, they will perpetuate a deficiency in which EPA was not able to ban asbestos, even though it kills 10,000 Americans per year. The same equivalent factors are preserved in the new draft.

Mr. PALLONE. Now, under the net benefits language, the proposal says that EPA should not regulate unless the action would result in net benefits. This appears to say that if preventing exposure to a toxic chemical will cost a company \$10 million and the reduced exposure would only prevent childhood illnesses valued at \$8 million, then EPA can't take the action. Does that seem ethically—well, it seems ethically wrong to me. What do you think about it?

Mr. BELLIVEAU. Well, I think it is further troubling in that there are not adequate data usually to quantify the health benefits, and we need to be mindful of the burden that it places on the Agency, burdens that should be placed on the industry.

Mr. PALLONE. The bill also creates a new requirement barring EPA from restricting a chemical's use unless there is an alternative currently available for that use without additional cost. And without that requirement, EPA restrictions on dangerous chemicals could provide market opportunities for innovation and safer alternatives. But do you have concerns about that requirement as well?

Mr. BELLIVEAU. Yes, I have very strong concerns, I think, as should any business person because what the act draft requires is that we substitute EPA's judgment for a business judgment as to what may constitute a safer alternative. Do we really believe that the Environmental Protection Agency can determine whether a particular substitute works for Intel or not? No, Intel is equipped to determine that. That is an impossible burden on EPA to achieve.

Mr. PALLONE. All right. Let me move to Mr. Cik. How would that provision affect companies like yours that innovate safer alternatives?

Mr. CIK. It would level the playing field certainly for small businesses, and leveling the playing field where everybody has to work by the same rules drives innovation. That is good for business if you level the playing field, and that is what we need to do is level the playing field. Nobody can put toxic chemicals in their products. Period. It will drive innovation and is good for business.

Mr. PALLONE. I appreciate that. Yes, I am just concerned, Mr. Chairman, that these burdensome requirements have the potential to create what Jim Jones called paralysis by analysis and to protect

the market position of dangerous chemicals and articles, and I think they should be removed from the draft to enable the EPA to act and to encourage innovation.

Again, I do appreciate, Mr. Chairman, your efforts to draft—you know, to move forward. And I think that if we continue to work, we can come up with a consensus on this bill. But I do have some serious concerns about the draft right now. Thank you.

Mr. SHIMKUS. I thank my colleague. The Chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman, and thank you for holding this hearing, and we appreciate each witness being here today to share your views and insight. I think that will be very helpful as we go forward.

Mr. SHIMKUS. Would the gentleman yield for a second?

Mr. HARPER. Yes.

Mr. SHIMKUS. Just a reminder because she is not up on the screen, but we also have Jennifer Thomas from the Alliance for Automobile Manufacturers. She is in Brussels. So there she is.

Mr. HARPER. Great.

Mr. SHIMKUS. So if there is—sometimes people come and go, and they forget that she is here and we appreciate her time.

Mr. HARPER. Great. Thank you. Mr. Harris, if I may ask you a couple of questions, first, can you talk for a moment about why it makes more sense to keep the focus on chemicals instead of mixtures?

Mr. HARRIS. Most of the mixtures that would—and there are millions of mixtures, understand. There are not just a few thousand. There are millions of mixtures. If the chemicals that go into those, unless they in some way through reaction or some other catalyst change the makeup of that chemical, if the chemical has been evaluated, it seems duplicative to me to do it again, extra effort on the part of the industry but extra effort on the part of the EPA as well and integrate information that I see as having little use.

Mr. HARPER. Mr. Harris, the small processor is not defined in TSCA. How do you define small business in your sector?

Mr. HARRIS. Employees of 100 or less is the typical definition under the bill. Otherwise, anyone with sales over \$4 million or sales of 100,000 pounds would not be included as a small processor.

Mr. HARPER. You state in your written testimony that protection of proprietary information is the foundation of innovation in our economy and that it is important to your members and your customers. In your opinion, are the confidential business information provisions in CICA an improvement over existing TSCA and if so, why?

Mr. HARRIS. Yes, I believe so. I think it gives industry the opportunity to keep information confidential that they need to for competitive and innovative reasons, but I think it also provides an opportunity for those emergency responders and those in healthcare to be able to get the information they need if necessary in event of an accident. I think it is an improvement over current TSCA.

Mr. HARPER. You make an important point in your written testimony about the economic margins your industry operates on and while you believe that your members should be subject to regulation that it is important to be mindful of the costs associated with

regulatory burdens. Along those lines, isn't cost-benefit analysis an essential part of most government regulation?

Mr. HARRIS. I certainly think it should be. In our industry, we are regulated by just about every agency that you could name here in Washington, and I think it is essential that when a regulation is created, you need to understand what it is going to cost industry to comply to make sure that it makes any sense, that there is a benefit not only to the industry but certainly to the general public.

Mr. HARPER. OK, and if there wasn't such a cost-benefit requirement, couldn't the government impose regulations whose costs far exceed the benefits they are purported to provide?

Mr. HARRIS. Absolutely. I think that happens today.

Mr. HARPER. Specifically you mention reporting burdens that may be especially burdensome for your members, and you explained that you want to avoid duplicate reporting burdens. How could EPA be sure it is getting the information it needs and not more and not duplicate information?

Mr. HARRIS. Well, I think that we are, speaking as a distributor, we are a middleman. We do not manufacture products. The chemicals that we distribute are manufactured by others. That information the EPA is getting from those manufacturers. We sell products to manufacturers, companies that are making a variety of products. They understand the exposure. They understand the risk better than we would. If that information can't be obtained anywhere else, we are certainly willing to do what we can to provide it. But it seems duplicative to me to provide information that someone else has already provided and a burden on both industry and the government.

Mr. HARPER. Thank you, Mr. Harris. I yield back.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DEGETTE. Thank you. Thank you very much, Mr. Chairman. I just want to reiterate that I am pleased that we are continuing to have conversations, and there is some progress that is made in this draft bill. But I am concerned like the ranking member of the full committee that the discussion draft might weaken some aspects of current law. And I want to talk about a couple of those issues.

Right now, TSCA doesn't require new chemicals to be tested before they are introduced into commerce, and it places significant hurdles on the EPA to require testing of existing chemicals. And so as a result of this, 85 percent of pre-manufacture notices submitted for new chemicals under TSCA are accompanied by no toxicity data. This bill, the draft bill, doesn't require new chemical applications to be accompanied by data, and it would not require testing of all existing chemicals. While the draft does extend order authority of the EPA for testing, it also puts new limits on the EPA's testing authority, allowing testing in only a narrow set of circumstances.

And so I want to start with you, Mr. Belliveau. Are you concerned about the limitations the draft would put on the EPA's authority to require testing?

Mr. BELLIVEAU. Yes, I am very concerned for the reasons that you stated and in addition, the changes in the draft to current law would substantially shrink the universe of the number of chemicals that would be candidates for testing. Currently under existing law, any chemical could be subject to a testing requirement. Under the draft, only those handful of chemicals that were going through a safety determination or determination for a new chemical could be tested. That really shrinks the universe and the bar is raised, a higher—rather than a chemical simply that may present an unreasonable risk triggering testing, now EPA has to show that the chemical will result or will likely result in an unreasonable risk before testing can be required.

Ms. DEGETTE. Right, and that sort of hints at what my next question is which is that EPA is not provided with the requirement of—I am sorry, with the authority to require the testing of chemicals before putting them into the high-priority or low-priority categories. The chemicals that were put into the low-priority category would be exempt from all regulation at both the Federal and State levels. So that would have huge consequences.

So I want to follow up and ask you are there any requirements in the draft to ensure that the EPA has adequate information about a chemical's risk before putting it into that category?

Mr. BELLIVEAU. No, because their authority has been narrowed as we just discussed.

Ms. DEGETTE. Right.

Mr. BELLIVEAU. And there is no threshold requirement that there be robust data demonstrating that the chemical has no intrinsic hazard in order to justify being designated a low priority. The result would be thousands of chemicals that are shielded from Federal and State—

Ms. DEGETTE. OK. Do you have—

Mr. BELLIVEAU [continuing]. Scrutiny.

Ms. DEGETTE [continuing]. Some ideas of how we can fix this part of the draft? You don't—

Mr. BELLIVEAU. Yes.

Ms. DEGETTE [continuing]. Need to tell me right now, but if you don't mind supplementing your testimony by providing a written summary of how you would fix this as we move forward in the committee?

Mr. BELLIVEAU. I would be happy to do that.

Ms. DEGETTE. That would be great. Thank you. Mr. Chairman, I would ask unanimous consent that he be allowed to supplement with that information.

Mr. SHIMKUS. Without objection, so ordered.

Ms. DEGETTE. Thank you. I want to turn to you, Mr. Harris, briefly. Why do you think that the bill should be changed to give the EPA the authority to require from downstream formulators, that are from downstream formulators? Sorry. That was written in my handwriting which I couldn't read.

Mr. HARRIS. No problem. I have the same issue. Again, I will repeat that, you know, we are a middleman. We are a distributor. We typically know but under Responsible Distribution and the product distributorship requirements that we have under Responsible Dis-

tribution, we know what our customers are using their products for.

Ms. DEGETTE. Right.

Mr. HARRIS. We do not always know exactly how they are using them. Thus it would be difficult for us as a distributor to determine what the exposures would be in their factors and in their plants. In fact, many of our customers would not want us in their factories, their plants. They have confidential things that they do there. They don't want us to know how they are formulating their paint or their ink or their cosmetics. So I think it would be duplicative for us to try to do something and provide information that in fact probably wouldn't say much because we don't know what is going on every day in a downstream processor's facility.

Ms. DEGETTE. And so really, if those folks gave the data to the EPA, then the EPA could use that to inform the prioritization, right?

Mr. HARRIS. Absolutely.

Ms. DEGETTE. Dr. Duran, you are nodding your head yes, too, is that correct?

Ms. DURAN. Yes. I mean, understanding where the exposure is, that is a role we play as downstream users of chemicals and—

Ms. DEGETTE. And in fact, high exposure is a valid reason to designate a chemical as a high priority, isn't it, Dr. Duran?

Ms. DURAN. In conjunction with inherent hazard, of course.

Ms. DEGETTE. Right.

Ms. DURAN. Yes.

Ms. DEGETTE. Thank you. Thank you very much, Mr. Chairman.

Mr. SHIMKUS. I thank my colleague. The Chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Well, I thank the chairman for getting this train moving down the tracks. I am just afraid that it will get going too fast. It is really possible for the House to pass something that wouldn't have a chance in the Senate. So let us work together on that.

And I understand the industry's need for TSCA's reform to establish a clear and consistent set of standards that would not impact the industry's competitiveness clear enough. However, there is a growing public concern and awareness of unapproved exposure to chemicals that may cause cancer or cause harm to other parts of our health. And a good reform package would give the EPA the tools and the resources to carry out regulations of public disclosures of chemicals to better ensure public safety. If this committee produces legislation that curtails the EPA from protecting the public safety from a chemical exposure, then this legislation would be a failure and ultimately counterproductive for the industry. So again, I urge we work together. There is competitive interest, of course, but in the end, I think we can find something that would be beneficial.

I do have some questions. I am not just going to preach here. The CICA continues to determine on a cost-benefit analysis rather than a risk-based standard, and yet every member of the panel agreed that the law should be risk-based. So I suspect we should move more in that direction in our legislative effort with the concurrence of the panel. The CICA fails to create protections from aggregate

exposures to chemicals which is something that concerns me personally. Mr. Belliveau, would you comment on that?

Mr. BELLIVEAU. Yes, we need to consider real-world conditions. The average person is exposed to a chemical from multiple sources. Naturally EPA should aggregate the information on those multiple exposures when determining the safety of chemicals and a more explicit requirement to assess aggregate exposure would certainly be appropriate.

Mr. MCNERNEY. Should the EPA generate risk data on chemicals?

Mr. BELLIVEAU. The EPA needs greater authority to require manufacturers and processes to test chemicals to provide data and information on—

Mr. MCNERNEY. So it should—

Mr. BELLIVEAU [continuing]. The hazards. Yes.

Mr. MCNERNEY [continuing]. Have a risk-based table or database of chemicals of risks?

Mr. BELLIVEAU. If you are asking do we need a strictly risk-based system, yes, we do, and the draft does not provide that.

Mr. MCNERNEY. So that was my next question.

Mr. BELLIVEAU. OK.

Mr. MCNERNEY. Does the CICA do that?

Mr. BELLIVEAU. No.

Mr. MCNERNEY. Does it give the EPA authority to do that?

Mr. BELLIVEAU. No, it mixes costs too up front in the process which prohibited EPA from banning asbestos. There needs to be—and I think stakeholders have agreed on this privately that there needs to be a strictly health-based determination as to whether a chemical is safe for the uses, all the uses that are out there. And then if a chemical fails to meet that safety standard, then we can look at solutions next. And then naturally, as a common-sense matter in looking at solutions, you look at what works, how affordable it is, and other considerations. But to consider those things up front chills a determination of safety.

Mr. MCNERNEY. I am not sure if anyone on the panel would like to answer this. It seems that the CICA creates new opportunities for litigation before chemicals can be regulated. Would anyone care to take that?

Mr. BELLIVEAU. If I may, in several places the draft adds new burdens of proof imposed on the Environmental Protection Agency. Arguably that opens the door to industry lawsuits that allege that the EPA has not met those burdens. There needs to be more of a burden on the industry to make certain demonstrations and less burden on EPA.

Mr. MCNERNEY. Lastly, the TSCA reform proposals included in this draft would create new duties and new requirements for the agency, necessitating additional funds. Yet, this draft provides no additional resources. For each to the panel, a yes or a no, please. Do you support the collection of reasonable user fees to ensure that the EPA has the resources to carry out its functions? Dr. Duran?

Ms. DURAN. I would say reasonable is key. Most likely, yes.

Ms. DEFORD. Reasonable in making sure that they come back to TSCA to EPA, that office to—

Mr. MCNERNEY. Very good.

Ms. DEFORD [continuing]. Have those resources.

Mr. CIK. Absolutely, of course.

Mr. MCNERNEY. OK.

Mr. CIK. We submitted some data with our package that demonstrates that most small businesses in the country support very strong measures to control toxic chemicals. This position is not a minority position. This is a majority position.

Mr. MCNERNEY. OK. Mr. Harris?

Mr. HARRIS. Yes, I would agree also if it is reasonable, if the fees are reasonable, and if the funds are used for the purpose intended.

Mr. MCNERNEY. OK.

Mr. BELLIVEAU. Yes.

Mr. MCNERNEY. Well, I want to underscore this before I yield. No matter what we put in the bill, if the EPA doesn't have the resources to carry out its functions, it won't be a functional law. I yield back.

Mr. SHIMKUS. The gentleman yields back. At this time the Chair now recognizes the gentlelady from California, Ms. Capps, for 5 minutes.

Mrs. CAPPs. Thank you, Mr. Chairman, for holding the hearing, and thank you to our witnesses for your testimony. And if it is any comfort to you, I think I am the last member to ask questions.

You know, under current law, TSCA uses a "unreasonable risk" standard to evaluate the safety of a chemical. This is understood to be a cost-benefit standard. In effect, a cost-benefit approach requires the Agency to balance the economic value of a chemical against the adverse health impacts, whether they be cancer, autism or any of the other serious threats.

Besides posing a serious ethical problem, this approach has also proven, and I think you might agree, to be unworkable. And that is what the subcommittee has repeatedly received testimony, that TSCA's safety standard is failing to protect the general public and vulnerable populations.

Since 2009, there has been widespread agreement that this cost-benefit standard needs to be abandoned. We have heard from many stakeholders, including EPA, the American Chemistry Council and even the oil refineries, everybody seems to be on the same page on this one. They have all stated that costs should not be part of safety determinations under TSCA.

Despite the broad consensus on this matter, the discussion draft we have before us maintains the status quo on the safety standard. It makes no changes to the language of unreasonable risk or the consideration of cost during EPA's assessment of a chemical's safety. I think that is a disappointment. I am also very concerned that the safety standard in the draft will fail to protect the vulnerable populations. That is what I want to talk about for a minute.

Vulnerable populations include children, infants, the elderly, the disabled workers and those living near chemical facilities. The National Academy of Science in their 2009 report, Science and Decisions, recommended that all vulnerable populations should receive special attention in all stages of the risk-assessment process.

Mr. Belliveau, do you believe the draft as written would adequately protect vulnerable populations from dangerous chemicals?

Mr. BELLIVEAU. No, I don't. It really needs to be changed so that a chemical has to be found to be safe for the vulnerable populations explicitly.

Mrs. CAPPS. I was going to ask you what changes you would recommend. Do you want to be more specific than that?

Mr. BELLIVEAU. Sure. I mean, to be fair, the drafters include a definition, potentially exposed population, that addresses some of who the vulnerable population is. It is a definition. It says that some exposures need to be considered, but you need to finish the job unless you require that you actually apply a health-based standard to the protection of vulnerable populations. It is an option. It is not a mandate. And we need to be concerned about those who are most vulnerable.

Mrs. CAPPS. And you may have already answered this, too, but just for the record, should the placement of chemicals—well, first of all, should decisions then on new chemicals protect vulnerable populations?

Mr. BELLIVEAU. Yes, absolutely.

Mrs. CAPPS. Yes? And should the placement of chemicals into either low- or high-priority categories protect vulnerable populations?

Mr. BELLIVEAU. Especially for the low-priority category. We need to ensure that there is adequate data to determine whether vulnerable populations may be at risk. The danger that is invited by the current draft is that literally thousands of chemicals will be set aside as low priority with poorly understood hazards. That would not provide the protection that we are seeking for vulnerable populations.

Mrs. CAPPS. Thank you. Mr. Chairman, there is about a minute and a half left or a quarter left. This is really what I wanted to drill in on here in my question time. So would any of the other of you like to respond to this matter of protecting our vulnerable populations?

Ms. DEFORD. Yes—

Mr. SHIMKUS. Your mike is not on. I am sorry.

Ms. DEFORD. Sorry. What I was saying is we see the discussion draft as actually is including—there is a definition for potentially exposed populations. So we do see the discussion draft taking account—

Mrs. CAPPS. Adequately?

Ms. DEFORD [continuing]. Of that.

Mrs. CAPPS. Adequately?

Ms. DEFORD. And I mean, we believe it is critical for that protection to be in place, both for new chemicals and existing chemicals.

Mrs. CAPPS. Anything else?

Mr. CIK. I will add something. The low-priority issue could be a trap for products that serve at-risk populations like babies and children, pregnant women, the at-risk population. These chemicals can be shielded from further review. I mean, that could be a serious problem. And then you make it worse by shielding these chemicals from States to review them. It is a serious problem. We can't allow that.

Mrs. CAPPS. OK.

Ms. DEFORD. Maybe one point I would make on low priority is, I mean, if the Agency doesn't have sufficient information in order

to make a determination, they can actually identify such as a high priority and then go ahead and collect additional information. So you know, the question, the issue around insufficient information is the Agency can realize that and make a determination about need for both exposure and additional hazard information.

Mrs. CAPPS. Thank you. I have overstayed my time but I just at least want to really acknowledge the chairman for your pledge to work with members on this side of the aisle in a real bipartisan way to improve this draft. I think that there is agreement that it may be a starting point but it needs a heck of a lot of work before it sees its final form. At least that is how I feel. Thank you very much.

Mr. SHIMKUS. I would thank my colleague and friend from California. I would just, on a side note, I would say TSCA currently has no category for vulnerable populations.

Mrs. CAPPS. Right.

Mr. SHIMKUS. Period. Nothing.

Mrs. CAPPS. Yes.

Mr. SHIMKUS. We at least start addressing it. And I think that is a step in the right direction showing some movement.

Mrs. CAPPS. One step.

Mr. SHIMKUS. That is better than no step. But I do want to thank—I want to make sure we thank Ms. Thomas for being with us in Brussels. She is going to be allowed to go to bed. And we also want to thank the first panel for your diligence. Members were very active. This is a very important issue. We do appreciate those offers of assistance. We want to get to obviously a compromise that can move in a bipartisan manner. That is the only one that will really get appropriately on the Senate side. As was stated, we could move a Republican bill adequately and through the house, but the question is, to what end? So we are all going to have to move somewhere, and I hope we all move together.

With that, I want to dismiss the first panel and ask the second panel to come join us.

I am going to get started and welcome the second panel. I will do the same as I did the first one. I will kind of announce you all right up front, and then we will just go with the 5 minutes. You all sat through the last panel. I think there will be a lot of good questions. I may not go as long as the first, but we are happy to have you here.

Joining us will be Mr. Mark Duvall who is a Principal at Beveridge & Diamond. Next to him is Dr. Bosley?

Ms. BOSLEY. Bosley.

Mr. SHIMKUS. Bosley. Thank you. President of Boron Specialties on behalf of the Society of Chemical Manufacturers and Affiliates. Mr. James Stem is National Legislative Director of the Transportation Division of the Sheet Metal, Air, Rail and Transportation Union. Dr. Philip Landrigan, Professor of Pediatrics, Director of Children's Environmental Healthcare Center, Ichann School of Medicine at Mt. Sinai. Welcome, sir. And Ms. Anna Fendley with the United Steel Workers.

With that, Mr. Duvall, you are recognized for 5 minutes.

**STATEMENTS OF MARK N. DUVALL, PRINCIPAL, BEVERIDGE & DIAMOND, P.C.; BETH D. BOSLEY, PRESIDENT, BORON SPECIALTIES, LLC, ON BEHALF OF THE SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES; JAMES A. STEM, JR., NATIONAL LEGISLATIVE DIRECTOR, TRANSPORTATION DIVISION, SHEET METAL, AIR, RAIL AND TRANSPORTATION UNION; PHILIP J. LANDRIGAN, DEAN FOR GLOBAL HEALTH, ETHEL H. WISE PROFESSOR AND CHAIRMAN, DEPARTMENT OF PREVENTIVE MEDICINE, PROFESSOR OF PEDIATRICS, ICHANN SCHOOL OF MEDICINE AT MOUNT SINAI; AND ANNA FENDLEY, UNITED STEELWORKERS**

**STATEMENT OF MARK N. DUVALL**

Mr. DUVALL. Chairman Shimkus and Ranking Member Tonko, thank you for inviting me to testify. My name is Mark Duvall. I am a principal at the law firm of Beveridge & Diamond. Although I represent a variety of clients on TSCA issues, I am appearing here today solely in my personal capacity. The views I express today are my own, and I am not representing my law firm or any client of my law firm.

My comments focus on the core provisions of the discussion draft which would amend Sections 4, 5 and 6 of TSCA relating to testing, new chemicals and existing chemicals. In my view, these provisions would strengthen TSCA in important ways.

Starting with Section 4, the draft would delete today's requirement that EPA establish both that testing is needed and that a chemical substance may present an unreasonable risk or other finding. It would only require EPA to conclude that testing is needed. Where appropriate, EPA would be able to impose testing requirements by order rather than by rule. This should streamline its ability to require testing.

The draft would also facilitate transition to the more sustainable toxicology testing of the future. It would encourage the use of innovative technologies while leaving EPA with the discretion to require animal testing where alternatives are not yet available or sufficiently reliable.

With respect to Section 5 of TSCA, for the first time EPA would have to decide whether a new chemical substance would or would not be likely to result in an unreasonable risk of harm under the intended conditions of use. The draft bill would authorize EPA to require testing to develop the information it needs in order to make that determination if the information was not provided by the submitter.

The draft bill would also clarify and strengthen EPA's ability where appropriate to restrict new chemical substances as they enter the market.

Turning now to Section 6, one of the most important changes to TSCA would be the prioritization provision. Current law has no driver that requires EPA to prioritize chemical substances for review and then review them systematically. As a result, EPA has faced challenges in obtaining necessary funding from Congress or clearances from OMB. The draft bill would provide that driver.

The prioritization provision would direct EPA to establish a risk-based process for designating chemical substances as either high or

a low priority for a safety determination. Those designated as high would proceed to a safety determination. Those designated as low would not. At any time, EPA could revisit a designation and change it if the available information supported a change in EPA's discretion.

Safety determinations are the second step in addressing chemical safety systematically. EPA would be required to make safety determinations for high priority substances. The safety determination would conclude either that a chemical substance will or that it will not result in an unreasonable risk of harm to human health or the environment under the intended conditions of use. EPA could require testing if needed in order to make a safety determination.

This unreasonable risk standard which has been discussed already this morning would be very different from the similarly worded standard of current TSCA and certain other statutes and would have a different effect. Unlike those other statutes, the draft would separate out the determination of risk which is primarily a scientific conclusion from decisions about risk management. The safety determination itself would be based on scientific factors, considerations of risk and so on. It would be risk-based. It would consider information on potentially exposed subpopulations that EPA would take into account in making a determination of unreasonable risk. But there is no provision in the bill for the weighing of costs and benefits in making a safety determination. If that is not clear, then legislative history or additional drafting should make it clear.

The bill's risk management provision would delete the least burdensome alternative requirement of TSCA and delete many of the procedural requirements that EPA has found to make rule making difficult. Instead, it would require EPA to make certain findings before imposing risk management controls. For example, EPA would have to determine that the controls will result in net benefits and would be cost effective. These requirements have been in place for over 20 years because they were part of the executive order issued by President Clinton and reaffirmed by President Obama. EPA has not found these executive orders to be obstructing it from completing its work. And where risk management measures would amount to a ban, EPA would have to ensure that feasible alternatives are available that would reduce the risk. This provision would address the concern reflected in California's green chemistry regulations about regrettable substitution.

In conclusion, the draft bill would strengthen TSCA's core provisions. It would delete requirements that have hampered EPA's ability to regulate chemical risks. It would provide EPA with new flexibility in exercising its authority, and it would require EPA to act in ways that promote good governmental decision-making.

Thank you for considering this testimony.

[The prepared statement of Mr. Duvall follows:]

**Testimony of Mark N. Duvall**  
**Before the Subcommittee on Environment and the Economy**  
**Committee on Energy and Commerce**  
**United States House of Representatives**  
**“The Chemicals in Commerce Act”**

**March 12, 2014**

**Summary of Key Points**

The draft Chemicals in Commerce Act (CICA) would strengthen the core provisions of the Toxic Substances Control Act (TSCA), sections 4, 5, and 6.

The changes to the testing provision, section 4 of an amended TSCA, would bolster EPA's ability to require testing by (a) lowering the threshold findings necessary for EPA to require testing; (b) authorizing EPA to require testing by order in appropriate cases; (c) providing a statutory basis for testing consent orders; and (d) facilitating the transition to the toxicology testing of the future.

The changes to the new chemicals and significant new use provisions, section 5 of an amended TSCA, would codify and strengthen EPA's current practices. They would also require for the first time that EPA make a determination about the safety of chemical substances reviewed under these provisions. EPA could require testing where necessary.

The draft bill would give EPA new tools to evaluate chemical safety by requiring it to prioritize chemical substances, make a safety determination for high-priority substances, and regulate those substances found to result in an unreasonable risk of harm to human health or the environment under the intended conditions of use. These provisions would appear in section 6 of an amended TSCA.

Prioritization would be a risk-based process for identifying chemical substances for further review. A safety determination would be a risk-based analysis of whether a chemical substance will result in an unreasonable risk; it would not involve consideration of costs and benefits. The risk management provision would delete the "least burdensome alternative" requirement in current TSCA and require findings that would help with good governmental decisionmaking.

**Testimony**

Thank you for inviting me to testify at this hearing. My name is Mark N. Duvall, and I am a principal at the law firm of Beveridge & Diamond, P.C. Although I represent a variety of clients on TSCA issues, I am appearing here today solely in my personal capacity. The views I express today are my own. I am not representing my law firm or any client of my law firm.

I have extensive experience with the Toxic Substances Control Act (TSCA). I have been advising clients on TSCA for some 30 years.

I have reviewed the Discussion Draft of TSCA legislation entitled the "Chemicals in Commerce Act." My comments today focus on the core provisions of the Discussion Draft, which would amend sections 4, 5, and 6 of TSCA, relating to testing, new chemical substances, and existing chemicals. These provisions would strengthen TSCA.

**1. Testing Requirements**

The draft CICA would bolster EPA's ability to require manufacturers and processors to conduct testing.

First, the draft would lower the threshold findings that EPA must make before requiring testing. Today, in order to require testing, EPA must find that testing is needed and that a chemical substance "may present an unreasonable risk" or that a chemical substance is produced in substantial quantities and may have significant or substantial human or environmental exposure. EPA has found these additional threshold findings to be obstacles to its ability to require testing. The draft would delete those additional threshold findings. It would only require EPA to conclude that testing is needed.

Second, where appropriate, EPA would be able to impose testing requirements by order rather than by rulemaking. This should streamline its ability to require testing, since EPA has found the rulemaking process for test rules to be resource-intensive and time-consuming.

Third, the draft CICA would provide a statutory basis for testing consent orders. While EPA has been entering into testing consent orders for several years, its authority to do so is at best implied in the current statute. The draft CICA would establish clear authority for testing consent orders.

Fourth, the draft would facilitate the transition to the toxicology testing of the future. Under current TSCA, EPA has required the testing of chemical substances one at a time, often in expensive tests that require the use of a large number of vertebrate animals. The draft would require EPA to take concrete steps to minimize the use of vertebrate animals in testing. It would encourage the use of innovative technologies that allow for the possibility of testing a large number of chemical substances for a wide variety of endpoints with the use of technology. This vision is far more sustainable than the approach EPA has taken in its testing requirements to date. At the same time, it would leave EPA the discretion to require animal testing where alternatives are not yet available or sufficiently reliable.

## **2. New Chemical Substances and Significant New Uses**

The draft CICA would codify much of EPA's current practices in addressing new chemical substances and significant new use rules (SNURs). For example, EPA has regulated a large number of chemical substances through consent orders under section 5(e) of TSCA. The draft bill would clarify and strengthen EPA's ability where appropriate to restrict new chemical substances as they enter the market or as a manufacturer or processor commences a significant new use of an existing chemical substance.

The draft bill would make a significant change in how EPA reviews new chemical substances and existing chemical substances subject to SNURs. For the first time, EPA would be required to make a determination about the safety of such chemical substances. Today, EPA may simply allow the notice period to expire without taking regulatory action. Under the Discussion Draft, EPA would have to decide whether a chemical substance, or engaging in a significant new use, would or would not be likely to result in an unreasonable risk of harm to human health or the environment under the intended conditions of use. Jim Jones, Assistant EPA Administrator, told this Subcommittee recently that the corresponding provision in the Senate bill, S. 1009, is one of the best features of that bill.

EPA may find that it lacks sufficient information to make a determination that a chemical substance or significant new use is or is not likely to result in an unreasonable risk under the intended conditions of use. In that case, the draft bill would authorize EPA to require testing to develop the information it needs in order to make that determination. This approach would be a compromise between the concept of minimum data sets, which may result in large amounts of data not necessary for regulatory determinations, and the current situation where many notices are submitted without data. Where appropriate, EPA may allow a new chemical substance to enter the market while the testing is being conducted. Otherwise, EPA may require the testing to be completed before commercialization.

The standard of “likely” or “unlikely” to result in an unreasonable risk under the intended conditions of use is appropriate where available data may be limited. A new chemical substance has not yet entered the market, so it has not produced the revenue necessary to generate the kind of data EPA might need to make a more definitive determination. Once a new chemical substance does enter the market, it would become subject to the provisions relating to existing

chemical substances. At any time after commercialization, EPA could review a former new chemical substance and make a safety determination that the chemical substance will or will not pose an unreasonable risk. If EPA then needed additional data in order to make that determination, it could require testing.

### 3. Prioritization

One of the most important changes to TSCA in the draft CICA is the prioritization provision. Prioritization would lead to safety determinations, which would lead to risk management in appropriate cases.

Today's TSCA does not direct EPA to review chemical substances systematically for the risks that they may pose to health or the environment. EPA has tried to do so, most recently with its list of Work Plan chemicals. However, we have seen over the years that it has struggled to sustain a focused, reasoned approach to reviewing chemical safety. Without a driver that requires it to prioritize chemical substances for review, and then review them, EPA has faced challenges in obtaining necessary funding from Congress or clearances from the Office of Management and Budget.

The prioritization provision of the draft CICA would direct EPA to establish a risk-based process for designating chemical substances as either a high priority or a low priority for a safety determination. EPA would have no more than 1 year to establish that process. The draft would identify the basis for making prioritization decisions. It would allow for public comment on proposed designations, but EPA would maintain considerable discretion in setting its own priorities for reviewing chemical substances.

Prioritization would be intended primarily as a process for selecting chemical substances for further review. Chemical substances designated as high priority would proceed to a safety

determination. Those designated as low priority would not. At any time, EPA could revisit a designation and change it if the available information supported a change.

EPA would be charged with making a prioritization decision for all chemical substances that are active (as determined under section 8). The draft bill would not mandate a timetable for completing prioritization all active substances, however. A timetable might create a large and growing backlog of uncompleted safety determinations. Instead, the draft bill would allow EPA to make prioritization decisions in part by taking into account its ability to schedule and complete safety determinations.

#### **4. Safety Determinations**

The draft CICA would require EPA to make safety determinations for high-priority substances. This would be the second step in addressing chemical safety systematically. The safety determination would conclude that a chemical substance will or will not result in an unreasonable risk to human health or the environment under the intended conditions of use.

Unlike the Senate bill, S. 1009, the Discussion Draft would not have a safety assessment followed by a safety determination. Instead, it would combine both activities into one safety determination step, to be followed by a separate risk management step if appropriate.

EPA would make a safety determination based on existing information unless it determined that additional information was needed. In that case, it would be able to require testing and defer the safety determination until after the test data became available.

The “unreasonable risk” standard in the draft CICA would be very different from the similarly-worded “unreasonable risk” standard of current TSCA, and of some other statutes such as the Consumer Product Safety Act. Those statutes combine a finding of risk with a decision about risk management into a single determination. They require the agency to weigh the costs

and benefits of the chemical and the regulatory action before making an “unreasonable risk” determination. Unlike those statutes, the draft CICA would separate out the determination of risk, which is essentially a scientific conclusion, from decisions about risk management. A safety determination about “unreasonable risk” would be risk-based. The draft provides that the determination would be based on the weight of the scientific evidence after considering the best available science related to health and environmental concerns. It would consider information on potentially exposed subpopulations. There is no provision for the weighing of costs and benefits in making a safety determination. Any consideration of costs and benefits would be postponed until the risk management stage.

Nevertheless, courts might be inclined to find that the CICA’s “unreasonable risk” standard requires consideration of costs and benefits simply based on other statutes. To mitigate this possibility, it may be advisable to explain this provision in legislative history to emphasize that the weighing of costs and benefits would not be part of a safety determination.

The draft bill does not include deadlines for EPA to complete a safety determination or a certain number of safety determinations. EPA is likely to need varying amounts of time to complete safety determinations, in light of variables such as the number of uses to be considered and whether or not testing would be needed. If deadlines are added to the bill, they should be flexible enough to address this variability in timing needed to complete any individual safety determination.

##### **5. Risk Management**

The draft bill’s risk management provisions would significantly strengthen EPA’s ability to require appropriate controls. It would delete the “least burdensome alternative” requirement

of TSCA that featured prominently in the court decision invalidating EPA's ban on asbestos.<sup>1</sup> It would also delete many of the procedural requirements that EPA found to make rulemaking difficult.

Instead, the draft would require EPA to make certain findings before imposing risk management controls, all of which relate to good governmental decisionmaking. For example:

- EPA would have to determine that the controls will result in net benefits and would be cost-effective. These requirements are already applicable to EPA decisionmaking through Executive Orders issued by President Clinton and President Obama.<sup>2</sup>
- Where the risk management measures would amount to a ban, EPA would have to ensure that feasible alternatives are available that would materially reduce the risk posed by the chemical substance. This provision would address the concern reflected in California's Green Chemistry regulations about "regrettable substitution," although far less would be required of EPA than the Green Chemistry regulations would require of responsible entities.<sup>3</sup>

Any risk management measure would have to exempt replacement parts for articles manufactured prior to the applicable compliance deadline. It would also have to provide for a reasonable transition period. Both of these measures are important for manufacturers of complex durable goods such as automobiles and airplanes.

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<sup>1</sup> *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5<sup>th</sup> Cir. 1991).

<sup>2</sup> Executive Order 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993) ("Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach .... When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective."); Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011) (similar language).

<sup>3</sup> Compare 22 Cal. Code Regs. § 69501 et seq. (Safer Consumer Products regulations).

The bottom line is that EPA would be better equipped than under current TSCA to regulate chemical substances found to result in an unreasonable risk.

\* \* \* \* \*

In conclusion, the draft CICA would strengthen TSCA's core provisions. It would delete requirements that have hampered EPA's ability to regulate chemical risks; it would provide EPA with new flexibility in exercising its authority; and it would require EPA to act in ways that promote good governmental decisionmaking.

Thank you for considering this testimony.

Mr. SHIMKUS. Thank you. The Chair now recognizes Dr. Beth Bosley. You are recognized for 5 minutes.

**STATEMENT OF BETH D. BOSLEY**

Ms. BOSLEY. Thanks very much, Chairman Shimkus, Ranking Member Tonko and other members of the subcommittee. My company, Boron Specialties, is a specialty chemical manufacturer and a woman-owned small business. We are located in Pittsburgh, Pennsylvania. We are also members of the Society of Chemical Manufacturers and Affiliates, known as SOCMA.

As an entrepreneur and a business owner, I offer a unique perspective that I hope you will find helpful as you consider this draft legislation which is a clear improvement over the status quo. I would like to discuss some important areas of the draft.

First, a robust new chemicals program is essential to America's ability to innovate and to create jobs. I cannot overstress the importance of market access to start-ups and small businesses. In general, the new chemicals provision in the draft bill preserves the delicate balance in existing law between the opportunity to innovate and protecting human health and the environment. The draft retains current statutory exemptions and the authorization for other exemptions such as for research and development.

As a clarification, when I speak of exemptions, I do not mean exempt from TSCA or any other compliance obligations. All I am talking about is exempt from premanufacture notification requirements or that they are eligible for expedited review so long as they meet certain criteria.

Chemicals making use of these exemptions are actually inherently restricted since they are bound by rigorous criteria. The draft also maintains the 90-day review period for PMNs. EPA currently completes review of many new chemicals in far less time than 90 days while still being protective. So this is reasonable. The draft would require EPA to determine during that review period whether a new chemical is likely to meet or not likely to meet a safety standard. This is a significant step forward.

As the subcommittee considers the bill further, I offer some suggestions regarding the treatment in Section 5. Current law authorizes EPA to extend the 90-day review period by rule which is usually procedurally too demanding. So EPA uses 15-day extensions with consent of the submitter. I would urge this aspect of the current bill be adopted rather than allowing an automatic 90-day extension.

I believe some drafting corrections might be warranted also to clarify EPA's ability to use significant new-use rules that are applicable to everyone and to authorize commencement of manufacture upon the establishment of Section 6 restrictions. We would be happy to discuss these with subcommittee staff off-line.

The draft bill also strengthens Section 14, confidential business information provision, and represents a balanced approach to increased transparency while preserving trade secret protection. The bill imposes reasonable limitations on CBI. Companies would have to determine how long they believe their CBI protection is necessary, and they would have to resubstantiate over time. This fixes

one of the core problems under the current law, the open-ended protection of CBI.

The draft would break the inventory of existing chemicals into active and inactive lists. This will help EPA focus its resources on prioritizing a much smaller list of active chemicals which will expedite review.

As I have mentioned in prior testimony, the bill should also expand TSCA Section 8(e) to authorize submission of non-adverse data and to require EPA to take this data into account. Presently Section (e) is bias toward adverse data.

I am pleased to see that the EPA would be able to obtain information from downstream processors who are in a much better position to report on market applications and exposure patterns for the chemicals they use. I am somewhat concerned that the bill does not require some degree of processor reporting, however.

After prioritization, should EPA determine that more data is needed to affirm safety, it would be given enhanced mechanisms for this data collection.

TSCA Section 4 would also be strengthened by expanding EPA authority to request data either by rule, by consent agreement or by order, and it is this order authority that will speed action. As a caveat, however, before ordering testing, EPA should first consider all the available information that it has. It should have sound scientific and risk basis for the request, and testing should be tiered.

The risk management provision under the current statute has received criticism for the unreasonable risk standard being too cumbersome for EPA to implement. It requires EPA to determine the least burdensome regulatory measures for chemicals that present a risk.

In the draft, cost and benefits are separated from what is now a purely health- and environment-based safety standard, and the least burdensome requirement is removed. EPA would instead have to look at risk management measures that are proportional to the risk that provide net benefits and are cost effective. These are all positive steps.

Perhaps the bill's greatest improvement over the Senate bill is its clarification that low-priority determinations would be judicially reviewable. This solves the problem of State requirements being preempted by actions that are not subject to judicial review.

I have covered the major ways in which this bill is an improvement over the status quo. The bill provides a vehicle for balanced TSCA reform and discussion crucial, unaddressed issues. I hope this hearing marks the first step in a constructive bipartisan process to facilitate this advancement. Thanks very much for the opportunity to share my perspective.

[The prepared statement of Ms. Bosley follows:]



Testimony  
of  
Beth D. Bosley, Ph.D.

President  
Boron Specialties, LLC

*On behalf of the*

Society of Chemical Manufacturers & Affiliates

*Before the*

U.S. House of Representatives

Energy and Commerce Committee  
Subcommittee on Environment and the Economy

*On the*

“Chemicals in Commerce Act”

March 12, 2014

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Good morning, Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee. My name is Beth Bosley, and I am the President of Boron Specialties in Pittsburgh, Pennsylvania. Boron Specialties is a specialty chemical manufacturer and a woman-owned small business.

I am pleased to be back in Washington to share my perspective on behalf of the Society of Chemical Manufacturers and Affiliates regarding the draft Chemicals in Commerce Act. I would also like to commend Chairman Shimkus and his staff for all their hard work in what I see as a very workable, good-faith vehicle for bipartisan TSCA reform.

As an entrepreneur and small business owner, I offer a unique perspective that I hope you find helpful as you consider this draft legislation. I am admittedly still digesting some of the bill, and need to caveat my remarks by saying that my views might change, and certainly will become more refined, as I am able to look at it more closely. And time does not allow me to flag every potential question or concern I have about the bill.

But, in general, I can say how pleased I am that it shares many features with the bipartisan Chemical Safety Improvement Act that was introduced in the Senate last year. I can also say that it is a clear improvement over the status quo. The Senate bill was able to get broad bipartisan support, with a quarter of the Senate, Republicans and Democrats, cosponsoring it. I see no reason why a bipartisan outcome is not possible in the House. I would now like to discuss some important areas in the draft. Many of the points I will make have also been mentioned and fleshed out in prior testimony before this committee.

**A Robust New Chemicals Program is essential to America's ability to innovate and create jobs.**

I cannot overstate the importance of market access to startups and small businesses like mine. In general, the new chemicals provision in the draft bill preserves the delicate balance in existing law between the opportunity to innovate and protecting human health and the environment. I am pleased to see that it retains the current statutory exemptions (e.g., for mixtures) and the authorization for exemptions such as the research and development and test marketing exemptions, for example. It also authorizes the current regulatory exemptions for byproducts and transitory intermediates. Finally, it preserves the authority used to issue the low volume chemical and polymer exemptions. As a clarification, when I speak of exemptions this does not mean exempt from TSCA or any compliance obligations; rather, it simply means such chemicals are exempt from Pre-manufacture notification or PMN requirements or eligible for expedited review, so long as they meet certain criteria. Chemicals making use of these exemptions are actually inherently restricted, since they are bound by rigorous criteria.

The draft maintains the 90 day review period for PMNs, which I support. This helps ensure swift access to market. EPA actually completes review of many new chemicals in far less time than 90 days while still being protective, so this is very reasonable. The draft would require EPA to determine during the review period, whether a new chemical is likely to meet or not likely to

meet the safety standard. Establishing a safety standard is an improvement over the current situation and should give the public more confidence in the new chemicals process. As I have mentioned in prior testimony, an overly-stringent standard like that for food, drugs and pesticides would be inappropriate and would grind new chemical innovation to a halt.

As the Subcommittee and Committee consider the bill further, I offer some suggestions regarding its treatment of Section 5:

- Current law authorizes EPA to extend the 90-day review period by rule, which is too procedurally demanding, so EPA usually uses 15-day extensions (with the consent of the submitter) if they need more time. The draft (and the Senate bill) eliminate the rulemaking requirement, and also expressly authorize waiver agreements. I am concerned that EPA might now routinely exercise both authorities, so that the default review period would be 180 days. Agency staff are quite able in the current 90-day period to determine if they need new data, so I would drop the 90-day extension authority altogether and simply authorize waivers of the 90-day limit.
- Current law also prohibits a submitter from commencing manufacture before the expiration of the 90-day period, even if EPA has dropped its review. The draft (and the Senate bill) preserves this. But why not authorize a submitter to submit a Notice of Commencement as soon as it has been notified by EPA that EPA has dropped its review?
- Finally, I believe some drafting corrections might be warranted to clarify EPA's ability to issue Significant New Use Rules applicable to anyone, and to authorize the commencement of manufacture upon the establishment of Section 6 restrictions. SOCMA staff would be happy to discuss these with Subcommittee staff offline.

**Innovation also requires adequate protection of confidential business information.**

The draft bill strengthens Section 14's confidential business information provision and represents a balanced approach to increased transparency and trade secret protection. It authorizes sharing of CBI with states – but not local governments -- and medical personnel on a need to know basis. Trade secrets that might be disclosed to medical personnel would presumably be treated in much the same way personal medical information is under the Health Insurance Portability and Accountability Act (HIPAA)—something medical professionals have experience managing.

The bill also imposes reasonable limitations on CBI protection that should help increase transparency. Companies would have to determine how long they believe their CBI protection is necessary. This fixes one of the core problems under the current law: the open-ended protection of CBI. In addition, there would be periodic re-substantiation requirements during reporting cycles, not unlike the present circumstances with the Chemical Data Reporting (CDR) rule.

I note that the bill eliminates the criminal penalties for disclosure contained in existing law and in the Senate bill. I assume that means such disclosure would be subject to the general criminal provision in Section 16(b), as well (potentially) to the Trade Secrets Act, the applicability of which the bill restores.

**The bill provides mechanisms for a more complete picture of chemicals in commerce.**

The draft would break the inventory of existing chemicals into active and inactive lists. There are currently about 84,000 chemicals on the TSCA inventory, but far fewer in actual commerce. EPA should focus its resources on prioritizing active chemicals in commerce. The bill, in general, mandates this. Establishing an accurate and manageable inventory of chemicals in commerce should give the public more confidence.

As I have mentioned in prior testimony, the bill should expand TSCA Section 8(e), as the Senate bill does, to authorize submission of non-adverse data and to require EPA to take it into account. Presently, Section 8(e) is biased towards adverse data. Such an enhancement would greatly increase the amount of data submitted under this authority, which can only improve EPA's understanding of chemical hazards.

I am pleased to see that EPA would be able to obtain information from processors, who are oftentimes the customers of upstream manufacturers. I am somewhat concerned that the bill does not necessarily require some degree of processor reporting, however – a potential problem with the Senate bill as well. A significant shortcoming of TSCA currently is the lack of accurate use and exposure information. Manufacturers have to make educated guesses on how a chemical they make is used when a customer or entity further downstream to them is not inclined to share such proprietary information. Increased processor reporting would be very helpful in giving everyone a fuller picture of chemical uses and exposures. Indeed, I would strongly recommend that the bill go further and give EPA authority to request information from non-consumer commercial users where needed. The Consumer Specialty Products Association has put forward a very sensible proposal in this regard.

Finally, the Subcommittee should consider specifically authorizing (or even requiring) EPA to consider robust summaries of test data prepared under REACH (or for other reasons). This would be an efficient way to leverage available data without having to confront complex concerns arising under research contracts and data ownership agreements.

**The EPA's ability to request data is enhanced.**

The bill would require EPA to divide the existing chemical inventory into active and inactive chemicals in commerce, and to prioritize active chemicals into high or low priority buckets. Should EPA determine that more data is needed to affirm safety, it would be given enhanced mechanisms for data collection.

TSCA section 4 would also be strengthened by expanding EPA authority to request data by rule, consent agreement, or order. Typically it takes years for EPA to go through a rulemaking process, so from a procedural standpoint, order authority would dramatically speed things up.

As a caveat, however, before ordering testing EPA should first consider all available information. It should also have a sound scientific and risk basis for the request and testing should be tiered. It appears the bill provides these standards, although the bill dramatically

condenses the comparable provisions of the Senate bill. This is an issue on which I'd like to reflect a bit more before taking a position.

**Cost-benefit analysis is separated from safety standard.**

The risk management provision under the current statute has received criticism for being married to the "unreasonable risk" standard and being too cumbersome for EPA to implement. It requires EPA to determine the "least burdensome" regulatory measures for chemicals that present a risk. In the draft, costs and benefits are separated from what is now a purely health and environment based safety standard, and the least burdensome requirement is taken out. EPA would instead have to look at risk management measures that are proportional to the risk, provide net benefits, and are cost effective. These are all positive steps, and these issues are expressed more simply than in the Senate bill. The bill also collapses the safety assessment and safety determination steps that the Senate bill separates – which makes a lot of sense and should expedite action.

However, the bill still requires EPA to assess the cost-effectiveness of its chosen restrictions "compared to alternative requirements or restrictions that the Administrator may reasonably adopt." This approach maintains the current law's problematic requirement that EPA identify economically feasible alternatives. To avoid over-analysis or unnecessarily vulnerable rules, I recommend the committee consider limiting EPA's evaluation to alternatives identified by commenters on a proposed rule, so that it need only choose among the least burdensome of those. People who believe they have a more cost-effective approach will not hesitate to describe them in comments; EPA should not have to imagine others. That would alleviate much of the objection to current Section 6, as interpreted by the *Corrosion-Proof Fittings* case.

Relatedly, perhaps the bill's greatest improvement over the Senate bill is its clarification that low-priority determinations would be judicially reviewable. This solves the problem under the Senate bill of state requirements being preempted by actions that are not subject to judicial review.

**Don't let perfect be the enemy of the good.**

I have covered the major ways in which this bill is an improvement over the status quo. If we are ever to see a TSCA bill enacted, we must realize that it will never be all things to all people.

The House draft is just that, a draft. It provides a vehicle for balanced TSCA reform and for discussing crucial, unaddressed issues like how many existing chemicals EPA must complete action on by what date, and the related question of EPA's resources. I hope that this hearing marks the first step in a constructive, bipartisan process to facilitate its advancement.

Thank you for this opportunity to share my perspective. I look forward to your questions.

Mr. SHIMKUS. Thank you. The Chair now recognizes Mr. James Stem. Sir, you are recognized for 5 minutes.

**STATEMENT OF JAMES A. STEM, JR.**

Mr. STEM. Mr. Chairman and Ranking Member Tonko, thank you for the opportunity to offer our input. My name is James Stem, and I serve here in Washington as the National Legislative Director for our largest railroad union, formerly known as the United Transportation Union. I am speaking to you today on behalf of the tens of thousands of men and women that are working today, operating our railroad system and who as a part of their daily responsibilities of safely moving the thousands of tons of chemical products around our country that have been requested by local businesses and local government bodies throughout.

I wish to commend the subcommittee for returning to regular order and for its work on this draft. All of us in this room are hoping to reform TSCA during 2014.

There were five unions that have been participating and expressing our optimism of the bipartisan nature of the Senate deliberations on this subject, and we will continue to work with the House committee in order to achieve that bipartisan result here. We congratulate you for that.

Modernizing TSCA takes on a new urgency as our American chemical industry prepares to make major investments in U.S. production facilities in the wake of the natural gas boom. The industry has announced over \$100 billion in planned U.S. investments that will not only use domestic natural gas to make products but also put our American people back to work. The U.S. chemical industry will generate tens of thousands of new American jobs in manufacturing, construction, energy infrastructure, technology, transportation and additional research and development. The industry already provides 800,000-plus well-paid U.S. jobs and indirectly supports millions more. The substantial tonnage of chemical shipments on our Nation's freight railroads helps to support good railroad jobs. Exporting thousands of tons of chemical products manufactured in this country by American workers is not a dream. That is the reality that is on the table today.

Transporting the needed chemical products that our U.S. manufacturing sector requires from the chemical production facilities to the final destination by rail is the safest form of transportation. Railroads have the capacity and the experienced workforce to move these products safely and efficiently without putting thousands of tanker trucks on our overburdened highways.

We support a reform that will achieve the following goals: number one, strengthen our chemical safety law to protect human health and the environment. Two, restore public confidence about the safety of chemicals in commerce, and three, help the U.S. chemical industry innovate and grow, so it can provide good jobs. Directly and indirectly, TSCA impacts chemical safety, our economy, and the health and well-being of many workers and their families.

Americans in every State need to be confident in their homes, workplaces and communities that our Nation's chemical regulations are robust and working to protect them.

This draft will fix significant problems that have been encountered and identified with TSCA. For the first time, EPA will be required to systematically evaluate all chemicals in commerce, including TSCA's grandfathered chemicals, and label them as either high- or low-priority based on potential health and environmental risks. Chemicals requiring the most immediate attention from regulators should be successfully identified for action by this process. This ranking system must be carefully crafted as the proposals move forward so that confidence in its dependability is high.

High-priority chemicals will require EPA to perform a safety-based risk assessment. EPA must determine whether a high-priority substance will result in unreasonable risk of harm to human health or the environment under its intended condition of use. Low-priority chemicals can be reclassified as high priority when necessary.

EPA will be able to demand more health and safety information from chemical producers. EPA will also delineate which chemicals are in active use and which are not, ending confusion about the actual number in use.

These improvements will make TSCA more effective. However, we recognize that the drafting process must address additional significant issues.

All of us here today are aware of the State preemption controversy with regard to reforming TSCA. As a practical matter, we agree that effective national regulation of chemicals in commerce is generally preferable to State-by-State regulation. At the same time, States must be able to successfully address local issues and concerns. A strong, uniform, robust and workable national law is preferable to 50 States regulating independently. Using rigorous scientific testing before a chemical is made available in any State is the recommendation. The need to improve the protection of vulnerable populations provide more definitive timelines for action by EPA and finally as a separate but related matter, EPA must be given the resources needed to carry out the reform and these new responsibilities.

I thank you for the opportunity to speak.

[The prepared statement of Mr. Stem follows:]

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**TESTIMONY OF  
JAMES A. STEM, JR.  
NATIONAL LEGISLATIVE DIRECTOR  
SMART – TRANSPORTATION DIVISION**

**BEFORE THE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON  
THE CHEMICALS IN COMMERCE ACT**

**March 12, 2014**



SMART - Transportation Division  
National Legislative Office  
304 Pennsylvania Avenue, SE  
Washington, DC 20003

**Summary of Testimony of James Stem: March 12, 2014 – TSCA****Reform:**

Modernizing TSCA takes on new urgency as our American chemical industry prepares to make major investments in U.S. production facilities in the wake of the natural gas boom. The industry has announced over \$100 billion in planned U.S. investments that will use domestic natural gas to make products and put our people to work.

Exporting thousands of tons of chemical products manufactured in this country by American workers is not a dream, but a realistic appraisal of the opportunities on the table today.

Moving the needed chemical products that our U.S. manufacturing sector requires from the chemical production facilities to the final destination by rail is the safest form of transportation. Railroads have the capacity and the experienced workforce to move these products safely and efficiently without putting thousands of tanker trucks on our highways.

We support reform that will achieve the following goals: strengthen our chemical safety law to protect human health and the environment; restore public confidence about the safety of chemicals in commerce; and help the U.S. chemical industry innovate and grow, providing good jobs.

For the first time, EPA will be required to systematically evaluate all chemicals in commerce – including TSCA’s “grandfathered” chemicals – and label them as either “high” or “low” priority based on potential health and environmental risks. Chemicals requiring the most immediate attention from regulators should be successfully identified for action by this process. This ranking system must be carefully crafted as the proposals move forward so that confidence in its dependability is high.

EPA will be able to take timely action against chemicals found to be harmful to human health and the environment, including restrictions and phase outs.

Chairman Shimkus, Ranking Member Tonko and members of the subcommittee:

Thank you for inviting me to testify at the hearing today on the Chemicals in Commerce Act, the CICA. Currently the CICA is a discussion draft and we appreciate this opportunity to offer input at this stage of the process.

My name is James Stem. I serve here in Washington as the National Legislative Director of the Transportation Division of the Sheet Metal, Air, Rail, Transportation Workers. We were formerly the United Transportation Union before we completed our merger with the Sheet Metal Workers in 2011. We represent the thousands of men and women that are working as railroad employees today safely moving thousands of tons of a variety of chemical products requested by local businesses and local government bodies throughout our country.

I wish to commend the Subcommittee for its work on CICA, which aims to modernize and strengthen the Toxic Substances Control Act of 1976 (TSCA) as you continue to refine this draft. As you know, our union and others have already voiced support for the Senate's effort to modernize and strengthen TSCA through S. 1009, the Chemical Safety Improvement Act. We commend the balanced, bipartisan approach taken by the Senate, and will support that approach in the House as you work to formally introduce the CICA. We will work with you to help pass bipartisan TSCA reform in 2014. Since this is a discussion draft and not a bill, my testimony will address the needed reforms to the TSCA of 1976, which is the goal of all of us gathered in this room.

Modernizing TSCA takes on new urgency as our American chemical industry prepares to make major investments in U.S. production facilities in the wake of the natural gas boom. The industry has announced over \$100 billion in planned U.S. investments that will use domestic natural gas to make products and put our people to work. The U.S. chemical industry will generate tens of thousands of new American jobs in manufacturing, construction, energy infrastructure, technology, transportation and additional research and development. The industry already provides 800,000 well paid U.S. jobs and indirectly supports millions more. The

substantial tonnage of chemical shipments on the nation's freight railroads helps to support good railroad jobs. Exporting thousands of tons of chemical products manufactured in this country by American workers is not a dream, but a realistic appraisal of the opportunities on the table today.

Moving the needed chemical products that our U.S. manufacturing sector requires from the chemical production facilities to the final destination by rail is the safest form of transportation. Railroads have the capacity and the experienced workforce to move these products safely and efficiently without putting thousands of tanker trucks on our highways.

We support reform that will achieve the following goals: strengthen our chemical safety law to protect human health and the environment; restore public confidence about the safety of chemicals in commerce; and help the U.S. chemical industry innovate and grow, providing good jobs. Directly and indirectly, TSCA impacts chemical safety, our economy, and the health and well-being of many workers and families. Americans in every state need to be confident in their homes, workplaces and communities that our nation's chemical regulations are robust and working to protect them.

The CICA in its final version will provide improvements to fix significant problems that have been encountered with TSCA:

- For the first time, EPA will be required to systematically evaluate all chemicals in commerce – including TSCA's "grandfathered" chemicals – and label them as either "high" or "low" priority based on potential health and environmental risks. Chemicals requiring the most immediate attention from regulators should be successfully identified for action by this process. This ranking system must be carefully crafted as the proposals move forward so that confidence in its dependability is high.
- High priority chemicals will require EPA to perform a safety-based risk assessment. EPA must determine whether a high priority substance will result in unreasonable risk of harm to human health or the environment under its intended condition of use. Low priority chemicals can be reclassified as high priority when necessary.

- EPA will be able to demand more health and safety information from chemical producers and require more testing by producers.
- EPA will be able to take timely action against chemicals found to be harmful to human health and the environment, including restrictions and phase outs.
- EPA will delineate which chemicals are in active use and which are not, ending confusion about the actual number in use.

These improvements will make TSCA more effective. However, we recognize that the drafting process must address additional significant issues. We support bipartisan cooperation to find solutions to the outstanding issues. For example:

- All of us here today are aware of the state preemption controversy with regard to reforming TSCA. As a practical matter, we agree that effective national regulation of chemicals in commerce is generally preferable to state by state regulation; at the same time, states must be able to successfully address local issues and concerns in this process. A strong, uniform, and workable national law is preferable to 50 States regulating independently. This aspect will require more work and bipartisan compromise to get the needed support.
- Additional issues raised include the need to improve protection of vulnerable populations, provide more definite timelines for action by EPA and chemical manufacturers, and ensure that confidential business information is protected but not in a way that prevents EPA from acting to fulfill its mission. Finally, as a separate but related matter, EPA must be given the resources needed to carry out the reforms.

In closing, we thank you again for your work on this important issue and look forward to assisting your efforts to craft effective, bipartisan reform of our nation's chemical safety law. We look forward to working with the committee to offer additional input as this process continues.

Mr. SHIMKUS. I thank you. The Chair now recognizes Dr. Philip Landrigan for 5 minutes, sir. Welcome.

**STATEMENT OF PHILIP J. LANDRIGAN**

Mr. LANDRIGAN. Thank you, Mr. Chairman, Ranking Minority Member Tonko from—

Mr. SHIMKUS. Can you pull that a little bit closer?

Mr. LANDRIGAN. Yes, sir.

Mr. SHIMKUS. Much better. Thank you.

Mr. LANDRIGAN. I am Philip Landrigan. As you said when you introduced me, I am a pediatrician, and I am here today to talk about the discussion draft, and I want to really focus on the inner section between Chemical Safety Legislation and Children's Health because this bill is not merely a chemical bill. It is a public health bill, and the public health issues in my opinion have to be front and center in the debate.

So let me start by pointing out to you that rates of a whole series of chronic diseases are on the rise in American children. Asthma has tripled. Childhood cancer incidence has gone up by 40 percent over the past 40 years. Autism now affects one child in 88. Attention Deficit Hyperactivity Disorder affects about one child in seven according to data from the CDC. These chronic diseases of children are highly prevalent in today's world. They are on the increase. They affect children of every social stratum, children whose parents might be of any political persuasion. This really ought to be a non-partisan bill because it is about the health of all Americans.

There is a strong body of scientific evidence that toxic chemicals have contributed to diseases in children. Going back 100 years ago, lead was shown to cause mental deficiency, learning problems, loss of IQ. Seventy-five years ago, methylmercury. More recent, clinical and epidemiologic studies have linked organophosphate pesticides, arsenic, manganese, brominated flame retardants, phthalates, bisphenol A to learning disabilities, loss of IQ, problems of behavior in children. All of these chemicals that I have listed have been studied in investigations supported by the National Institutes of Health, published in peer-reviewed journals, reports that have withstood extensive scrutiny. And this body of evidence is growing by the year.

Now experience has taught us that when we know the risk factors to disease, we can intervene against those risk factors. The first great teaching in this regard came from the Framingham Heart Study launched in 1948 in Framingham, Massachusetts. It was the Framingham Heart Study that taught us all about the big risk factors for heart disease: hypertension, smoking, cholesterol, diabetes, sedentary lifestyle, obesity. And because doctors and nurses and health professionals and citizens across America have become aware of these risk factors, they have intervened against them, and one of the best kept secrets in American medicine is that the death rate from heart disease has gone down by 50 percent in this country over the past 40 years. Yes, heart disease is still the leading killer, but it is half the killer it was.

The same logic applies to preventing disease and dysfunction caused by toxic chemicals. In 1976, based on data showing that lead was toxic to children, even at low levels, EPA made the coura-

geous decision to remove lead from gasoline. What happened was astounding. Blood lead levels plummeted, and they have come down 95 percent since 1976 in this country. The average IQ of American children has increased by somewhere by somewhere two and five points as a consequence of the decline in blood lead levels, and because IQ points are worth money, if you do the math, we have 4 million babies in this country each year, four or five IQ point increase per child, \$10,000 per IQ point over the lifetime of a child. Researchers at Harvard have done that arithmetic and have calculated that the economic benefit to the United States of America of the single action of getting lead getting lead out of gasoline is \$200 billion in each crop of babies born since 1980 since blood lead levels came down.

So a big problem today in this country is that our children are surrounded by thousands of untested chemicals. How many more leads? How many more PCBs? How many more organophosphate pesticides are out there today that might be entering the bodies of pregnant women, damaging the brains of unborn children in the womb, damaging nursing infants, damaging little kids? Nobody knows. We don't know because we haven't done the testing. We are flying blind.

A pediatric colleague, Dr. Herbert Needleman of the University of Pittsburgh who has done much work on childhood lead poisoning, has described the situation as follows. Needleman says, "What we are doing in this country is we are conducting a vast toxicological experiment, and we are using our children and our children's children as the unwitting, unconsenting subjects." This is a situation that needs to be fixed. It is not sustainable, it is not wise. I would argue that it is not even moral to permit exposure of babies in the womb, infants and young children and other vulnerable populations such as workers and the elderly to untested chemicals of unknown hazard.

So it is clear that we need to move forward to fix TSCA. Mr. Chairman, I salute you and your colleagues for having started the process. I salute my dear, beloved departed friend, Frank Lautenberg, who was a pioneer for so many years, Senator Lautenberg of New Jersey, in advancing chemical safety legislation. We need to test both existing as well as new chemicals for safety.

And as I close, there are a couple of architectural requirements that I think are essential to be included in any law that you draft going forward. First and foremost—

Mr. SHIMKUS. You are getting close to a minute over so—

Mr. LANDRIGAN. All right.

Mr. SHIMKUS. Is it in your written—you got this finally in your written statement also?

Mr. LANDRIGAN. Yes, sir. Protect kids, set timelines, safety standards, and adequately fund EPA. Thank you very much.

[The prepared statement of Mr. Landrigan follows:]



Icahn  
School of  
Medicine at  
**Mount  
Sinai**

**TESTIMONY**

before

**The Subcommittee on Energy and the Economy  
Committee on Energy and Commerce**

of the

**U.S. House of Representatives**

on the

**Chemicals in Commerce Act**

**Washington, DC**

**March 12, 2004**

Presented by

**Philip J. Landrigan, MD, MSc, FAAP**  
Dean for Global Health  
Ethel H. Wise Professor and Chairman,  
Department of Preventive Medicine  
Professor of Pediatrics  
Icahn School of Medicine at Mount Sinai

Good morning,

Mr. Chairmen, Mr. Ranking Member and Members of the Subcommittee on Energy and the Economy, I thank you for having invited me to appear before you.

My name is Philip J. Landrigan, MD, MSc. I am pediatrician. I serve as Dean for Global Health, Professor and Chairman of the Department of Preventive Medicine, Professor of Pediatrics and Director of the Children's Environmental Health Center (CEHC) in the Icahn School of Medicine at Mount Sinai.

I come before you today to testify in support of the need for strong chemical safety legislation in the United States and to offer my views on the discussion draft of the "Chemicals in Commerce Act".

**Strong chemical safety legislation that mandates the safety testing of new chemicals before they come to market as well as safety testing of existing chemicals will improve the health of America's children. It will reduce the prevalence of such dread diseases as autism, attention deficit/hyperactivity disorder, certain congenital malformations and childhood cancer. It will reduce health care costs. It will make the United States of America more economically productive. It will pay for itself many times over.**

But chemical safety legislation will be of little value, and it will not accomplish these goals unless it contains certain vital provisions:

- It must contain explicit protections for infants and children, including unborn children in the womb, because infants, children and human fetuses are the most vulnerable among us to toxic chemicals.
- It must impose meaningful deadlines on EPA.
- It must permit the states to act to protect their citizens against toxic chemicals when the federal government fails to act.
- It must prioritize those chemicals that are found through biomonitoring to be most widespread in the American population, those for which there is evidence of toxicity, and those that are persistent and bioaccumulative.
- It must be based on a safety standard of "reasonable certainty of no harm". Steps to mitigate risks to children's health should not be subject to cost-benefit analyses in which children's health and well-being are weighed against costs to the chemical manufacturing industry.
- It must require chemical manufacturers to provide a minimum set of data to EPA on all chemicals proposed for commercial introduction just as companies must now provide safety data on pharmaceutical chemicals to the Food and Drug Administration, data on pesticide chemicals to EPA, and data on industrial and consumer chemicals to the European Chemical Agency under the European REACH legislation.
- It must require important data and information to be publicly available and not allow chemical manufacturers to hide behind overly broad and unsubstantiated claims of trade secrecy.
- It must allow for new science to be taken into account when prioritizing and reviewing chemicals.
- It must provide sufficient funding for EPA to effectively carry out the law.

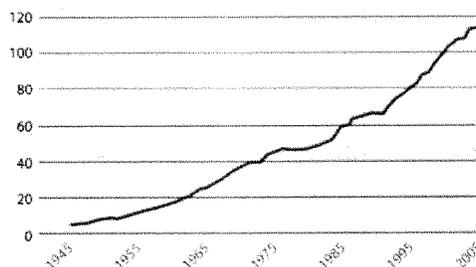
**Strong chemical safety legislation will improve the health of America's children and reduce the prevalence of disease, especially developmental disabilities of the brain and nervous system.**

Asthma, autism, attention deficit/hyperactivity disorder (ADHD), cancer, congenital malformations, obesity and diabetes are the principal causes of disease, disability, and death in American children today. Rates of many of these diseases are high and rising (1). The Centers for Disease Control and Prevention (the CDC) finds, for example, that autism spectrum disorder now affects 1 child in 88 (2) and that ADHD is diagnosed in 1 child out of every 7 (3).

At the same time, children's environments are changing rapidly. More than 80,000 new synthetic chemicals have been invented over the past 50 years, and 1,000 new chemicals come to market every year (**Figure below**) (4). These chemicals are used today in millions of products that range from foods and food packaging to clothing, building materials, cleaning products, cosmetics, toys, and baby bottles. Synthetic chemicals have become widely disseminated in children's environments and in the bodies of all Americans. In national surveys conducted by CDC, measurable levels of several hundred synthetic chemicals are found in the blood and urine of virtually all Americans (5). Detectable levels are seen in the breast milk of nursing mothers and the cord blood of newborn infants (6).

U.S. chemical production, 1947–2007

Production index (100 = year 2002)



**Most chemicals in commerce have never been tested for their possible toxicity.** Of very great concern to me as a pediatrician, parent and grandparent is that most of the new chemicals introduced to the American market over the past two generations have never been subjected to even minimal safety testing (4).

An especially disturbing fact is that only about 20 percent of the chemicals in widest use have been screened for their potential to disrupt early human development or to cause disease in infants and children.(4)

My colleague, pediatrician Herbert Needleman, pioneer in the prevention of childhood lead poisoning has described this situation as follows: "We are conducting a vast toxicological experiment in the United States, and our children and our children's children are the unwitting and unconsenting subjects."

America's failure to require safety testing of chemicals carries grave risks. And these risks are not merely hypothetical. Time and time again, toxic chemicals that were not properly tested before they came to market in the United States have been proven to cause injury to unborn children in the womb, to young infants and to growing children.

Examples of chemicals that were brought to market with much fanfare and initially hailed as beneficial, but later found to cause great harm include:

- Lead added to paint and gasoline – caused widespread lead poisoning and brain injury (7,8)
- Asbestos – caused a global epidemic of cancer (9)
- Thalidomide – caused over 10,000 cases of birth defects of the limbs in newborn infants (10)
- Polychlorinated biphenyls (PCBs) – prenatal exposure causes loss of IQ (11)
- Di-ethylstilbestrol (DES) – caused cancer of the vagina in girls exposed *in utero* (12)
- Chlorofluorocarbons (CFCs) – destroyed the stratospheric ozone layer (13)
- Organophosphate pesticides – prenatal exposure causes brain injury with loss of IQ and behavioral problems (14)
- Brominated flame retardants – prenatal exposure causes brain injury with loss of IQ and behavioral problems (15)
- Phthalates – prenatal exposure causes brain injury with loss of IQ and behavioral problems resembling autistic behaviors and also causes anomalies of the amle reproductive organs.(16, 17)

**Infants and children, and most especially unborn children in the womb, are exquisitely sensitive to toxic chemicals.** We now know that infants and children are very sensitive to chemical exposures, much more so than adults. A landmark report issued 20 years ago by the National Academy of Sciences documented that infants and children have exposures to toxic chemicals that are much greater pound-for-pound than the those of adults and that children are much more vulnerable to toxic injury caused by chemicals. (18)

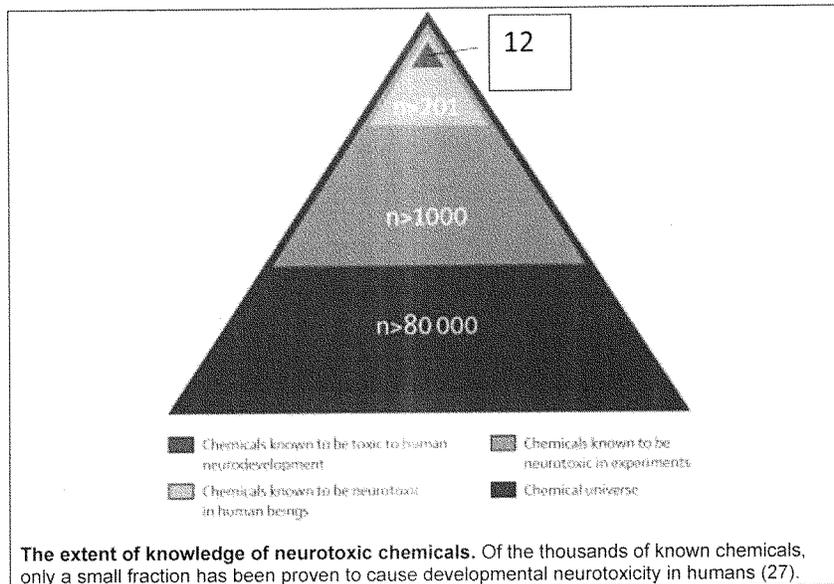
New research has identified "critical windows of vulnerability" in fetal life and early childhood when exposures of the unborn baby or the young infant to even minutely low levels of chemicals can cause devastating injury to the developing organs (18). Children's developing brains, because they are so incredibly complex, are at particularly high risk of chemical injury during the nine months of pregnancy and in the first months and years after birth. A number of chemicals have now been strongly linked to brain injury in human infants:

- Lead (7, 8)
- Methyl Mercury (19)
- Polychlorinated Biphenyls (PCBs) (11)
- Organophosphate pesticides (14)
- Arsenic (20)
- Manganese (21)
- Organochlorine pesticides (22)
- Brominated flame retardants (Polybrominated diphenyl ethers) (15)
- Phthalates (16)
- Bisphenol A (23)
- Polycyclic aromatic hydrocarbons (24)
- Perfluorinated compounds (25).

Suspicion is high that, beyond these few well established chemical causes of developmental disabilities in children, there may be other widely used chemicals that also are toxic to the developing human brain, but that have never been properly tested (26).

A recent systematic review of the world's literature produced a list of approximately 200 industrial chemicals that are documented to be neurotoxic in adult humans (27). These are primarily acutely toxic chemicals that have caused serious, clinically obvious, acute effects at high levels of exposure. None of these chemicals, even those in wide use, have been tested to determine whether they are safe for infants and children. Additionally, this search produced a second list of approximately 1,000 chemicals that have been found to be neurotoxic in animal species, principally in acute, high-dose exposure scenarios. None of these chemicals have been examined in humans, let alone in human infants (27).

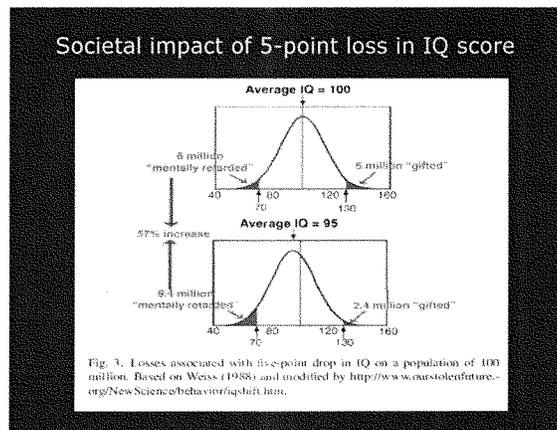
The relatively small number of chemicals that have been identified as proven causes of brain injury in children is likely the tip of an iceberg that could be very large (**See Figure below**). But we do not how large might be this iceberg because testing data on chemicals in wide use have never been required.



**Widespread exposure to untested neurotoxic chemicals can reduce the intelligence, creativity and economic productivity of entire societies.** Beyond obvious developmental disabilities such as autism, ADHD and learning disabilities, current research has shown that exposures to toxic chemicals at levels too low to cause obvious symptoms can still cause real, but less obvious brain injury in children. This is termed "subclinical" brain injury (7, 8).

Subclinical brain injury results in decreased intelligence, impaired cognitive skills, shortening of attention span and disruption of behavior (7, 8). Because the human brain has only very limited capacity for regeneration or repair, most cases of subclinical brain injury result in permanent and irreversible damage and thus produce lifelong reduction in children's ability to function.

When subclinical brain injury is widespread in a society, it can reduce intelligence and diminish economic productivity across an entire nation (28). An example is the downward shift in population IQ that occurred in the United States between the 1930s and mid-1970s when virtually all of our children were exposed to substantial amounts of lead emitted into the environment by the combustion of leaded gasoline. It is estimated that this widespread exposure to lead, which reduced the average IQ of all American children by 2-5 points, reduced the number of children with truly superior intelligence (IQ scores above 130 points) by over 50% and at the same time doubled the number with IQ scores below 70 (Figure below).



The consequence of widespread subclinical neurotoxicity is decimation of a country's future capacity for leadership. Widespread exposures to neurotoxic chemicals threaten societal sustainability. Widespread exposures to neurotoxic chemicals undermine national security. There is speculation that exposure of the ruling classes to lead with subsequent widespread brain injury and reduced fertility accelerated the fall of Rome.

**Strong chemical safety legislation will reduce health care costs and make the United States of America more economically productive.**

Disease caused by toxic chemicals in the environment is very expensive and contributes to health care costs in the United States. The costs associated with disease in children caused by environmental exposures include direct medical costs as well as indirect or non-medical costs. These indirect costs include the cost of a child's time lost from school; the cost of a parent's time lost from work while caring for a sick child; the costs of special education; the costs of rehabilitation; the costs of lifelong reduction in economic productivity in damaged children; and the costs of lost productivity from premature death

A 2011 estimate of the costs of environmental disease in the United States examined the annual medical and non-medical costs of lead poisoning, methyl mercury exposure, childhood cancer, asthma, intellectual disability, autism, and attention deficit hyperactivity disorder in US children. The analysis concluded that these costs currently amount to \$76.6 billion per year (29) (See Table).

	<u>Best estimate</u>	<u>Low-end estimate</u>	<u>High-end estimate</u>
Lead poisoning	\$50.9 billion	\$44.8 billion	\$60.6 billion
Methylmercury toxicity	\$5.1 billion	\$3.2 billion	\$8.4 billion
Asthma	\$2.2 billion	\$728.0 million	\$2.5 billion
Intellectual Disability	\$5.4 billion	\$2.7 billion	\$10.9 billion
Autism	\$7.9 billion	\$4.0 billion	\$15.8 billion
AD/HD	\$5.0 billion	\$4.4 billion	\$7.4 billion
Childhood cancer	\$95.0 million	\$38.2 million	\$190.8 million
<b>Total</b>	<b>\$76.6 billion</b>	<b>\$59.8 billion</b>	<b>\$105.8 billion</b>

(From Trasande and Liu, 2011 [29])

Neurodevelopmental disorders are especially costly because they last lifelong. The direct medical costs of caring for children with neurodevelopmental disabilities fall on families, school districts, employers, insurers and government. The annual per capita cost of caring for a person with autism in the United States is estimated to be \$3.2 million. The annual cost for providing medical care to the entire population of children who develop autism in the United States in any given year is estimated to be \$35 billion. In addition, people with autism spend twice as much on health care than the typical American over their lifetimes and spend 60% of those incremental direct medical costs after age 21 years (30).

In addition to direct medical costs, neurodevelopmental disabilities have substantial indirect costs such as costs of special education, legal costs, costs of institutionalization and incarceration, costs of alternative therapies, and the costs associated with lifelong reductions in economic and social productivity (31).

Special education services for students with developmental disabilities including ASD and PDD cost over \$77 billion per year (32).

### **Current Chemical Safety Legislation in the United States Does not Protect Children's Health.**

At the present time, chemicals that are intended for industrial or consumer use, chemicals that are found in products as diverse as foods and food packaging, clothing, building materials, cleaning products, cosmetics, furniture, toys, and baby bottles, are virtually unregulated in the United States. These chemicals are subjected to little or no safety testing before they come to market. Unlike pharmaceutical chemicals, they are not monitored for safety after they come to market even though they may result in exposures to millions of Americans of all ages.

This failure to test chemicals for safety reflects failure of the Toxic Substances Control Act of 1976 (4)

At the time of its passage, the Toxic Substances Control Act was intended to be pioneering legislation that would require safety testing of chemicals already in commerce and would also require premarket evaluation of all new chemicals. The Act never fulfilled those noble intentions. A particularly egregious lapse was a decision soon after passage of the Act to "grandfather in" the 62,000 chemicals that were then already on the market without any toxicity testing requirement. These chemicals were simply presumed to be safe and allowed to remain in commerce, unless and until the Environmental Protection Agency made a finding that they posed an "unreasonable risk." (4)

This "unreasonable risk" standard in the Toxic Substances Control Act has created a substantial barrier to the regulation of industrial and consumer chemicals. This standard has been so burdensome that EPA has not been able to remove chemicals from the market even when there is overwhelming evidence of potential harm. The result is that only five chemicals have been controlled under the act in the thirty-five years since its passage. (4)

Further barriers to enforcement of the Toxic Substances Control Act have resulted from the federal courts' interpretation of the "unreasonable risk" standard. Thus, in a 1991 opinion on the asbestos ban in *Corrosion Proof Fittings v. EPA*, the Fifth Circuit found that the Environmental Protection Agency had failed to show that it was taking the "least burdensome" approach required under the Act in formulating its final rule banning asbestos. The court thus overturned the agency's rule banning asbestos.

This interpretation has made it virtually impossible since 1991 for the Environmental Protection Agency to regulate dangerous chemicals under the Act.

### **Strong Chemical Safety Legislation Protects Children's Health**

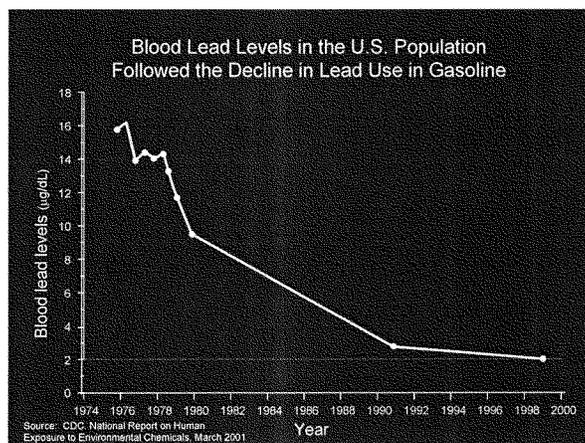
Diseases caused in American children by toxic chemical exposures can be prevented. They can be prevented when research identifies links between the chemicals and disease and when that research is translated in to policy and regulation that protects infants, children and all Americans against toxic chemicals

The removal of lead from gasoline, which began in the United States in 1976, is a classic example of the successful removal of a toxic chemical from commerce (**See Figure below**) (33). The action by EPA to remove lead from gasoline was triggered by research findings showing that exposure of American children to lead was eroding intelligence and disrupting behavior (7, 8). This action was taken in the face of strong opposition from the chemical industry which claimed that removal of lead from gasoline would cost jobs and cripple the American economy.

In fact, the removal of lead from gasoline produced a series of benefits, all of them much greater than had been anticipated (34):

- It resulted in a more than 90% reduction in blood lead levels in American children.
- It produced a 90% reduction in incidence of childhood lead poisoning.
- It raised the average IQ of all American children by 2 -5 points.
- It has produced an economic benefit estimated to be approximately \$200 billion in each US birth cohort born since the 1980s (50). This economic benefit resulted largely from increases in productivity that followed population-wide increases in intelligence.

This success has now been replicated in countries around the world.



#### **The Urgent Need for a New US Chemical Policy that Protects Children's Health.**

To better defend America's children against the unforeseen consequences of industrial and consumer chemicals and to avoid the repetition of past tragedies, the United States needs to adopt a new national paradigm for chemical safety and to pass new legislation that will enable EPA to exercise responsible stewardship over industrial and consumer chemicals (4).

This new paradigm must be designed explicitly to protect children's health and the environment. It must overturn the dangerous and outdated assumption that chemicals are "innocent" until proven "guilty". This hallowed principle of American jurisprudence has no place in the regulation of consumer chemicals.

One critical component of a new, health-based chemical policy in the United States must be a legally enforced requirement that chemicals already on the market be systematically examined for potential toxicity beginning with those chemicals that are found through biomonitoring to be most widespread in the American population, those for which there is evidence of toxicity, and those that are persistent and bioaccumulative.

A second critical component of a health-based chemical policy would be a legally mandated, strictly enforced requirement that all new chemicals be assessed for potential toxicity before they enter the market.

A third pillar of a health-based chemical policy would be continued research to examine the impact of chemicals on children's health. Such research is an essential complement to toxicity testing. It provides direct evidence of the effects of chemicals on human health. It also provides an evidentiary basis for assessing the impact on children's health of policy interventions.

#### **Conclusion.**

The discussion draft of the "Chemicals in Commerce Act" that is currently before us is not satisfactory. It will not protect the health of America's children – born and unborn. It will not protect America's environment. It will not reduce health care costs. It will not benefit the United States of America. It will perpetuate the mistakes of the past and jeopardize the health and well-being of America's children today and in the future.

Nonetheless, I applaud the United States Congress for seriously considering chemical safety legislation and for recognizing that the Toxic Substances Control Act of 1976 is outmoded, ineffective and failed legislation that needs to be replaced. I salute the legacy of the late Senator Frank Lautenberg of New Jersey who for so many years pioneered the reform of chemical safety legislation in the United States. I stand ready to assist you in your continuing deliberations.

Thank you.

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Mr. SHIMKUS. Thank you. The Chair now recognizes Ms. Fendley for 5 minutes.

#### STATEMENT OF ANNA FENDLEY

Ms. FENDLEY. Great. Chairman Shimkus, Ranking Member Tonko and members of the committee, thank you for the opportunity to testify. I am here on behalf of the United Steelworkers. We are the largest industrial union in North America and represent the majority of unionized chemical workers.

As witnesses in this and past hearings have stated, TSCA is woefully out of date and ineffective. Governments around the world have enacted chemical laws that are more protective than TSCA. Members of our union rely on the jobs in the chemical industry, and we support reform because know that it will make American manufacturing more competitive. However, while industry competitiveness and consumer confidence are important considerations for reform, protecting public health must be the primary goal.

We appreciate that this subcommittee has held so many hearings on TSCA reform. However, we are disappointed in the CICA. This draft would merely amend, not reform, TSCA and would result in a less protective, less functional Federal system for assessing and restricting industrial chemicals. The remainder of this testimony will highlight some of the shortcomings.

First, the safety standard. One often-cited example of the ineffectiveness of the law is EPA's attempted ban of asbestos using the unreasonable risk safety standard and the least burdensome requirement for restrictions. CICA retains the highly problematic safety standard by neglecting to include a definition that specifies health-only considerations. And although the draft does not retain the language of the least burdensome requirement, it functionally recreates the requirement in Section 6(f)(4). These provisions place an impossibly high burden on EPA and do not fix the problems in existing TSCA that have prevented the Agency from acting on chemicals.

Second, prioritization. The scheme laid out in Section 6(a) of the draft would result in chemicals falling through the cracks due to considerations of cost versus benefits and chemicals being prioritized without adequate information. Specifically, a chemical must be listed as high priority if it has the potential for high hazard and high exposure, but it only may be high priority if it is either highly hazardous or there are high exposures. And a low-priority chemical will not be further evaluated or have a safety determination even though EPA may not have sufficient information for an informed determination of the chemical's safety.

Third, new chemicals. The draft would weaken existing provisions for new chemicals. Real reform would prove safety before market access. But Section 5 of the draft makes it nearly impossible for EPA to get safety information for new chemicals, and the Agency must make a safety determination using the unreasonable risk standard within 90 days or the chemical can go on the market and States are preempted from acting.

The draft also eliminates Section 5(e) from existing TSCA which includes worker protections and limits environmental releases.

Fourth, vulnerable populations. As has been discussed already, the draft does not adequately protect these groups. In fact, there is only one mention of them aside from the definition, and that clause requires EPA to analyze the exposures of vulnerable populations that are significant to the risk of harm. There is no requirement to protect or consider them during prioritization.

Fifth, confidential business information or CBI. Provisions in TSCA that protect CBI are important to competition and innovation, but they also have the potential for abuse. The draft expands the information that can be claimed as CBI and has a problematic clause that grandfathers previous claims. Real reform would make more, not less, information about the safety and use of chemicals available.

Finally, deadlines and resources. Ultimately TSCA reform will never work if the Agency is not provided with clear, enforceable deadlines and adequate resources to move the program forward. The draft does not incorporate either of those. Even those stakeholders have underscored their importance. My written testimony also details the draft's problems related to testing authority and overreaching preemption.

In closing, the USW strongly supports working on TSCA reform during the 113th Congress with the goal of developing meaningful legislation that qualifies as actual reform. However, this draft would set us back from the status quo and from other parts of the world. TSCA reform must give EPA the necessary authority and resources to get the information the Agency needs, make safety assessments and determinations and restrict the use of chemicals that do not meet a health-only safety standard. We look forward to working with the subcommittee and any other stakeholders in developing legislation that would protect worker and public health. Thank you.

[The prepared statement of Ms. Fendley follows:]

**Testimony of  
Anna Fendley, MPH  
United Steelworkers  
before the  
Subcommittee on Environment and the Economy  
on  
the "Chemicals in Commerce Act of 2014"  
March 12, 2014  
Washington, DC**

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, thank you for holding today's hearing on the Chemicals in Commerce Act (CICA) discussion draft and for the opportunity to testify. My name is Anna Fendley. I am here on behalf of the 850,000 members of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW).

We are the largest industrial union in North America and represent the majority of unionized chemical workers in the United States who make plastics, fertilizers, pesticides, synthetic rubber, pharmaceuticals, paints, pigments, solvents and thousands of organic and inorganic chemicals. We also represent hundreds of thousands of men and women whose workplaces use and store large quantities of industrial chemicals. We therefore have a very significant stake in the economic health of the chemical industry and all industries that use chemicals where workers suffer higher exposures than other segments of the population.

Our members, and indeed all workers, have a huge stake in chemical safety. We are the first to be exposed and suffer the highest exposures as the producers of new and old chemicals. For many years workers have been recognized as canaries in the coal mine in respect to toxic chemicals. Miners used to bring canaries underground in the mines before the invention of modern testing equipment. If the bird died, workers knew something was in the air and they exited the mine. Today, we often understand the hazards of a chemical through epidemiologic studies that count the death or disease attributed to exposure. Most of these studies are done on workers. Our chemical safety laws should prevent workers from becoming sick and dying due to their workplace chemical exposures.

The Toxic Substances Control Act (TSCA) is the only major environmental law that has not been updated since it was originally passed in 1976. As witnesses in past hearings before this

subcommittee have stated, TSCA is woefully out of date and ineffective. Some of the shortcomings that adversely impact workers include:

- The safety standard under TSCA is not solely health-based. It includes a cost-benefit component that has prevented the Environmental Protection Agency (EPA) from making clear statements about a chemical's safety and prevented needed regulations.
- Under current law TSCA does not explicitly require protection for those who are more vulnerable based upon their aggregate or cumulative exposure or their biology, including workers, pregnant women, children, the elderly, and other disproportionately affected communities.
- TSCA does not require new chemicals to be tested for safety. EPA must demonstrate that a chemical may pose a risk before it can be tested for safety. This is an impossible Catch-22 with regard to a new chemical.
- EPA is limited in its ability to require testing on existing chemicals because, like new chemicals, EPA must show that a chemical poses a risk before it can be tested for safety. Under TSCA, EPA must initiate formal rulemaking to require testing which is an arduous process.
- Health and safety information has, in practice, been protected under TSCA's provisions for confidential business information (CBI). Public disclosure of this information is crucial to preventing worker and consumer exposure to harmful chemicals.

Our union has been advocating for chemicals policy reform in the United States for many years. A system for testing and restricting harmful chemicals is critically important to health and consumer confidence. Many governments around the world have enacted chemical laws that are more protective than TSCA. The European Union has adopted the REACH program (Registration, Evaluation Authorization and Restriction of Chemicals), which is designed to assure that chemicals and products made with chemicals are safe for workers to manufacture and for the public to use. Other countries that have implemented stronger laws include Japan, South Korea, and China. Unless the United States passes more protective chemical safety laws, manufacturers in the United States may be unable to export to parts of the world with more protective laws, and consumers could ultimately come to trust products from other parts of the world more than those made domestically. Members of our union rely on the jobs in the chemical industry and in the industries that use chemicals, and we support reform because we

know that it will make American manufacturing more globally competitive. However, while this issue of chemical industry competitiveness and consumer confidence is an important consideration for reform, protecting public health must be the primary goal.

The USW is a member of the Safer Chemicals, Healthy Families Coalition, which includes over 450 organizations working to protect Americans from toxic chemicals. Our union also co-founded the BlueGreen Alliance, which is a coalition of ten labor unions and four environmental groups building a cleaner, fairer and more competitive American economy. With our partners in the BlueGreen Alliance, we developed and accepted principles for TSCA. These principles include:

1. **Take Immediate Action on the Worst Chemicals:** TSCA should ensure that EPA can take immediate action to test and regulate the chemicals that pose the greatest threat to workers and the public.
2. **Prove Safety and Provide that Information to the Public:** Chemical manufacturers should be required to demonstrate the safety of their products and provide information about health and environmental hazards to workers and the public. Claims of confidential business information should not include information about the health and environmental effects of a chemical.
3. **Give EPA the Power to Protect:** TSCA reform should provide EPA with the clear authority to establish health and safety standards and obtain information to make those decisions using the most up-to-date science available. Implementation of the law should be adequately funded.
4. **Protect Those at Greatest Risk, Including Workers:** TSCA should explicitly protect those who are most vulnerable due to biology or aggregate or cumulative exposure including workers, children, pregnant women, people of color, low-income communities, and other groups.
5. **Promote Problem Solving Rather than Problem Shifting:** TSCA reform should prioritize the use of green chemistry and engineering that create inherently safer products and processes.
6. **Involve Workers, Communities and the Public:** TSCA reform must ensure that these groups have the right to know, whistleblower protections, the right to court action, and that companies disclose ingredients.

7. **Improve Coordination Between and Innovation Inside Government Agencies:** The EPA should have the authority to work with agencies that have the responsibility to protect against chemical exposures including the Occupational Safety and Health Administration, the Food and Drug Administration, and the Consumer Product Safety Commission. Additionally, the states' ability to regulate chemicals above and beyond federal law should be maintained.
8. **Invest in a Green Jobs Future and Support the Transition to That Future:** Investment should be made to help workers and companies grow and innovate in an economy made up of safer chemicals that are more environmentally and economically sustainable.

Our union has appreciated that this Subcommittee has held so many hearings on TSCA reform during the 113<sup>th</sup> Congress. However, we are disappointed that the drafters of the CICA discussion draft did not include expert witnesses' valuable recommendations for TSCA reform to fix the problems in the original law and create a system to protect public health and the environment. The CICA would merely amend, not reform, TSCA and would result in a less protective, less functional federal system for assessing and restricting industrial chemicals. CICA is a step backwards, not a step forward. The remainder of this testimony will highlight some of the shortcomings of the CICA:

#### **1. Safety Standard**

TSCA's safety standard requires that EPA determine whether a chemical poses an "unreasonable risk," which incorporates both a health and cost-benefit analysis. When EPA is regulating a chemical that does not meet the safety standard, it must impose the "least burdensome" regulation.

One often-cited example of the ineffectiveness of the law is EPA's attempted ban of asbestos. Asbestos is a known human carcinogen that has caused debilitating illness and eventual death for hundreds of thousands of workers who were exposed on the job. It is banned in other countries around the world. EPA banned most uses of asbestos in 1989 after spending ten years studying the issue and developing a plan. The ban was overturned by a federal court in 1991 because EPA had failed to establish that asbestos posed an "unreasonable risk," and that it had chosen the "least burdensome" method for restricting use of the

substance, as required by TSCA. As a result, asbestos is still in commercial use in the United States. EPA has not tried to ban a substance since the ruling on asbestos 23 years ago.

TSCA reform needs to include a health-only safety standard. Neither CICA nor the Chemical Safety Improvement Act (CSIA) in the Senate would fix TSCA's problematic safety standard because neither includes a health-only safety standard.

CICA retains the highly problematic "unreasonable risk" standard by neglecting to include a definition of the safety standard that specifies the use of health-only considerations. A slight change updates the language throughout the text from "unreasonable risk of injury to health or the environment" to "unreasonable risk of harm to human health or the environment under the intended conditions of use." However, this language change is negligible and will not result in a change that would provide adequate protection to public health, particularly because the CICA narrows the application of the unreasonable risk standard only to the intended conditions of use.

Additionally, although the draft does not retain the language of the "least burdensome" requirement for regulating chemicals, it recreates the requirement in Section 6(f)(4). That section requires the Administrator to determine that requirements or restrictions are proportional to the risks of the chemical substance that are addressed in the safety determination, will result in net benefits, and are cost-effective in ensuring that the chemical will meet the safety standard. CICA's recreation of "least burdensome" also requires that EPA only impose requirements or restrictions after EPA determines that technologically and economically feasible alternatives are available and likely to be used as a substitute. These provisions place an impossibly high burden on EPA and do not fix the problems in existing TSCA that have prevented the agency from imposing restrictions on chemicals.

## **2. Prioritization**

Included among our BlueGreen Alliance principles for TSCA reform is the concept of EPA prioritizing and taking action on the worst chemicals first. This is a pragmatic response to the 62,000 chemicals that were grandfathered in when TSCA was first enacted and the additional 20,000 or more chemicals that have gone on the market since that time.

However, the prioritization schemes laid out in the CICA and the CSIA would both result in chemicals falling through the cracks due to considerations of cost versus benefits or being prioritized without adequate information. Again, as written, neither bill qualifies as forward-moving reform.

Section 6(a) of CICA requires the Administrator to prioritize chemicals. A chemical must be listed as high priority if it has the potential for high hazard and high exposure. It may be listed as high priority if it only has either high hazard or high exposure; and a chemical can be given a low priority designation if it is likely to meet the safety standard. Under CICA, if a chemical is designated low priority, then it will expressly not be further evaluated or be subject to a safety determination even though EPA may not have sufficient information to make an informed determination of the chemical's safety and its designation as low priority may be based on current costs versus benefits. The factors that must be considered for prioritization include some reasonable items such as hazard and exposure potential and specific uses and exposures. However, other factors for consideration fall into a flawed model including the volume of a chemical substance manufactured or processed in the United States when a substance with only high hazard and not high exposure (or volume) may, but is not required to be considered high priority. Flawed logic is also used to designate a chemical as low priority due to existing federal and state laws, which would then be preempted if a chemical is designated low priority.

### **3. Testing Authority**

EPA must be able to get the information it needs from manufacturers and processors in order to make a safety determination. One of the flaws of current TSCA is that the burden is entirely on EPA to prove that a chemical substance is harmful before it can require testing from a company to show whether that chemical meets the safety standard. TSCA reform should shift the burden from EPA to industry having to prove that a chemical is safe. CICA would not allow EPA to easily require the development of the information it needs.

Section 4(a) of the bill does give EPA the authority to require information, but not for purposes of prioritization which is the first step in determining whether a chemical substance is likely to meet the safety standard (low priority) or not (high priority). Section 4 does not shift

the burden of proof from EPA to industry because EPA must provide a detailed justification for requiring data using order authority.

#### **4. New Chemicals**

The new chemicals program under TSCA is the part of the program that allows EPA to review information about a chemical prior to it going on the market. The CICA would weaken the existing provisions in TSCA for oversight of new chemicals. Real reform would require that companies be required to provide the data EPA needs to assess a chemical's safety and that new chemicals be shown to meet a health-only safety standard before they go on the market as a way to protect health and improve confidence in the safety of new chemicals.

Section 5 of CICA makes it nearly impossible for EPA to require companies to submit health and safety information for new chemicals before they go on the market. EPA must complete a review of the premanufacture notice and make a safety determination (using the "unreasonable risk" standard) within 90 days or the company can put the product on the market and states are preempted from acting on the chemical. Manufacturers are not required to provide safety data for the chemical, and EPA does not have the ability to compel testing before the chemical goes on the market at the end of the 90 day review period. Additionally, there are a number of problematic exemptions in Section 5(f) that manufacturers and processors can claim to avoid providing information to EPA. The exemptions would, however, allow for problematic worker exposure to potentially harmful chemicals.

#### **5. State Action**

State action in the area of chemicals regulation has been the driving force for protections during the last 40 years due to an ineffective federal system. State laws and regulations are an important safeguard for the residents of each state and can help account for exposures or circumstances unique to that state.

The preemption language in the Senate bill, CSIA, overreaches by taking away states' rights and preventing state action on chemicals. Unbelievably, the CICA goes further and includes an even more unacceptable level of preemption. Both bills would preempt state law before EPA

takes final action on a chemical and could preempt state law due to a lack of information about a chemical rather than an affirmative determination of safety.

Section 17 of CICA preempts and prevents states from protecting their citizens by prohibiting states from requiring the development or submission of information about a chemical substance and by prohibiting, restricting, or reporting the manufacture, distribution, or use of a chemical substance for any reason. In CICA these provisions extend to chemical substances and to mixtures and articles. As previously mentioned regarding prioritization, a low priority designation preempts state action, but that low priority designation may be made due to state protections. Additionally, CICA would preempt state action on any chemical substance that enters commerce through the new chemicals program even if that chemical enters commerce due to the expiration of the review period rather than an affirmative determination of safety.

#### **6. Vulnerable Populations**

Protecting the most vulnerable among us is of utmost importance in any TSCA reform bill. Often called vulnerable populations, these are people who are more susceptible to adverse health effects caused by exposure to a chemical either due to increased biological susceptibility or increased aggregate or cumulative exposure. Workers, the canaries in the coal mine, fall into the latter category and generally have the highest exposures in the population. Prioritization, safety assessments, safety determinations, and restrictions on the use of chemicals must include considerations of workers and other vulnerable populations like children, pregnant women, the elderly, and other vulnerable populations.

Neither CICA nor the introduced CSIA adequately protect these vulnerable populations because they do not require EPA to consider and protect these groups.

CICA, which uses the term “potentially exposed subpopulation,” does include a definition, but allows for EPA to determine which groups (workers, infants, children, pregnant women, etc.) are appropriate to consider rather than considering all of them. Although there is a definition, “potentially exposed subpopulations” are only mentioned one other time in the draft. That mention is in Section 6(c)(3) which requires EPA, in the safety determination

process, to “analyze exposures to the chemical substance for the specific uses that are significant to the risk of harm and subsets of exposure (including information on potentially exposed subpopulations)...” This is inadequate. EPA would not be required to analyze all potential exposures under the intended conditions of use, but only the specific uses that are significant to the risk of harm

CICA does not require the exposures of potentially exposed subpopulations or vulnerable populations to be considered during the prioritization process. Unlike the safety determination, potentially exposed subpopulations are not expressly mentioned as one of the factors for assigning priorities. Therefore, protection of vulnerable populations is at the mercy of the cost-benefit analysis required for both prioritization and the safety determination.

#### **7. Confidential Business Information**

Provisions in TSCA that protect confidential business information (CBI) are important to competition and innovation in the industry. However, CBI protections have the potential for abuse and should never include safety information about a chemical substance. Both CICA and CSIA as introduced expand the ability of industry to hide information and have problematic clauses that grandfather previous claims of protection of information. Section 14(e) of the CICA does not require resubstantiation of CBI claims made during the nearly 40 year implementation of the current law. Real reform would make more information about the safety and use of chemicals available to workers and the public and would prevent abuse of CBI claims while protecting information that is legitimate CBI.

#### **8. Deadlines and Resources**

Ultimately TSCA reform will never work if the agency is not provided with clear, enforceable deadlines that ensure the program moves forward in assessing chemicals and adequate resources to move the program forward. The two go hand-in-hand and are both essential. Neither the CICA nor the CSIA incorporated mandatory deadlines or a funding mechanism for the program even though a wide variety of stakeholders have underscored their importance.

CICA includes a requirement that the Administrator prioritize all active chemical substances “as soon as feasible.” This is not a deadline and leaves the agency without a specified timeline for prioritizing chemicals, making safety determinations, and restricting chemicals that do not meet the safety standard. The only other deadline in the bill is that the agency must complete policies, procedures, and guidance as prescribed by the Act. Unfortunately this one deadline will not ensure that EPA assesses or regulates chemicals in a timely way.

Resources are also a critically important aspect of TSCA reform that is not mentioned in either the CICA or the CSIA. Congress must make sure that EPA is able to carry out TSCA reform by providing adequate funding via appropriations and user fees.

In closing, the United Steelworkers union strongly supports working on TSCA reform during the 113<sup>th</sup> Congress with the goal of developing meaningful legislation that qualifies as actual reform. However, the CICA would amend the law and set us back from the status quo and from other parts of the world that are assessing and restricting harmful chemicals. The House of Representatives needs to begin a new effort that incorporates these and other recommendations that would protect worker and public health. TSCA reform must give EPA the necessary authority and resources to get the information the agency needs, make safety assessments and determinations, and restrict the use of chemicals that do not meet a health-only safety standard. We look forward to working with the subcommittee and other stakeholders in developing legislation that does that. Thank you again for the opportunity to be here today.

**Summary of Testimony of Anna Fendley - United Steelworkers  
before the Subcommittee on Environment and the Economy  
on the "Chemicals in Commerce Act of 2014"  
March 12, 2014 - Washington, DC**

USW is the largest industrial union in North America and represent 850,000 workers whose workplaces use and store large quantities of industrial chemicals including the majority of unionized chemical workers.

The Toxic Substances Control Act (TSCA) is the only major environmental law that has not been updated since it was originally passed in 1976. It is woefully out of date and ineffective. USW strongly supports TSCA reform and is a member of the Safer Chemicals, Healthy Families coalition and the BlueGreen Alliance, which has developed principles for TSCA reform.

The Chemicals in Commerce Act (CICA) would merely amend, not reform, TSCA and would result in a less protective, less functional federal system for assessing and restricting industrial chemicals. CICA is a step backwards, not a step forward for these reasons:

1. **Safety Standard:** CICA retains the highly problematic "unreasonable risk" standard and recreates the "least burdensome" requirement for regulating chemicals.
2. **Prioritization:** CICA would enact a prioritization schemes that would result in chemicals falling through the cracks due to considerations of cost versus benefits or being prioritized without adequate information.
3. **Testing Authority:** TSCA reform should shift the burden from EPA to industry having to prove that a chemical is safe. CICA would not allow EPA to easily require the development of the information it needs.
4. **New Chemicals:** The CICA would weaken the existing provisions in TSCA for oversight of new chemicals by making it nearly impossible for EPA to require the information it needs to make a safety determination and by allowing new chemicals to go on the market if EPA's review timeline expires.
5. **State Action:** CICA includes an unacceptable level of preemption. It could preempt state law due to a lack of information about a chemical rather than an affirmative determination of safety.
6. **Vulnerable Populations:** CICA does not adequately protect those at high risk of illness due to biological susceptibility or high exposure.
7. **Confidential Business Information:** CICA expands the ability of industry to claim CBI and has problematic clauses that grandfather previous claims of protection of information.
8. **Deadlines and Resources:** CICA does not include clear and firm deadlines or adequate resources for EPA to carry out reform.

The House of Representatives needs to begin a new effort to ensure that TSCA reform gives EPA the necessary authority and resources to get the information the agency needs, make safety assessments and determinations, and restrict the use of chemicals that do not meet a health-only safety standard.

Mr. SHIMKUS. Thank you very much, and I know the folks out there observed me—this is causing me to drink. So I have got my chemically induced Diet Coke and my chemically induced Hershey candy bar which does bring up a point. One part of the problem with TSCA is that TSCA makes the assumption every chemical is toxic. And that whole prioritization issue is part of that debate. Not every chemical is toxic. Otherwise, we would have huge problems.

So I just thought of that. I recognize myself for 5 minutes for my first round or the opening round of questions to this panel. Mr. Landrigan, I just want to ask, you said in the first panel current TSCA does not mention vulnerable populations. Is that correct?

Mr. LANDRIGAN. That was said at the first panel, yes.

Mr. SHIMKUS. Yes.

Mr. LANDRIGAN. I believe that—

Mr. SHIMKUS. And you understand that? I mean, there is no mention. Current law does nothing to that vulnerable population that you are concerned about?

Mr. LANDRIGAN. That is right.

Mr. SHIMKUS. OK. And at least we are starting the debate on how to address vulnerable populations. Would you agree with that?

Mr. LANDRIGAN. That is correct. Yes, sir.

Mr. SHIMKUS. Thank you. Mr. Duvall and Dr. Bosley, I am giving you a chance to respond to some of the statements made in either this panel or the other panel to maybe something that caught you that it is, you know, this is very intense and there are opinions on both sides. So the opportunity to respond to something you may have heard and would like to at least give your side of that story.

Mr. DUVALL. Thank you. There are several points I would like to make. One of the first is a widespread perception that the unreasonable risk standard of the draft bill would be no different from the unreasonable risk standard of current TSCA. My understanding from reading the bill is that that is not what is intended and that would not be the effect and that the key provision on unreasonable risk is the safety determination provision which identifies the basis on which a safety determination would be made. The draft bill reads, "The Administrator shall make a safety determination based on the best available science related to health and environmental considerations and in accordance with the weight of the scientific evidence." That is not a cost-benefit exercise.

Another point I would make would be related to preemption. It is important to recognize that there is no preemption except where EPA would take preemptive actions. So it is not the case that entire statutes would be preempted at the State level or local level. Instead, only where there is a Federal action which, under the statute, would there be preemption. There is a suggestion that past EPA actions will preempt entire statutes. I would disagree. It seems to me that the purpose of that reference to preemption prior to the effective date is simply an effort to preserve preemption that has occurred. An example would be State or local PCB restrictions which the courts have determined were preempted years ago. Presumably PCBs would not go through a safety determination, at least soon in the process, because EPA has already comprehensively addressed PCBs. And yet, if preemption is tied solely to the

safety determination process, then you would lose the preemption of State PCB laws without a savings clause.

Mr. SHIMKUS. Let me give Dr. Bosley a chance with the remaining time I have.

Ms. BOSLEY. Sure. I would like to reiterate that cost-benefit analysis, the initial analysis is done without regard to cost at all. The safety determination is made really whether a chemical will or will not meet the safety determination. No cost is anticipated there.

During the risk assessment portion, EPA can take costs into account. For instance, if a chemical cannot be tested economically, the chemical may go away all together, and if there is no other chemical waiting to take its place, then certain critical uses, very low-exposure critical uses, could be at risk.

The other point is under Section 5. We hear a lot about data not being available under Section 5 and that the CICA doesn't take steps to address that. And it is not so surprising that manufacturers have to back up a long time before they go to market with a chemical, and you don't want to test when you don't have things like final specification and you don't have final physical form. You don't know if there is going to be a large market or a small market. So you don't usually test that far before something goes to market. But it doesn't mean that testing stops. So under Section 8(e), we give EPA after—post-haste. After the testing is done, we give them that information. But that information is available eventually.

Mr. SHIMKUS. Yes, in the first panel, and I will end up with this. And he is still in the audience. Mr. Belliveau mentioned being overly burdened to the EPA. And it is my understanding that that overly burdensome aspect is them asking for information.

Ms. BOSLEY. Yes. That is part of it. Yes.

Mr. SHIMKUS. All right. So thank you. I yield to the ranking member, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. TSCA reform is about protecting human health and the environment from dangerous chemicals by systematically assessing and managing chemical risks in this country. Effective regulation will depend on strong science. Yes, this draft limits EPA's access to existing information and the Agency's ability to require testing.

With that being said, Dr. Landrigan, should TSCA reform expand the scientific information available to EPA and the public about chemical risks?

Mr. LANDRIGAN. Yes, sir. I would absolutely say that EPA should have access to all of the best science in assessing risk.

Mr. TONKO. Thank you. And to use your words, you said we are flying blind. Do you have suggestions for how this draft might be changed to achieve that goal?

Mr. LANDRIGAN. I am neither a lawyer nor a legislator. So I will speak in terms of principles rather than amending specific clauses. But I think there needs to be strong, very specific language about protecting vulnerable populations. There have to be clear deadlines. There has to be—the emphasis on safety has to far outweigh the emphasis on cost. Safety should come first. And there should be adequate funding for the Agency.

Mr. TONKO. Thank you. Ms. Fendley, do you agree that TSCA reform should provide more scientific information about chemicals to

the Agency, the public and those who are exposed to chemicals in their workplace?

Ms. FENDLEY. Yes, I do.

Mr. TONKO. And do you have suggestions for this panel for how this draft might be changed to achieve that goal?

Ms. FENDLEY. Yes, specifically not grandfathering all of previous CBI claims which is included in the draft and also expanding the amount of information about safety and uses that the EPA can obtain and then share with the public and workers.

Mr. TONKO. Thank you. We have heard from GAO and other stakeholders throughout this process that EPA needs more information and stronger testing authority. But this draft would restrict what science EPA can use to only studies that meet statutory criteria for best available science and information quality. By including these provisions, the draft puts courts in the position of determining what the science EPA should use, and they also allow for advances in technology.

Ms. Fendley, do you have concerns about the good science provisions in this particular draft?

Ms. FENDLEY. I do, yes.

Mr. TONKO. And Dr. Landrigan, what mechanisms are in place within the scientific community to ensure that EPA uses good science in assessing chemicals?

Mr. LANDRIGAN. Scientists are constantly developing new techniques importing technologies from one branch of science to another to dig deeper into toxicology, and what scientists do to get that information out into the marketplace where it is available to EPA is that they put their results through peer review and publish them in widely read journals which are certainly accessible to EPA.

Mr. TONKO. Should we be concerned about putting courts in the position of determining what science should be relied upon and what science should not be relied upon?

Mr. LANDRIGAN. Scientists are better able than the courts to judge the validity of science. I have always thought that.

Mr. TONKO. Thank you. Well, I agree, and I am concerned about the costs and the delays that go along with litigation. It doesn't solve a problem. Perhaps it expands upon that problem. We need to expand the scientific information available to EPA and the public and not restrict the Agency's ability to consider relevant science and create new reasons for litigation.

Mr. Chair, I think we have our work cut out for us to strengthen this bill. But I look forward to continuing to work with the subcommittee and the committee at large to address these issues. And with that I yield back.

Mr. SHIMKUS. The gentleman yields back his time. And again, the Chair thanks him for his comments. The Chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5 minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it very much, and thank you for your testimony. This question is actually for Mr. Duvall. We frequently hear that 80,000 chemicals in commerce number—the number is overstated. Was the inventory reset provisions under the current draft improve our understanding what is in commerce? If so, if that is the case, would the current draft improve the current situation under TSCA today?

Mr. DUVALL. Yes. The inventory reset would certainly provide valuable information for EPA, for the public and for the Congress to understand what the numbers are that are realistically in play. There are approximately 84,000 chemicals listed on the TSCA inventory but only about 7,800 chemicals were reported in the 2012 Chemical Data Reporting Rule. Presumably since not all chemicals in commerce are reported per CDR, there are some number higher than 7,800. But it is helpful to understand that the universe of chemicals that EPA should focus its scarce resources on is of limited number and not something like 84,000.

Mr. BILIRAKIS. Thank you. Next question again for Mr. Duvall. The current draft provides for the reentry of inactive chemicals to active status on the inventory. Again, I apologize for my laryngitis. Would you describe that process as one that can be accomplished by chemical manufacturer or processor without an undue amount of bureaucratic red tape?

Mr. DUVALL. Yes. My understanding is that the process is mostly a notification requirement. Simply send a notice into EPA saying that you have met the criteria for an active substance, and EPA would then add it to the active substance list.

Mr. BILIRAKIS. Why is it important to the free flow of commerce and the economy in the United States?

Mr. DUVALL. I am—why is what?

Mr. BILIRAKIS. Why is it important to the free flow of commerce and the economy in the United States?

Mr. DUVALL. I see the inventory reset provision as primarily a tool to help EPA focus its resources. It is important for EPA to protect the people of the United States, protect its environment, including vulnerable subpopulations. But in doing so, it can't do everything at once. It must focus on its resources in a rational, reasoned way and then follow through. And the inventory reset is one tool among others that the draft bill would provide to EPA to help it do a better job than it has been able to do so far under current TSCA.

Mr. BILIRAKIS. Very good. Thank you, Mr. Chairman. I yield back.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman. I want to reiterate a statement that I made that public concern about chemical safety is a significant issue, and unless we address that, then we are not going to get anywhere by passing laws that don't achieve that goal.

One of the questions I have is about—I mean, when we hear testimony that is sort of contradictory, I always get confused. Mr. Duvall, you seem to be saying that you think that the CICA will reduce the legal burden on the EPA to move forward with the regulations. Is that your opinion?

Mr. DUVALL. Yes, it is. EPA tried for 10 years to regulate asbestos and failed, in part because it did not do what the statute told it to do. One of the things that the statute told it to do was to identify the least burdensome alternative. And the draft bill would delete that requirement. There are also a number of burdensome procedural processes that EPA must go through to regulate under cur-

rent Section 6. Those procedures would also be dropped. What would be left would be a broad authority for EPA to select appropriate risk management in the case where it had determined that there was an unreasonable risk that needed to be redressed, and only consider in doing so key considerations that are in the nature of good governmental decision-making, such as are there net benefits? The net benefits requirement to be considered should not be a straightjacket. The—

Mr. MCNERNEY. Well, let me stop you there if you don't mind. One of the questions that was asked earlier I thought a lot of by my colleague from Texas, whether or not the priority should be given in decision-making to risk—the cost benefit or health and safety risks. Would you just give a yes or no answer to whether—

Mr. DUVALL. Risk. Clearly risk-based.

Mr. MCNERNEY. Ms. Bosley?

Mr. DUVALL. And for prioritization, clearly it should be a risk-based process.

Ms. BOSLEY. I agree. Risk-based is the best scenario.

Mr. MCNERNEY. Mr. Stem?

Mr. STEM. Health and safety.

Mr. MCNERNEY. OK. Dr. Landrigan?

Mr. LANDRIGAN. Health and safety.

Mr. MCNERNEY. Ms. Fendley?

Ms. FENDLEY. Health and safety.

Mr. MCNERNEY. So that was unanimous. I mean, both panels, every person agreed that health and safety should be the priority. The CICA creates new prerequisites for limiting approved use of chemicals blocking the EPA from taking action unless there is a cheaper substitute available. But as every member of both panels agreed, health risks should be the primary purpose or should be the primary deciding factor of the law.

Dr. Landrigan?

Mr. LANDRIGAN. I absolutely agree with that, that health should be the primary driver.

Mr. MCNERNEY. So having a cheaper substitute, requiring the determination of a cheaper substitute should not be a determining factor?

Mr. LANDRIGAN. In my opinion, not.

Mr. MCNERNEY. OK. Ms. Fendley?

Ms. FENDLEY. I would agree.

Mr. MCNERNEY. OK. With that, I am going to yield back, Mr. Chairman.

Mr. SHIMKUS. The gentleman yields back. At this time, I want to really pose a question to the panel. We have got two hearings going on at the same time, and votes are going to be called in about 20 minutes. There is a desire to let my colleagues get back from this other hearing walking back and forth. One might be coming in now. One is coming in now. So I think I have got an agreement with my colleague that once votes are called we will stop and then we will adjourn the hearing, but we would like to keep going on until that time. And it may require in essence a second, if I have to bounce back and forth now and then. And you are agreeable to that? Great. And now I would like to recognize my colleague, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I apologize. As our witnesses know, Wednesday has got to be the worst day on the Hill.

Mr. SHIMKUS. Your apology is noted into the record.

Mr. GREEN. First of all, I have some questions, but I represent an area that has a whole lot of United Steelworkers. In fact, four of our five refineries and a lot of chemical plants. So obviously steelworkers have an impact on this and their members do because they are my constituents.

My first question, Ms. Fendley, as a representative of an organization whose members regularly work in close contact with chemicals, do you believe that the Chemicals in Commerce Act establishes a working, appropriately protective safety standard that allow the EPA to ban dangerous chemicals that your members come in contact with on a regular basis?

Ms. FENDLEY. No, I do not. It does not sufficiently amend TSCA.

Mr. GREEN. OK. Do you believe the Chemicals in Commerce Act would offer any improvement to the health and safety of the chemical workers under current law?

Ms. FENDLEY. No, I do not.

Mr. GREEN. OK. You mentioned in your testimony that draft removes the least burdensome language found in current TSCA but recreates later in Section 6. Can you elaborate on that claim?

Ms. FENDLEY. Sure. So it recreates the least burdensome requirement using different language that requires that considerations about net benefits and cost effectiveness are used when regulating a chemical.

Mr. GREEN. OK. The other thing I noticed in the draft, do you believe that the Federal statute should explicitly guarantee whistle-blower protections and the right to know for people who work on the plant site?

Ms. FENDLEY. I do, absolutely. That is very important.

Mr. GREEN. OK. Mr. Chairman, I know this is a work in progress, and I think these hearings are what we are trying to do is lay a groundwork on how we need to look at the draft. But I appreciate your effort to get us there.

Dr. Landrigan, why should EPA be required to consider vulnerable populations such as children and pregnant women in safety determinations?

Mr. LANDRIGAN. The rationale for that goes back 20 years. In 1993 I chaired a report from the National Academy of Sciences that systematically examine differences between children and adults and their vulnerability to toxic chemicals. And we found overwhelmingly that children are more sensitive to chemicals than adults. And we concluded further that children require higher levels of protection in law than adults. And that logic was actually incorporated by the Congress into the Food Quality Protection Act, the Federal pesticide law.

I would argue that the same logic ought to apply to all chemicals, whether they are pesticides or commercial chemicals.

Mr. GREEN. One of the questions I asked to the first panel is if a substance is designated as a low priority under the draft by EPA and then several years later, scientific study comes out that shows that substance may be hazardous to human health, I don't think the draft has it in there, but should EPA have the authority to con-

sider the new information in order to go back and recategorize that substance as a high priority?

Mr. LANDRIGAN. Yes, sir. I think it is essential that they should have access to that new information, and it is also—picking up on a conversation a moment or two ago, it is important to recognize that new information is very frequently going to come out from epidemiologic studies or non-standard toxicologic studies using novel techniques that don't fit the science definition that is in the bill as it now stands. And the EPA has to be given the power to broadly consume new science in the marketplace.

Mr. GREEN. Well, you know, if a study is done this year and the designation is a low priority—we also know that chemistry changes, everything changes over the years. And I know the manufacturers want some certainty on what they are doing. But we also know that at any given time something is going to change, whether it is whether we find out from studies or that there is a problem with it and that is what concerns me. I want to give EPA the authority, but I want to make it, you know, science-based enough that we just don't have these continual lawsuits on something that, you know, really is not going after the issue.

So our goal is to protect folks but also to make sure that there is some certainty there. And so that is why this is a working draft, and I hope we will address some of that in future drafts.

Mr. LANDRIGAN. Yes. You know, there may be a parallel here in food and drug law or in the—chemicals intended to be pharmaceuticals were extensively tested before they come to market, and certain criteria are met and then FDA lets the chemical come to market. But once it is out there, the process doesn't end and post-marketing surveillance continues. And we ought to have that same kind of provision here in the universe of consumer and industrial chemicals.

Mr. GREEN. OK. One of the things that—I am out of time but not only before a chemical is approved or it is set as a low priority or high priority, if there is something later on that the manufacturer discovers in their product, shouldn't they be required to come back to EPA in this case, just like a drug manufacturer should go back to FDA?

Mr. LANDRIGAN. I think it should be mandatory and I think further that there should be penalties attached to failure to report.

Mr. SHIMKUS. I thank my colleague. Mr. Green, Mr. Duvall is trying to get your attention on responding to one of those questions. I wanted to give him—well, I am taking my time now in the second panel so but since he was trying to respond, I will use my time to let him do that.

Mr. DUVALL. Thank you. I wanted to call Mr. Green's attention to a provision that reads, "The Administrator may revise the priority designation of a chemical substance based on consideration of new information." So there is a provision there that allows reprioritization at any time. If the language isn't right, then it should be fixed. But I think the idea is there.

Mr. GREEN. Thank you.

Mr. DUVALL. And I might mention also that current TSCA has a provision requiring manufacturers and others who obtain signifi-

cant information about chemical hazards to report it to EPA immediately, and there are stringent penalties for not doing so.

Mr. SHIMKUS. Great. I appreciate that. Using my time in the second round now, I am also joined by Mr. Harper, and we are waiting for my friends on the other side to show also.

Let me go back to Mr. Duvall. In your testimony you say that Section 5 would codify and strengthen EPA's current practices. You know, when you have a Congressional hearing, you hear—I mean, I am like Mr. McNerney. I mean, you hear, hell, this is the worst thing we have ever seen written and no, this thing is working pretty good. So we are trying to figure out where the truth is. In your testimony you do say that. So what is your basis for that statement?

Mr. DUVALL. Section 5 of TSCA today is short on procedure. But EPA in its regulations in Part 720 has identified a number of critical procedures such as filing a notice of commencement of manufacture at the end of the process, which is not mentioned in the statute. What the draft bill does is to incorporate into law many of the procedural provisions that EPA has adopted by regulation and included them as a way of ensuring that since they have worked well, that EPA should continue to use them.

The bill improves the Section 5 primarily through changing the situation today where EPA can conclude that it would just let the review period expire without reaching a decision as to whether there is a problem with the chemical or not. The draft bill would require EPA to make a determination, and if EPA were to find that it doesn't have sufficient information, it is given a powerful tool for requiring the submitter to develop that information. The EPA can hold up the resolution of the review period until the information becomes available or it can allow the chemical to enter the marketplace but still require the manufacturer to submit the information so that it can be considered later in the prioritization process.

Mr. SHIMKUS. Speaking of the same section, why is the exemption based on, and I quote, "likelihood of risk"? Why is that unprecedented authority?

Mr. DUVALL. Well, it recognized that Section 5(e) of TSCA today is based on it is likely to pose an unreasonable risk provision. So that Section 5(e) authorizes EPA to take regulatory action on a new chemical. When that finding is made, this bill would do essentially the same thing. It would—

Mr. SHIMKUS. So it is not unprecedented that we have this language—

Mr. DUVALL. It is not unprecedented. It actually strengthens EPA's ability to regulate new chemicals where appropriate.

Mr. SHIMKUS. And Dr. Bosley, some call for more extensive testing on chemicals than the Chemicals in Commerce mandates. You have spoken before on minimum data sets and base set requirements like those in Europe. Could you please tell us again whether public health is any better protected by those kinds of mandatory requirements?

Ms. BOSLEY. They are not. Most industrial chemicals are not intended to be released to the environment or exposed to any population, whether vulnerable or not. Those sorts of testing requirements that are blanket might drive those chemical manufacturing

from the United States. We simply—you know, we operate in a market economy, and we simply can't afford to—

Mr. SHIMKUS. Where would they go?

Ms. BOSLEY. To China, to India, to Malaysia.

Mr. SHIMKUS. And what is their safety regime?

Ms. BOSLEY. Most of those countries have much less stringent safety regimes that change depending on the political nature of the environment there as well. So it is much harder for U.S. manufacturers to import into those countries, given the same chemical that might be produced in those countries. They would much favor those.

Mr. SHIMKUS. And I take obviously the saving grace right now for this country is our natural gas exploration and really holding those jobs. But I think your point is well stated that the public should not be deceived that if we move to a regime that is costly, ineffective by the manufacturers, they could move overseas with less stringent.

Ms. BOSLEY. Yes, in some cases we couldn't afford to manufacture the chemical here in the United States any longer.

Mr. SHIMKUS. And my friends from California are experiencing what? They are experiencing—

Ms. BOSLEY. I can tell you I have no customers in California.

Mr. SHIMKUS. California is also experiencing a 10-day lag from the air pollution from China reaching—

Ms. BOSLEY. Right.

Mr. SHIMKUS [continuing]. The West Coast.

Ms. BOSLEY. The coast. That is right.

Mr. SHIMKUS. So that has to be part of this debate, jobs and the economy. So with that I will yield back my time and yield to Mr. Tonko for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. This draft legislation suggests that EPA could very quickly sort the universe of chemicals into two categories. The first category would be known as high priority and chemicals in this category would be further assessed to ensure their safety. The second category would be known as a low priority, but this is a bit of a misnomer because these chemicals would be dismissed of any further examination. The idea is that thousands of chemicals would fall into this low-priority category.

So Dr. Landrigan, in your view, do we have the information we need to complete such an undertaking with confidence that we are protecting public health?

Mr. LANDRIGAN. So we don't have full information, but there are some guidelines that we can use to help EPA to move forward. One guideline would be to assign highest priority to the chemicals that are most widely found in the American population in the rolling surveys that the CDC now does every year. I am sure you are aware that CDC, in their National Biomonitoring Program, is picking up measurable levels of several hundred chemicals in the bodies of most Americans, synthetic chemicals, most of which did not exist in 1960. So to be sure, many chemicals stay inside the four walls of the chemical factories. Maybe they could be given lower priority. But the chemicals that are getting out that are widely distributed in people and the environment need to be assigned higher priority. Two more criteria for judging priority is evidence of tox-

icity as has already appeared in toxicological laboratories published in the peer-reviewed literature, and finally persistence in humans in the biosphere.

Mr. TONKO. Thank you. And does EPA know enough to quickly go through the TSCA inventory and rule out thousands of chemicals as potential risks?

Mr. LANDRIGAN. No, they don't. And the problem is it is a Catch-22 given that so little toxicologic testing has been done on so many chemicals in commerce. EPA is flying blind. There are some chemicals that we know a lot about that have been studied extensively but many, many more that are in wide use that have been little studied.

The biomonitoring survey from CDC offers some protection. It is not foolproof because they can only measure what they have the technology to measure.

Mr. TONKO. And what kind of information or testing will the EPA need in order to assess which chemicals in commerce are causing health effects or—

Mr. LANDRIGAN. The principles for selecting chemicals would be the ones I just mentioned, widespread use, some evidence of toxicity, persistence. Beyond that there is a lot of expert judgment here. They would clearly have to consult with their colleagues at the National Institute of Environmental Health Sciences of the NIH or developing new paradigms for high through-put toxicologic testing.

Mr. TONKO. And every witness on both panels today agreed that we should abandon the cost-benefit standard in current law. Unfortunately, the discussion draft continues to use the unreasonable risk standard. Mr. Duvall, you have assured the subcommittee that the term unreasonable risk in the discussion draft needs something completely different than the term unreasonable risk under current law. A lot of experts have expressed grave concerns that that is an incorrect statement or it is wrong in substance in order to address this concern and to address the stakeholders' concerns together. Would you agree that it would be simpler to no longer use unreasonable risk and instead choose a new term that perhaps is clearly defined as not utilizing a cost-benefit approach? Is there clarification needed there?

Mr. DUVALL. If there is another verbal formula that will achieve what is intended to be achieved, then that would be fine. During the TSCA legislative discussions for several years, there is really only one other verbal formula that has been offered and that is reasonable certainty of no harm. And that formulation has its own problems. If there could be a different, a third one, I think it would be worthy of discussion.

The unreasonable risk language has been interpreted primarily by courts as requiring a cost-benefit analysis. Since the safety determination itself is a science-oriented, risk-based analysis, cost doesn't seem to make sense in that context. Cost considerations make sense in the context of making risk management decisions. One suggestion I would make would be to ensure that legislative history clarifies the intent of Congress that costs and benefits not be waived in making a safety determination. The kind of legislative history together with the statutory text would go a long way to

keeping the courts from going in the direction of finding cost benefit required in the safety determination.

Mr. TONKO. Thank you. And I believe my time is more than expired. I yield back.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes Mr. Harper from Mississippi for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman. Mr. Stem, if I may ask you a few questions, in your written testimony you note the importance of EPA being required to systematically evaluate all chemicals in commerce including TSCA's grandfathered chemicals. Why is that important?

Mr. STEM. Because science changes. We develop new information. Chemicals that have been grandfathered that might be new information on that. If there is no new information, there is no science change in the chemicals and it is a process that would benefit the people.

Mr. HARPER. CICA requires prioritization of chemicals in order for EPA to make safety determinations. Why is this important in a reformed TSCA and how does the CICA address it?

Mr. STEM. Well, it doesn't adequately address it. The concept, in answer to your question, is that the EPA should be given the authority to require the company that is manufacturing the chemical to do most of the initial testing to present that when they present the product and ask for commercial use. CICA does not adequately do that.

Mr. HARPER. All right. So what would be your recommendation then?

Mr. STEM. That EPA require that, that the EPA not have to start testing the product.

Mr. HARPER. OK.

Mr. STEM. The manufacturer of the product should conduct valid scientific testing and produce that testing when they present the product to EPA asking for commercial use.

Mr. HARPER. You note in your written testimony that if necessary, CICA allows EPA to reclassify a low-priority chemical as high priority. Why is this important?

Mr. STEM. Basically because of reevaluation of the science involved and the potential use or mixture of the original chemical that was classified at one time as a low priority.

Mr. HARPER. Mr. Chairman, I yield back.

Mr. TONKO. Just one item of business, Mr. Chair. Would you entertain a request for a unanimous consent?

Mr. SHIMKUS. I would.

Mr. TONKO. I request unanimous consent to enter 38 letters into the hearing record. These letters have come in from across the country and represent the views of groups in the public health, environmental, labor, scientific and small business communities. All express the need for TSCA reform and concerns with this current draft. Letters have been shared with your staff.

[The letters are available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=101890>.]

Mr. TONKO. I also request unanimous consent to enter into the record the statement of our fellow Energy and Commerce member, Representative Bobby Rush.

Mr. SHIMKUS. Without objection, so ordered.  
[The prepared statement of Mr. Rush follows:]

PREPARED STATEMENT OF HON. BOBBY L. RUSH

Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee: thank you for allowing me to participate in today's hearing on the Chemicals in Commerce Act. Though I am not a member of this subcommittee this issue is one that I care about deeply and I appreciate your consideration of that.

Mr. Chairman, let me say that I am excited to see movement on this important issue. I am, however, discouraged by the discussion draft presented. The bill we have been shown presents some dangerous changes that will affect our communities, and I would like to take a moment to discuss those:

First, this bill discontinues use of the Centers for Disease Control and Prevention's standard of "vulnerable populations" in favor of a newly created standard of "potentially exposed subpopulation". While the CDC clearly defines vulnerable populations based on quantifiable standards such as race/ethnicity, socio-economic status, geography, gender, age, disability status, and/or risk status related to sex and gender this bill creates a vague definition. Specifically, the bill defines this subpopulation as "a group or groups of individuals within the general population who may be differentially exposed to a chemical substance under the intended conditions of use or who may be susceptible to more serious health consequences from chemical substance exposures than the general population, which where appropriate may include infants, children, pregnant women, workers, and the elderly."

Mr. Chairman, it is very likely that the standard presented in this bill would not have protected my constituents in the Village of Crestwood, Illinois. When it was found that their drinking water was contaminated with perchloroethylene—an industrial solvent used primarily in dry cleaning—it was the entire town that was impacted; they were vulnerable because of their geography. Furthermore, this chemical was clearly being used outside its scope of "intended conditions of use". In this scenario, what protection would the people of Crestwood have had?

This brings me to my second point of concern: "intended conditions of use". I think all of my colleagues would agree with me in saying that chemicals should be used as intended: in a safe manner. Unfortunately, as my example above has demonstrated, this is not always the case. In instances of malfeasance how do we keep our constituents safe?

Lastly, Mr. Chairman, I would like to discuss this bill's preemption of State and local laws. Time and time again, my friends on the other side of the aisle have discussed the need for preserving the States' ability to protect their citizens. We have heard how the States know best what their communities need. And now, for an inexplicable reason, all of that thinking has been done away with. Not only does this bill prohibit States and local governments from passing new laws, it prevents them from enforcing already existing laws. The very laws that, in many communities, have been the principle safety measure. The States and local communities know better than we do the biggest threats they face. Why prevent them from protecting their residents?

In short, Mr. Chairman, while I am encouraged by the discussion that we are about to witness I strongly urge this committee to go back to the drawing board and bring forward a bipartisan bill that protects our communities.

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

Mr. SHIMKUS. It was asked during the hearing by Mr. Cik and you asked if we could submit that pediatrician document. We would like to see it first, and having seen it, then we will accept it. But that is a follow-up just from the hearing, if we can do that. I guess I have a unanimous consent request also for this letter with a bazillion people in support of the legislation.

Mr. TONKO. How many zeroes in bazillion?

Mr. SHIMKUS. I hope it has been shared with your staff. They couldn't carry it in, there were so many. But without objection, so ordered.

[The information follows:]

March 12, 2014

The Honorable Fred Upton  
Chairman, Committee on Energy and  
Commerce  
United States House of Representatives  
Washington, DC 20515

The Honorable Henry Waxman  
Ranking Member, Committee on Energy and  
Commerce  
United States House of Representatives  
Washington, DC 20515

The Honorable John Shimkus  
Chairman, Subcommittee on Environment  
and the Economy  
United States House of Representatives  
Washington, DC 20515

The Honorable Paul Tonko  
Ranking Member, Subcommittee on Environment  
and the Economy  
United States House of Representatives  
Washington, DC 20515

Dear Congressmen Upton, Waxman, Shimkus, and Tonko,

We are writing to you as members of the American Alliance for Innovation, a large and diverse coalition of trade associations representing a broad spectrum of the economy, including businesses both large and small. Industry sectors represented in the coalition include: aerospace, agriculture, apparel, automotive, building and construction materials, chemical and raw material production, consumer and industrial goods, distribution, electronics, energy, equipment manufacturers, food and grocery, footwear, healthcare products and medical technology, information technology, mining and metals, plastics, retail, and travel goods.

We support updating the Toxic Substances Control Act (TSCA) in a scientifically sound and economically practical way. Creating an effective national regulatory system that will allow us to continue to provide the goods and services that so many Americans rely on as part of their everyday lives is critical as part of this update. In addition, any update needs to allow U.S. industries to continue to bring innovative solutions to the marketplace and provide consumers with a greater degree of confidence that chemicals in commerce are being used safely.

We appreciate the efforts of the members of your Committee and Subcommittee over the past few months to explore and discuss TSCA reform. The hearings took a very thorough and thoughtful approach that carefully examined each of the major sections of the statute and allowed many of the key stakeholders to share their views on areas that need to be updated.

We believe the hearings have allowed Subcommittee Chairman Shimkus to put forward a well-grounded discussion draft that can serve as a solid foundation for introducing legislation that will make significant improvements to TSCA and garner the bipartisan support needed for passage in the House.

With this proposal, and the bipartisan bill in the Senate, for the first time we have a historic opportunity to make fundamental changes to TSCA that allow the U.S. to continue to lead the way in safely managing chemicals, driving innovation, and creating jobs.

We are committed to helping pass legislation that will make meaningful changes to TSCA that will benefit all Americans, and strongly urge Congress to continue to move these proposals forward.

Sincerely,

Adhesive and Sealant Council  
Alkylphenols & Ethoxylates Research Council  
Alliance of Automobile Manufacturers  
American Apparel & Footwear Association  
American Architectural Manufacturers Association  
American Bakers Association  
American Chemistry Council  
American Cleaning Institute  
American Coatings Association  
American Coke & Coal Chemicals Institute  
American Composites Manufacturers Association  
American Fiber Manufacturers Association  
American Forest & Paper Association  
American Foundry Society  
American Fuel and Petrochemical Manufacturers  
American Gas Association  
American Wood Council  
APA-The Engineered Wood Association  
Asphalt Roofing Manufacturers Association  
Association of Global Automakers, Inc.  
Association of Home Appliance Manufacturers  
Automotive Aftermarket Industry Association  
Can Manufacturers Institute  
Composite Lumber Manufacturers Association  
Consumer Healthcare Products Association  
Consumer Specialty Products Association  
Corn Refiners Association  
Edison Electric Institute  
EPS Industry Alliance  
ETAD North America, representing the North American Dyes Manufacturing Industry  
Extruded Polystyrene Foam Association  
Fashion Accessories Shippers Association  
Fashion Jewelry & Accessories Trade Association  
Flexible Packaging Association  
Global Cold Chain Alliance  
Grocery Manufacturers Association  
Halogenated Solvents Industry Alliance  
Hardwood Plywood and Veneer Association  
Industrial Minerals Association, North America  
Institute of Makers of Explosives  
Institute of Scrap Recycling Industries, Inc.  
International Association of Refrigerated Warehouses  
International Diatomite Producers Association  
International Fragrance Association, North America

International Institute of Ammonia Refrigeration  
International Institute of Synthetic Rubber Producers  
International Sleep Products Association  
IPC – Association Connecting Electronics Industries  
Juvenile Products Manufacturers Association  
Methanol Institute  
Motor & Equipment Manufacturers Association  
National Association for Surface Finishing  
National Association of Chemical Distributors  
National Association of Manufacturers  
National Association of Printing Ink Manufacturers  
National Electrical Manufacturers Association  
National Grocers Association  
National Industrial Sand Association  
National Lumber and Building Material Dealers Association  
National Marine Manufacturers Association  
National Oilseed Processors Association  
National Pest Management Association  
National Retail Federation  
National Tank Truck Carriers, Inc.  
Nickel Institute  
Oregon Women In Timber  
Personal Care Products Council  
Personal Watercraft Industry Association  
Pine Chemicals Association, Inc.  
Plastic Pipe and Fittings Association  
Plastics Pipe Institute  
Polyisocyanurate Insulation Manufacturers Association  
Recreation Vehicle Industry Association  
Resilient Floor Covering Institute  
RISE (Responsible Industry for a Sound Environment)  
Roof Coatings Manufacturers Association  
Society of Chemical Manufacturers and Affiliates  
Specialty Graphic Imaging Association  
SPI: The Plastics Industry Trade Association  
Sports & Fitness Industry Association  
Spray Polyurethane Foam Alliance  
SPRI, Inc. (representing the Single Ply Roofing Industry)  
Styrene Information and Research Center  
The Chlorine Institute  
The Silver Institute  
The Vinyl Institute  
Toy Industry Association  
Travel Goods Association  
Treated Wood Council  
U.S. Chamber of Commerce  
Utility Solid Waste Activities Group  
Vinyl Building Council  
Vinyl Siding Institute, Inc.  
Window and Door Manufacturers Association

Mr. SHIMKUS. We want to thank you all for coming. We know we have a long way to go. So we are going to continue to work. We believe there will be another legislative hearing on the draft. It may be an adjusted draft based upon the consultations we are having. We do want to encourage all stakeholders to continue to work with us. Because of the diversity of opinion, we are not going to get everybody 100 percent on board. Even those who will despise the legislation, we want them to despise it with a smile that we made a good effort and attempt to move forward.

So with that, I appreciate your patience, and the hearing is now adjourned.

[Whereupon, at 1:04 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Map only 10101 725 2097  
Minority 10101 725 2643

July 15, 2014

Ms. Connie DeFord  
Director  
Global Product Sustainability and Compliance  
The Dow Chemical Company  
2030 Dow Center  
Midland, MI 48674

Dear Ms. DeFord:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, March 12, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, July 29, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



The Dow Chemical Company  
Midland, MI 48674  
U.S.A.

July 28, 2014

Nick Abraham  
Legislative Clerk  
Committee on Energy and Commerce  
House of Representatives  
Congress of the United States  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Dear Mr. Abraham:

This letter is in response to the letter from The Honorable John Shimkus dated July 15, 2014 where I was requested to respond to questions received from The Honorable Henry A. Waxman following the Subcommittee on Environment and the Economy's hearing on discussion draft entitled the "Chemicals in Commerce Act" on March 12, 2014. Attached is my response in the format requested.

Thank you for providing me with the opportunity to testify before the Subcommittee.

Regards,

[Redacted signature]

Connie Deford  
Director – Product Sustainability and Compliance

[Redacted contact information]

Attachment

## Attachment

Dow Chemical Response to the Questions following March 12, 2014 Subcommittee Hearing on the discussion draft entitled the "Chemicals in Commerce Act"

(1) Questions from The Honorable Henry A. Waxman

(2) & (3) Questions and Response

**1. Does Dow still support holding all existing chemicals in commerce to a safety standard?**

Dow response: Dow supports a systematic approach to evaluating existing chemicals in active commerce against a safety standard. Under this framework, EPA should prioritize existing chemicals based on hazard, use and exposure information, and then assess high priority chemicals based on their safety under intended conditions of use.

**2. Does Dow still support a safety standard that requires a chemical to be "safe for its intended conditions of use"?**

Dow response: Dow supports a safety standard that addresses the potential hazards and potential exposures under the chemicals' intended conditions of use. For those uses of a substance found not to meet the safety standard, risk management measures should be applied.

**3. Does Dow still support applying that safety standard as a minimum standard?**

Dow response: Dow supports a safety standard for all chemicals in active commerce that addresses the potential hazards and potential exposures under the chemicals' intended conditions of use.

**4. Should all existing chemicals be held to a safety standard that ensures they are safe for vulnerable populations?**

Dow response: Dow supports a systemic approach to evaluating existing chemicals in active commerce whereby high priority chemicals should be assessed against a safety standard that would ensure that the chemical is safe under its intended conditions of use, including uses to which vulnerable populations may be exposed or hazards to which they may be particularly susceptible.

**5. Should all new chemicals be held to a safety standard that ensures they are safe for vulnerable populations?**

Dow response: Dow supports that new chemicals should be assessed against a safety standard that examines the potential hazards and potential exposures of the new chemical under its intended conditions of use, including exposures to vulnerable populations.

**6. Should vulnerable populations be considered in priority decisions?**

Dow response: Yes

**7. Should risk management measures ensure that vulnerable populations are protected?**

Dow response: Yes

FRED LIPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (201) 225-2827  
Minority (202) 225-3641

July 15, 2014

Mr. Roger T. Harris  
President  
Producers Chemical Company  
*On behalf of*  
National Association of Chemical Distributors  
1960 Bucktail Lane  
Sugar Grove, IL 60554

Dear Mr. Harris:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, March 12, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, July 29, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

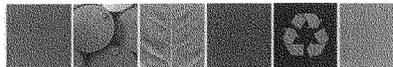


John Shimkus  
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



July 29, 2014

1960 BUCKTAIL LANE | SUGAR GROVE, ILLINOIS 60954 | TEL (830) 466.4584 | FAX (830) 466.4325

producerschemical.COM  
E-MAIL: info@producerschemical.com

The Honorable John Shimkus  
Chairman, Subcommittee on Environment and Economy  
Committee on Energy and Commerce  
2452 Rayburn House Office Building  
Washington DC, 20515

Dear Chairman Shimkus:

This letter is in response to your letter of July 15, 2014, asking a follow-up question in regards to my testimony on March 12, 2014, in the Subcommittee on Environment and Economy hearing titled "Chemicals in Commerce Act."

Question for the Record from The Honorable Henry A. Waxman:

**Question: In your testimony, you described the current system of state level chemical regulation as "unworkable."**

- 1. Please provide a list of any state laws that have prevented your member from distributing chemicals in the United States.**

The current federal law has failed to provide a workable national framework to assess the safety of chemicals. New laws and proposals at the state level have been initiated to fill the gap. The problem with a state approach is not in the physical distribution of chemicals from chemical distributors to product manufacturers. In describing the system as "unworkable," I am referring to the need for a national framework to provide greater confidence to consumers that the products they use and consume are safe as well as to maintain a national distribution of manufactured products. Improving consumer confidence is a key part of why the National Association of Chemical Distributors supports amending the Toxic Substances Control Act. Moreover, laws governing manufactured products should be consistent as many manufacturers must make a single national version of their product for their distribution systems. Providing the Environmental Protection Agency with the ability to better assess chemical safety at a national level brings greater certainty to the marketplace into which we distribute our chemicals.

Sincerely,

Roger T. Harris, President/CEO



FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majesty (202) 225-2827  
Minority (202) 225-3041

July 15, 2014

Mr. Michael Belliveau  
Executive Director  
Environmental Health Strategy Center  
P.O. Box 2217  
Bangor, ME 04402

Dear Mr. Belliveau:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, March 12, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, July 29, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



ENVIRONMENTAL  
HEALTH  
STRATEGY CENTER

***Board of Directors***

29 July 2014

- Ryan Bouldin, PhD
- Gail Carlson, PhD
- Priscilla Carothers
- Carla Dickstein, PhD
- Ken Geiser, PhD
- Marie Gunning, MBA, MF
- Ginger Jordan-Hillier
- Bettie Kettell, RN
- Jeannie Mattson
- Hon. Hannah Pingree
- Sharon Rosen, PhD
- Michael Belliveau  
*Executive Director*

Nick Abraham, Legislative Clerk  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Nick,

Please find attached my responses to the questions for the record, which follows my appearance before the Subcommittee on Environment and the Economy on March 12, 2014 to testify on the discussion draft of the "Chemicals in Commerce Act."

I appreciate the opportunity to further share my views on issues related to meaningful reform of the Toxic Substances Control Act.

Best regards,



Michael Belliveau  
Executive Director

Enclosure

P.O. Box 2217  
6 State Street, Suite 504  
Bangor, ME 04402  
565 Congress Street, Suite 204  
Portland, ME 04101  
(207) 699-5795  
[www.preventharm.org](http://www.preventharm.org)

**Response to Questions for the Record from the Honorable Henry A. Waxman**

By Michael Belliveau, Executive Director, Environmental Health Strategy Center, following his testimony at the March 12, 2014 hearing before the Subcommittee on Environment and the Economy, House Committee on Energy and Commerce

**The February 2014 draft of the Chemicals in Commerce Act employs the term “potentially exposed subpopulation” instead of referring to “vulnerable populations,” and defines the term as follows:**

**“a group or groups of individuals within the general population who may be differentially exposed to a chemical substance under the intended conditions of use or who may be susceptible to more serious health consequences from chemical substance exposures than the general populations, which where appropriate may include infants, children, pregnant women, workers, and the elderly.”**

**1. Do you have concerns about this definition?**

YES. The proposed term creates confusion by ignoring the long-established reliance on the concept of “vulnerable populations” in the public health community. The proposed definition is vague and unclear. Everyone is “differentially exposed” – what does that mean? The use of the phrase “intended conditions of use” implies limiting consideration of all exposures, for which there is no scientific basis. The phrase “who may be susceptible to more serious health consequences” is in error. It should read: “who may be more susceptible to serious health consequences;” – vulnerable populations are *more* susceptible than others.

The qualifier “where appropriate” either implies proposed discretionary authority to ignore vulnerable populations, or is in biological error by denying the intrinsic vulnerability of classically recognized subgroups that are at higher risk than the population as a whole – infants, children, pregnant women, workers, and the elderly.

**2. Do you have concerns about creating a new term, rather than using the term “vulnerable populations,” which has been widely used?**

YES. Congress should rely instead on scientific expertise in defining the term “vulnerable populations.” In 2009, the National Research Council issued six recommendations for modernizing risk assessment, which included “attention should be directed to vulnerable individuals and subpopulations that may be particularly susceptible or more highly exposed.” (*Science and Decisions*, National Academy of Science). The U.S. Environmental Protection Agency (EPA) defines: “Vulnerability – Differences in risk resulting from the combination of both intrinsic differences in susceptibility and extrinsic social stress factors such as low socioeconomic status, crime and violence, lack of community resources, crowding,

access to health care, education, poverty, segregation, geography, etc.” and “Susceptibility – Differences in risk resulting from variation in both toxicity response (sensitivity) and exposure (as a result of gender, lifestage, and behavior).” See <http://www2.epa.gov/children/guidance-tools-and-glossary-key-terms>.

Getting this definition right is critical because the draft legislation requires EPA to assess exposures of sub-populations to chemicals during the course of a safety assessment, but it does not explicitly require that safety determinations protect vulnerable populations from those exposures. The legislation should define “vulnerable populations” and explicitly require that they be protected from aggregate exposure to high priority chemicals. In addition, the safety standard itself needs more clarification to ensure it is strictly health-based and protective.

**Some have argued that risk assessment under TSCA should focus only a subset of exposures to a chemical, those from intended uses. The Chemicals in Commerce Act goes further by limiting assessment to only a subset of exposures from intended uses, those that are found to be significant on their own as opposed to in aggregate. Some have argued that TSCA should be restricted further, by exempting some sources of exposure such as automotive replacement parts.**

**3. In terms of health effects, does the body distinguish between the exposures from intended and unintended uses?**

NO. A person integrates aggregate and cumulative exposure to chemicals from all sources through ingestion, inhalation, hand-to-mouth contact, and dermal contact without regard to whether anybody intended any of the activities that led to any of the exposures. The manufacturers’ intention may wildly differ from the reality of real world exposure to multiple sources of a chemical (and to multiple chemicals).

**4. Is there a biological justification for excluding exposures from some sources, such as automotive parts?**

NO. All sources should be assessed in aggregate to assess risk and risk reduction opportunities. Chemical exposure sources associated with the manufacture, use and disposal of articles in a single industrial sector are never inherently more or less risky. Each source needs to be evaluated on its own merit and magnitude.

With regards to the example of automotive parts, there’s no historic basis for a special exemption. It’s worth noting that the use of elemental mercury in automobiles for switches in trunk lights, ABS brakes and other auto parts were a major source of environmental release of mercury during disposal. (See <http://www.epa.gov/mercury/archive/switch/index.html>). Auto parts were once, and may still be for some, a significant source of asbestos, a known human

carcinogen. There's no basis for special treatment of auto parts. (See for example <http://www2.epa.gov/sites/production/files/documents/brakesfinal-3-07.pdf>).

**5. Is there a biological justification for considering only those exposures that are significant on their own, as opposed to in aggregate?**

NO. An individual may be exposed to the same chemical from multiple sources. To reflect real world conditions, the exposures associated with that one chemical need to be aggregated in order to honestly assess the risk to human health. Parsing apart separate sources of exposure, and determining their significance in isolation from one another, invites misleading abuse. If broken into small enough pieces, none of the exposures may be considered "significant," even though in aggregate the risk may be unacceptably high for the vulnerable populations.

**6. In your view, is it important that aggregate exposures to chemicals be considered in assessing their safety?**

YES. If Congress wants to create a risk-based approach to chemical management, then the aggregate risks need to be assessed for all sources of exposure to the same chemical. Otherwise such an isolated risk-based approach fails dishonestly. How could a regulator determine whether the "risk cup" overflows unless all the associated exposures and risks are placed in the cup?

Further, as recommended by the National Research Council in its *Science and Decisions* report, cumulative exposure from multiple chemicals with similar hazards need to also be assessed whenever feasible. The NRC sketched a path forward in its 2008 report, *Phthalates and Cumulative Risk Assessment: The Path Ahead*. Recently, the Chronic Hazard Advisory Panel to the Consumer Product Safety Commission used a cumulative risk assessment to conclude that 5% to 10% of pregnant women and children in the United States are exposed to decidedly unsafe levels of cumulative exposure to five phthalates. (See <http://www.cpsc.gov/en/Regulations-Laws--Standards/Statutes/The-Consumer-Product-Safety-Improvement-Act/Phthalates/Chronic-Hazard-Advisory-Panel-CHAP-on-Phthalates/>).

**The Committee has received testimony that mixtures should not be tested or regulated directly because they have the same health and environmental effects as their components, but research has shown that exposures to chemicals in combination can have additive effects.**

**7. In terms of health effects, can all mixtures be understood simply by assessing the health effects of the mixture's components?**

NO. In fact, that's why the National Institute of Environmental Health Sciences (NIEHS) has established as a goal to expressly address combined chemical exposures in its 2012-2017 Strategic Plan. In 2011, NIEHS hosted a comprehensive science workshop entitled, "Advancing Research on Mixtures: New Perspectives and Approaches for Predicting Adverse Human Health Effects." The workshop proceedings can be found at: [http://www.niehs.nih.gov/about/visiting/events/pastmtg/2011/mixtures/pdf\\_workshop\\_report.pdf](http://www.niehs.nih.gov/about/visiting/events/pastmtg/2011/mixtures/pdf_workshop_report.pdf).

Under the current Toxic Substances Control Act (TSCA), mixtures are defined as: "Any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of chemical reaction; except that such term does not include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the mixture is a new chemical substance and if the combination could have been manufactured [(including imported)] for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined."

Given the commonplace use of chemical mixtures, and the complexity of human exposure to multiple chemicals, it would be unwise to rollback any of the existing TSCA authority that authorizes regulation of mixtures.

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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Majority (202) 226-2827  
Minority (202) 226-8641

July 15, 2014

Ms. Jennifer Thomas  
Director, Federal Government Affairs  
Alliance of Automobile Manufacturers  
803 7th Street, N.W., Suite 300  
Washington, D.C. 20001

Dear Ms. Thomas:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, March 12, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, July 29, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



**AUTO ALLIANCE**  
DRIVING INNOVATION™

8/5/2014

**Questions for the Record**

**Ms. Jennifer Thomas on behalf of the Alliance of Automobile Manufacturers  
March 12, 2014 Subcommittee on Environment and the Economy Hearing on the  
Discussion Draft entitled the "Chemicals in Commerce Act"**

**Questions from Ranking Member Waxman:**

**Some automotive replacement parts have been demonstrated to be significant sources of chemical exposures and to pose significant risks, including asbestos brake pads, lead wheel weights, and mercury switches. Progress has been made through TSCA actions to reduce the risk from mercury switches, and many of your members have voluntarily joined the National Lead Free Wheel Weight Initiative. You cite progress in eliminating those risky parts, and the flame retardant deca-BDE as success stories in your testimony. Yet, at the same time, you argue for a "full outright exemption" from TSCA requirements for automotive replacement parts.**

First, the Alliance would like to point out that the automaker phase-outs of mercury-containing switches, asbestos brake pads and lead wheel weights were not a result of TSCA action, but rather were due to the voluntary actions undertaken by automakers.

Second, and to be clear, the Alliance is not advocating that all automobile parts be exempt from TSCA requirements. Rather, we are seeking an exemption for replacement parts used to service in-use vehicles – a much smaller universe of auto parts. Vehicles should be serviced with parts "as produced", meaning the service parts should use the materials that were acceptable when the vehicle was originally launched. This "repair as produced" concept prevents using brake pads containing asbestos from a vehicle "produced" with asbestos-free pads, as well as replacing lead-free wheel weights with ones containing lead.

An exemption for replacement parts is necessary because it is impractical, and in many cases infeasible, to redesign and re-source a part for a vehicle that is no longer in production. Replacement parts are often manufactured in bulk at the end of a vehicle production run, while the tooling is still available. Storing and maintaining old tooling or building new tooling to manufacture new redesigned replacement parts can be inefficient,

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**Alliance of Automobile Manufacturers**

**BMW Group • Chrysler Group LLC • Ford Motor Company • General Motors Company • Jaguar Land Rover •  
Mazda • Mercedes-Benz USA • Mitsubishi Motors • Porsche • Toyota • Volkswagen • Volvo**  
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impractical and cost prohibitive. This does not even take into account the obstacles associated with validating such parts for vehicles that have already gone out of production to ensure the parts meet the necessary federal safety and/or emissions requirements.

In our view, any TSCA regulation applicable to automobiles should focus on risks identified in connection with original equipment parts. To the extent the original equipment parts in vehicles are changed based on such risks, such changes will also carry over to replacement parts manufactured for service and repair for those vehicles.

**1. Do you believe that existing TSCA regulations for mercury switches should be eliminated?**

It is important to clarify that the automaker phase-out of mercury-containing switches as well as the creation of the voluntary programs End of Life Vehicle Solutions (ELVS) and the National Vehicle Mercury Switch Recovery Program (NVMSRP) were initiated *prior* to any EPA rulemaking under TSCA.

Automakers see no reason to eliminate these regulations as the industry voluntarily phased out the use of mercury-containing switches in the 1990s and early 2000s. It was this voluntary effort that allowed EPA to adopt its significant new use rule on automotive mercury switches in 2007, since by that time the use of mercury-containing switches had become “new” (i.e., no longer ongoing). While vehicle occupants were not at risk from mercury exposure during the life of a vehicle, concerns were raised about the possibility that mercury from improperly discarded switches could escape into the environment. Automakers responded by creating ELVS. Comprised of light, medium and heavy-duty vehicle manufacturers, ELVS is committed to providing educational outreach and technical assistance on best practices for the safe removal and proper disposal of mercury-containing switches from scrapped motor vehicles.

Additionally, the NVMSRP is a voluntary collaboration among relevant stakeholders including EPA, states, environmental organizations, automakers, auto dismantlers and recyclers, and steelmakers to recover mercury-containing switches from scrapped vehicles. As a partner in the NVMSRP, ELVS has collected approximately 5,685,000 switches, preventing over 12,500 pounds of mercury from being released into the environment.

**2. Do you believe that the phase out of lead wheel weights should be reversed?**

No, but to be clear, lead wheel weights have never been regulated under TSCA. Much like the case with mercury-containing switches, automakers voluntarily phased out the use of lead wheel weights prior to model year 2010, without the need of a federal mandate. In 2008, the EPA built on this voluntary action by bringing together the tire manufacturers and retailers and creating the National Lead-Free Wheel Weight Initiative. All automakers have been using lead-free alternative wheel weights since 2010.

**3. Do you believe that a reformed TSCA should be barred from addressing the risks posed by asbestos brake pads?**

To the best of our knowledge, automakers no longer utilize asbestos-containing brake pads. Replacement and original equipment non-asbestos brake pads have been available since the mid-1990s. This voluntary change-over from asbestos-containing brake pads occurred despite the 1991 court decision invalidating EPA's ban of asbestos in brake pads and other products. Given the timing of the phase-out, automakers agree that replacement pads designed "as produced" should be asbestos free.

**4. In general, where an automotive replacement part itself poses or contributes to an unreasonable risk to human health or the environment, do you think it should be exempt from regulation under TSCA?**

The auto industry suggests adopting a "repair as produced" principle for replacement parts, as used in a number of other global chemical initiatives. This methodology represents a balanced strategy by allowing replacement parts to be comprised of the chemicals/materials that were acceptable when the vehicle was originally designed and certified to meet the applicable substance requirements, as well as the applicable federal safety and/or emissions requirements. The market for replacement parts represents a significantly smaller universe of risk – a study by the European Automobile Manufacturers Association states that more than 90% of spare parts have a production rate of less than 0.1% of the original mass production volume. This approach therefore represents a reasonable approach that holistically addresses vehicle safety, environmental risk and customer satisfaction by providing reliable inventory of cost-effective and quality replacement parts in a timely manner; while still maintaining compliance with an array of global regulatory standards.

Nevertheless, the infeasibility to redesign and validate numerous replacement parts for vehicles that are no longer in production presents significant challenges –

potentially impacting automakers' ability to fulfill consumer warranties, recalls, and repairs of the existing fleet. This is significant, as there are more than 250 million vehicles currently on U.S. roads and the average age of an automobile is 11 years old. As such, the Alliance believes exempting replacement parts from TSCA requirements is necessary to avoid a potential disruption in the supply of older model replacement parts, a disruption that would disproportionately affect and likely harm owners of older vehicles.

**In addition to federal actions under TSCA to address mercury switches, some states have passed laws to minimize the risks posed by such switches. For example, since 2006, Illinois has had in effect a law that requires recordkeeping for the removal of mercury switches from end-of-life cars and prohibits people from falsely claiming that mercury switches have been removed.**

**5. Has the law impacted your members' ability to manufacture and distribute cars in the United States or in Illinois?**

Thus far, state requirements related to mercury have not restricted our ability to manufacture or distribute vehicles. However, these state-by-state removal requirements, with their unique program elements, have resulted in significant administrative and implementation costs that could have been considerably reduced if the same requirements have been implemented at the federal level. It is for reasons such as this that the auto industry continues to urge Congress to reform TSCA to ensure a more consistent program across the entire nation.

It is worth noting the use of mercury-containing switches by automakers ceased entirely in 2003 – three years *prior* to the Illinois statute cited in the question. Indeed automakers comply with any obligations imposed on them by a state law or regulation pertaining to mercury-containing switches at the national level, through the National Vehicle Mercury Switch Removal Program. As noted earlier, this voluntary program, brought together all the various stakeholders, including states, and has resulted in the safe removal and proper disposal of approximately 5,685,000 mercury-containing switches nationwide.

**6. Do you believe that law should be preempted?**

Alliance members comply with all state laws and regulations. However, a patchwork of state-by-state regulations presents significant challenges to manufacturers of complex durable goods, such as automobiles. Automakers design

and build vehicles to meet an array of customer needs and demands, and to comply with thousands of pages of federal regulations. As a practical matter, automakers simply cannot manufacture vehicles on a state-by-state basis. We strongly believe that reforming TSCA in a manner such as the proposed draft “Chemicals in Commerce Act”—which encourages state participation—is more in line with today’s manufacturing realities and will better protect public health while supporting U.S. competitiveness and innovation. We support state input into EPA regulatory activities.

**7. Please provide a list of any and all state laws that have impeded your members’ ability to manufacture and distribute cars in the United States.**

Alliance members comply with all state laws and regulations. However, inconsistent or conflicting state requirements with respect to the design or content of motor vehicles do present compliance obstacles. For example, California and Washington State both have environmental protection laws to restrict heavy metals and asbestos in brake friction material. While the Alliance appreciates the efforts made by the two states to collaborate, there are still differences in their laws and implementing regulations. For example, both states ultimately require brakes to contain less than 0.5% copper. In California this must be accomplished by 2025, however in Washington the date is eight years following its determination that a viable alternative exists. Both states allow manufacturers to make an application for an extension from that requirement, however, the applications and timing for applying are not identical, and, most importantly, each state has its own process for determining whether to grant these extensions, which means one state could grant an extension while the other does not. This extension process is labor intensive and costly, and having to repeat it for multiple states is inefficient, and adds a large amount of uncertainty.

In addition, it appears there may be edge code marking requirement discrepancies between the same two states for brakes that have received extensions. This has the likelihood of causing a logistical nightmare for industry despite the fact that we are only talking about two states. However, this could be multiplied by many more. Even if the states harmonize, manufacturers must still spend considerable time and resources monitoring multi-state regulations, submitting multiple reports, satisfying individual state notification and approvals, etc.

Finally, we are noticing a significant trend towards state legislation and regulations targeting not just chemicals but consumer products (i.e., articles). In 2013, at least 16 broad-reaching chemical regulation bills were introduced by state legislatures

across the country. While some had a specific focus, the definitions went beyond the scope of federal definitions and were broad enough to include consumer products and automobiles. As a result, we expect the number of conflicting and duplicative laws and regulations will only increase.

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
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July 15, 2014

Dr. Philip J. Landrigan  
Dean for Global Health  
Ethel H. Wise Professor and Chairman  
Department of Preventive Medicine  
Professor of Pediatrics  
Director, Children's Environmental Health Center  
Icahn School of Medicine at Mount Sinai  
17 East 102nd Street, Room D3-145  
New York, NY 10029

Dear Dr. Landrigan:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, March 12, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



July 16, 2014

Nick Abraham  
Legislative Clerk  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Philip J. Landrigan, MD, MSc  
*Ebel H. Wise Professor of Community Medicine*  
*Chairman, Department of Preventive Medicine*  
*Professor of Pediatrics*  
*Dean for Global Health*

One Gustave L. Levy Place, Box 1057  
New York, NY 10029-6574  
T 212-824-7018  
F 212-996-0407

Re: Response to questions from Congressional Hearing  
on Chemical Safety legislation

Via email: [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov)

Dear Nick,

Thank you again for having invited me to respond to the questions submitted by members of the Subcommittee on Environment and the Economy in follow-up to my testimony of March 12, 2014 on the Chemicals in Commerce Act. I am pleased to do so.

1. **Do you have concerns about this definition in the current draft of the chemicals in Commerce Act of the term "potentially exposed subpopulation"?** I do have concerns about this definition. The term "vulnerable populations" has been widely used and has come into common usage over the past two decades to refer to the groups within the American population who are understood to be at heightened risk to toxic chemicals in the environment and in consumer products. These vulnerable groups include infants, children, pregnant women, workers and the elderly. I would prefer to use the well-established and widely accepted term "vulnerable population" rather than to introduce a new and possibly confusing term such as "potentially exposed subpopulation".
2. **Do you have concerns about creating a new term, rather than using the term "vulnerable populations," which has been widely used?** Yes I have concerns about creating a new term for the reasons expressed above in my response to question #1.
3. **In terms of health effects, does the body distinguish between exposures from intended and unintended uses?** The human body makes no distinction whatsoever between exposures from intended and unintended uses of chemicals. Indeed, many industrial and consumer chemicals that are added to consumer products can enter the human body via a number of routes and pathways some of which may be intended and some unintended. Once in the human body, chemicals from all of these sources interact with one another to produce cumulative and synergistic effects regardless of their source of origin. This principle was established many years ago in studies of children exposed to lead. It was been reaffirmed in studies of children exposed to pesticides, plastics, chemicals, and endocrine disrupting chemicals.

World Health Organization Collaborating Centre in  
Environmental Epidemiology  
and Children's Environmental Health



4. **Is there a biological justification for excluding exposures from some sources, such as automotive parts?**  
There is no justification whatsoever for excluding exposures from some sources, such as automotive parts.
5. **Is there a biological justification for considering only those exposures that are significant on their own, as opposed to in aggregate?** There is no justification whatsoever for this distinction. Infants, children, workers, the elderly, and all Americans are exposed to multiple chemicals from many sources. National surveys conducted by the Centers for Disease Control and Prevention (CDC) demonstrate that detectable levels of several hundred synthetic chemicals are found today in the bodies of virtually all Americans. Pediatricians and research scientists strongly suspect that these various chemicals interact within the human body in various and complex ways to produce adverse effects on health and development. One of the great problems that impedes medical research in this area and interferes with proper medical care of infants, children and pregnant women exposed to synthetic chemicals is that very little information is available on the potentially toxic effects of many of these chemicals. This lack of information reflects the weaknesses in the chemical testing requirements of the Toxic Substances Control Act of 1976. I detail these weaknesses in the attached article that Dr. Lynn Goldman of George Washington University and I published in 2011 in the peer reviewed biomedical journal, *Health Affairs*.
6. **In your view, is it important that aggregate exposures to chemicals be considered in assessing their safety?**  
It is absolutely essential that aggregate exposures to chemicals be considered in assessing their safety. Multiple examples have been documented of harmful interactions between chemicals in the human body. Many years ago, for example, cigarette smoke and asbestos were shown to interact powerfully in the causation of lung cancer. The U.S. Environmental Protection Agency has documented interactions among organophosphate pesticides in causing neurotoxicity. Undoubtedly many more interactions among chemicals in the human body to produce adverse effects remain to be documented. For this reason it is important that aggregate exposures to chemicals be considered in assessing their toxicity.
7. **In terms of health effects, can all mixtures be understood simply by assessing the health effects of the mixture's components?** The health effects of exposures to mixtures cannot be understood simply by assessing the health effects of their components. As I note in my response to the preceding question (#6) instances have been well documented in medicine in which chemicals have interacted synergistically to produce adverse effects in which the total effect is greater than the sum of the parts. Undoubtedly additional examples of synergistic interaction remain to be discovered. However, these interactions will not be discovered until strong and enforceable legislature requiring the testing of chemicals for toxicity and requiring assessment of interactions among potentially toxic chemicals is enacted by United States Congress and signed into law by the President.

In conclusion, I would like to urge that examination of the consequences of chemical exposures on human health and development be central to any effort to reform chemical policy in the United States. Chemical policy legislation is, in fact, public health legislation. Exposures to toxic chemicals have been responsible for numerous public health disasters in the past ranging from cancer caused by asbestos, birth defects caused by thalidomide, cancer caused by diethylstilbestrol, and mental deficiency caused by lead. These diseases are not only tragic. They are also extremely costly as is detailed in the attached article in *Health Affairs* by Trasande and Liu. Many of these tragic episodes could have been avoided if premarket testing of chemicals for safety had been mandated and enforced in the United States and if industrial chemicals were required to undergo the same level of scrutiny as pharmaceutical chemicals. I therefore urge the Congress to make consideration of public health, and especially consideration of the health of infants and children, a central element of your deliberations on this important legislation.

Thank you again for having asked me to address these questions. Please do not hesitate to come back to me with further questions or to request further elucidation of the answers I have provided herein.

Sincerely,



Philip J. Landrigan, MD, MSc

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
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Majority (225) 225-3327  
Minority (222) 225-3841

July 15, 2014

Ms. Anna Fendley, MPH  
United Steelworkers  
Health, Safety & Environment Department  
1155 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Dear Ms. Fendley:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, March 12, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

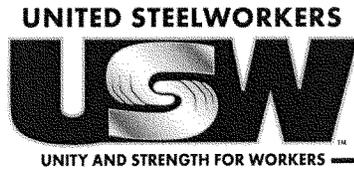
Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



July 29, 2014

The Honorable John Shimkus, Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
U. S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Shimkus:

Please see the attached responses to the additional questions for the record from the hearing entitled the "Chemicals in Commerce Act" on March 12, 2014. Thank you for the opportunity to testify.

Sincerely,

  
Anna Fendley  
United Steelworkers

Cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

The Honorable Henry A. Waxman

The February 2014 draft of the Chemicals in Commerce Act employs the term “potentially exposed subpopulation” instead of referring to “vulnerable populations,” and defines the term as follows:

“a group or groups of individuals within the general population who may be differentially exposed to a chemical substance under the intended conditions of use or who may be susceptible to more serious health consequences from chemical substance exposures than the general populations, which where appropriate may include infants, children, pregnant women, workers, and the elderly.”

1. Do you have concerns about this definition?

I do have concerns with this definition, particularly with the use of the term “where appropriate.” This allows EPA discretion to determine whether and which vulnerable populations are appropriate to consider rather than considering all of them when evaluating a chemical.

Of course, a good definition is only part of the equation. We must also consider how the term is used throughout the text of the bill. As my written testimony indicates, the term is only used in one place in the bill, providing inadequate protection to the populations included in the definition.

2. Do you have concerns about creating a new term, rather than using the term “vulnerable populations,” which has been widely used?

I do have concerns with using a new term when the meaning of the existing term, “vulnerable populations,” is widely known and accepted when referring to the aforementioned groups for the purposes of chemical evaluation and management systems. The term “vulnerable populations” is used in the United States and elsewhere in the world, including the European Union.

Some have argued that risk assessment under TSCA should focus only on a subset of exposures to a chemical, those from intended uses. The Chemicals in Commerce Act goes further by limiting assessments to only a subset of exposures from those intended uses, those that are found to be significant on their own as opposed to in aggregate. Some have argued that TSCA should be restricted further, by exempting some sources of exposure such as automotive replacement parts.

3. In terms of health effects, does the body distinguish between the exposures from intended and unintended uses?

No. An exposure to a chemical is an exposure to a chemical. The body does not distinguish between an intended and unintended exposure.

**4. Is there a biological justification for excluding exposures from some sources, such as automotive parts?**

No. There is not a biological justification for excluding exposures from some sources. Legislation that is intended to protect the health of the American people should include protection from all exposures that may harm them.

**5. Is there a biological justification for considering only those exposures that are significant on their own, as opposed to in aggregate?**

No. There is not a biological justification for considering only those exposures that are significant on their own as opposed to in aggregate.

The following is from *Fundamentals of Industrial Hygiene (5<sup>th</sup> edition)*, which is published by the National Safety Council (The National Safety Council is an organization whose founding and charter members include Bridgestone Firestone, Chevron, Domtar, DuPont, Eastman Kodak, General Electric, Georgia Pacific, Honeywell, Mittal Steel, and US Steel, among others. Its current board consists of executives from Dow Chemical, Exxon Mobil, US Steel, DuPont, and Exxon Mobil.):

When two or more hazardous substances that act on the same body organ system are present, their combined effect, rather than that of either component, should be given primary consideration. In the absence of information to the contrary, the effects of the different hazards should be considered additive. When a given operation or process emits a number of harmful dusts, fumes, vapors, or gases, it is often feasible to attempt to evaluate the hazard by measuring a single (surrogate) substance. In such cases, the threshold limit used for this substance should be reduced by a suitable factor, the magnitude of which depends on the number, toxicity, and relative quantity of the other contaminants ordinarily present. (p. 140-141)

In plain terms, this passage says that when there are multiple exposures, those exposures must all be considered when determining hazard.

This month the Chronic Hazard Advisory Panel on Phthalates and Phthalate Alternatives released their report to the US Consumer Product Safety Commission. The two approaches that panel used to determine aggregate exposure and the cumulative risk provides a model for how aggregate exposures can be determined. (<http://www.cpsc.gov/PageFiles/169902/CHAP-REPORT-With-Appendices.pdf>)

