

THE CHEMICALS IN COMMERCE ACT

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

APRIL 29, 2014

Serial No. 113-141



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

90-983 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND COMMERCE

FRED UPTON, Michigan

Chairman

RALPH M. HALL, Texas	HENRY A. WAXMAN, California
JOE BARTON, Texas	<i>Ranking Member</i>
<i>Chairman Emeritus</i>	JOHN D. DINGELL, Michigan
ED WHITFIELD, Kentucky	FRANK PALLONE, JR., New Jersey
JOHN SHIMKUS, Illinois	BOBBY L. RUSH, Illinois
JOSEPH R. PITTS, Pennsylvania	ANNA G. ESHOO, California
GREG WALDEN, Oregon	ELIOT L. ENGEL, New York
LEE TERRY, Nebraska	GENE GREEN, Texas
MIKE ROGERS, Michigan	DIANA DeGETTE, Colorado
TIM MURPHY, Pennsylvania	LOIS CAPPs, California
MICHAEL C. BURGESS, Texas	MICHAEL F. DOYLE, Pennsylvania
MARSHA BLACKBURN, Tennessee	JANICE D. SCHAKOWSKY, Illinois
<i>Vice Chairman</i>	JIM MATHESON, Utah
PHIL GINGREY, Georgia	G.K. BUTTERFIELD, North Carolina
STEVE SCALISE, Louisiana	JOHN BARROW, Georgia
ROBERT E. LATTA, Ohio	DORIS O. MATSUI, California
CATHY McMORRIS RODGERS, Washington	DONNA M. CHRISTENSEN, Virgin Islands
GREGG HARPER, Mississippi	KATHY CASTOR, Florida
LEONARD LANCE, New Jersey	JOHN P. SARBANES, Maryland
BILL CASSIDY, Louisiana	JERRY McNERNEY, California
BRETT GUTHRIE, Kentucky	BRUCE L. BRALEY, Iowa
PETE OLSON, Texas	PETER WELCH, Vermont
DAVID B. McKINLEY, West Virginia	BEN RAY LUJAN, New Mexico
CORY GARDNER, Colorado	PAUL TONKO, New York
MIKE POMPEO, Kansas	JOHN A. YARMUTH, Kentucky
ADAM KINZINGER, Illinois	
H. MORGAN GRIFFITH, Virginia	
GUS M. BILIRAKIS, Florida	
BILL JOHNSON, Ohio	
BILLY LONG, Missouri	
RENEE L. ELLMERS, North Carolina	

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

JOHN SHIMKUS, Illinois

Chairman

PHIL GINGREY, Georgia	PAUL TONKO, New York
<i>Vice Chairman</i>	<i>Ranking Member</i>
RALPH M. HALL, Texas	FRANK PALLONE, JR., New Jersey
ED WHITFIELD, Kentucky	GENE GREEN, Texas
JOSEPH R. PITTS, Pennsylvania	DIANA DeGETTE, Colorado
TIM MURPHY, Pennsylvania	LOIS CAPPs, California
ROBERT E. LATTA, Ohio	JERRY McNERNEY, California
GREGG HARPER, Mississippi	JOHN D. DINGELL, Michigan
BILL CASSIDY, Louisiana	JANICE D. SCHAKOWSKY, Illinois
DAVID B. McKINLEY, West Virginia	JOHN BARROW, Georgia
GUS M. BILIRAKIS, Florida	DORIS O. MATSUI, California
BILL JOHNSON, Ohio	HENRY A. WAXMAN, California (<i>ex officio</i>)
JOE BARTON, Texas	
FRED UPTON, Michigan (<i>ex officio</i>)	

C O N T E N T S

	Page
Hon. John Shimkus, a Representative in Congress from the State of Illinois, opening statement	1
Prepared statement	3
Hon. Paul Tonko, a Representative in Congress from the State of New York, opening statement	3
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement	5
Prepared statement	6
Hon. Henry A. Waxman, a Representative in Congress from the State of California, opening statement	6

WITNESSES

James Jones, Assistant Administrator, Office of Chemical Safety and Pollu- tion Prevention, Environmental Protection Agency	8
Prepared statement	10
Answers to submitted questions	174
Calvin Dooley, President and Chief Executive Officer, American Chemistry Council	48
Prepared statement	50
Beth Bosley, President, Boron Specialties, LLC, On Behalf of the Society of Chemical Manufacturers and Affiliates	64
Prepared statement	66
Mark Greenwood, Principal, Greenwood Environmental Counsel, PLLC	70
Prepared statement	72
Len Sauers, Vice President, Global Sustainability, Product Safety and Regu- latory Affairs, the Proctor & Gamble Company	94
Prepared statement	96
Steven J. Goldberg, Vice President and Associate General Counsel, Regu- latory and Government Affairs, BASF Corporation	103
Prepared statement	105
Michael Moore, a State Senator from the Commonwealth of Massachusetts, On Behalf of the National Conference of State Legislatures	111
Prepared statement	114
Andy Igrejas, Director, Safer Chemicals, Healthy Families	153
Prepared statement	155

SUBMITTED MATERIAL

Discussion Draft of H.R. ———, the Chemicals in Commerce Act, submitted by Mr. Shimkus ¹	
Discussion Draft of H.R. ———, the Chemicals in Commerce Act, with amendments, submitted by Mr. Shimkus ²	

¹The draft bill is available at <http://cradmin.clerk.house.gov/repository/IF/IF18/20140429/102160/BILLS-113pjh-TheChemicalsInCommerceAct.pdf>.

²The draft bill with amendments is available at <http://cradmin.clerk.house.gov/repository/IF/IF18/20140429/102160/BILLS-113pjh-DraftsComparisonofTheChemicalsInCommerceAct.pdf>.

- Letter of April 28, 2014, from Kevin H. Rhodes, President and Chief Intellectual Property Counsel, 3M Innovative Properties Company, to Mr. Shimkus and Mr. Tonko, submitted by Mr. Shimkus³
- Letter of April 17, 2014, from Eric T. Schneiderman, New York State Attorney General, et al., to Mr. Shimkus and Mr. Tonko, submitted by Mr. Shimkus³
- Letter of April 29, 2014, from Linda Lipsen, Chief Executive Officer, American Association of Justice, to Mr. Shimkus and Mr. Tonko, submitted by Mr. Shimkus³
- Letter of April 3, 2014, from Dominique Browning, Co-Founder and Senior Director, Moms Clean Air Force, to Mr. Shimkus, et al., submitted by Mr. Shimkus³
- Letter of April 16, 2014, from Elena Rios, President and CEO, National Hispanic Medical Association, to Mr. Shimkus and Mr. Tonko, submitted by Mr. Shimkus³
- Letter of April 1, 2014, from Michael A. Lenoir, President, National Medical Association, to Mr. Shimkus, et al., submitted by Mr. Shimkus³
- Letter of March 28, 2014, from Georges Benjamin, Executive Director, American Public Health Association, to Mr. Shimkus and Mr. Tonko, submitted by Mr. Shimkus³
- Letter of April 28, 2014, from Advocate Health Care, et al., to Mr. Shimkus and Mr. Tonko, submitted by Mr. Shimkus³
- Letter of April 28, 2014, from Pamela Miller, Executive Director, Alaska Community Action on Toxics, et al., to Mr. Shimkus, submitted by Mr. Shimkus³
- Letter of April 28, 2014, from Mr. Waxman and Mr. Tonko to Mr. Shimkus, submitted by Mr. Shimkus³
- Statement of April 27, 2014, by NORA, An Association of Responsible Recyclers, submitted by Mr. Shimkus³

³The letters and the NORA statement are available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=102160>.

THE CHEMICALS IN COMMERCE ACT

TUESDAY, APRIL 29, 2014

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

The subcommittee met, pursuant to call, at 10:17 a.m., in room 2123 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

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

Staff present: Nick Abraham, Legislative Clerk; Charlotte Baker, Deputy Communications Director; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment and the Economy; Tina Richards, Counsel, Environment; Chris Sarley, Policy Coordinator, Environment and the Economy; Tom Wilbur, Digital Media Advisor; Phil Barnett, Democratic Staff Director; Alison Cassady, Democratic Senior Professional Staff Member; Greg Dotson, Democratic Staff Director, Energy and the Environment; Caitlin Haberman; Democratic Policy Analyst; Ryan Schmit, Democratic EPA Detailee; and Alexandra Teitz, Democratic Senior Counsel, Energy and the Environment.

Mr. SHIMKUS. I would like to call the hearing to order and recognize myself for 5 minutes for my opening statement.

Since our March 12 hearing on the original discussion draft of the Chemicals in Commerce Act, we have been working on a bipartisan basis to find common—oh, my apologies. My apologies. My ranking member is not here. I was just busy. If Jerry would shut off my time? Again, my apologies to my colleagues. I was anxious to get started. So I will now open—start again my opening statement for this hearing.

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

Since our March 12 hearing on the original discussion draft of the Chemicals in Commerce Act, we have been working on a bipartisan basis to find common ground. The revised discussion draft before you today contains several significant changes from the earlier version. I won't itemize them now, but I will mention a few highlights.

In Section 4, we have added new authority for EPA to require the development of new hazard and exposure information for pri-

ority designation purposes. In Section 5, instead of requiring EPA to grant exemptions for byproducts from Section 5 notice requirements, the new draft gives the EPA discretion to decide whether to grant such an exemption. Section 6 includes several important changes. The draft now requires EPA to evaluate the risk of harm that a chemical substance poses to human health or the environment based upon four specific factors. One is the nature and magnitude of risk. Two is important—the impact on potentially exposed subpopulations. Three is whether harms has occurred. And, four, the probability that harm will occur from use of a chemical substance.

The new draft also makes it explicit that in making such risk evaluations, EPA is not to consider economic costs or benefits. Section 6 also now includes a new alternative risk evaluation option for EPA to determine, at any time, that a chemical not designated as a high priority will not present a risk of harm in the absence of Section 6 restrictions on it. The section also now adds deadlines for EPA to make action on existing individual chemicals. EPA must complete a risk evaluation within 4 years after designating a chemical as high priority, and must promulgate any restrictive rule on an existing chemical within 3 years after finishing the risk evaluation. The revised draft would allow for extensions to factor in additional information, but the total of all extensions could not exceed 3 years.

With respect to preemption, we changed the effect of an EPA designation of a chemical substance as low priority. In the previous draft, a low-priority designation would have preempted any State regulation of a chemical substance. The revised draft limits the preemptive effect of a low-priority designation to State regulations established after the low priority designation, leaving in place State regulations in effect when the low-priority designation is made.

We also want to ensure we are using a strong scientific process, which is why the revised draft streamlines the science and information quality provisions of the bill. Specifically, details about science, including a definition of “best available science” and some details on information, quality requirements are replaced by codification of five science assessment factors currently used administratively by the EPA. The revised draft also clarifies which decisions under TSCA must be made based on the weight of such scientific evidence. Today, we will get the reaction of the administration, and we welcome back our friend, Jim Jones, Assistant Administrator of the EPA, just for that purpose. We will also hear from a variety of stakeholders, many of whom will have to live with the Chemicals in Commerce Act once it becomes law.

I appreciate all of our committee colleagues who have put so much time and effort into this legislative effort. TSCA reform is neither easy nor simple, and there is still no guarantee that we will succeed in forging a consensus bill this year. All I can promise is my best effort, working directly with my colleagues on both sides of the aisle to get there.

And with that, I would—I have a couple—a minute left. No one seeking recognition on my side? I yield back my time and recognize Ranking Member Mr. Tonko from New York.

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

Since our March 12 hearing on the original discussion draft of the Chemicals in Commerce Act we've been working on a bipartisan basis to find common ground. The revised discussion draft before you today contains several significant changes from the earlier version. I won't itemize them now, but I will mention a few highlights.

In Section 4 we added new authority for EPA to require the development of new hazard and exposure information for priority designation purposes.

In Section 5, instead of requiring EPA to grant exemptions for byproducts from section 5 notice requirements, the new draft gives EPA discretion to decide whether to grant such an exemption.

Section 6 includes several important changes. The draft now requires EPA to evaluate the risk of harm a chemical substance poses to human health or the environment based upon four specific factors:

- Nature and magnitude of the risk;
- Impact on potentially exposed subpopulations;
- Whether harm has occurred; and
- Probability that harm will occur from use of a chemical substance.

The new draft also makes it explicit that in making such risk evaluations EPA is not to consider economic costs or benefits.

Section 6 also now includes a new Alternative Risk Evaluation option for EPA to determine, at any time, that a chemical not designated as a high priority will not present a risk of harm in the absence of section 6 restrictions on it.

The Section also now adds deadlines for EPA to take action on existing individual chemicals. EPA must complete a risk evaluation within 4 years after designating a chemical as high priority, and must promulgate any restrictive rule on an existing chemical within 3 years after finishing the risk evaluation. The revised draft would allow for extensions to factor in additional information but the total of all extensions could not exceed 3 years.

With respect to preemption, we changed the effect of an EPA designation of a chemical substance as low priority. In the previous draft a low-priority designation would have pre-empted any State regulation of a chemical substance. The revised draft limits the preemptive effect of a low-priority designation to State regulations established after the low-priority designation, leaving in State regulations in effect when the low priority designation is made.

We also want to ensure we are using a strong scientific process, which is why the revised draft streamlines the science and information quality provisions of the bill. Specific details about science, including a definition of "best available science" and some details on information quality requirements, are replaced by codification of five science assessment factors currently used administratively by EPA.

The revised draft also clarifies which decisions under TSCA must be made based on the weight of such scientific evidence.

Today we'll get the reaction of the administration, and we welcome back our friend, Jim Jones, Assistant Administrator of EPA, for just that purpose. We'll also hear from a variety of stakeholders, many of whom will have to live with the Chemicals in Commerce Act once it becomes law.

I appreciate all of our committee colleagues who have put so much time and effort into this legislative effort. TSCA reform is neither easy nor simple, and there is still no guarantee that we will succeed in forging a consensus bill this year. All I can promise is my best effort working directly with my colleagues on both sides of the aisle to get there.

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

Mr. TONKO. Thank you, Mr. Chair, for holding this hearing on the discussion draft for TSCA reform that was released last week.

At the last hearing, we heard from witnesses from industry and the public health community on the initial proposal for revising TSCA. Initial reviews from industry witnesses were mixed but mostly favorable. The views of the public health, labor and environmental community were very critical. We have had a lot of helpful

testimony from our earlier hearings. Our staffs have been meeting for several months now. And of course, we have 40 years of experience with the existing law.

While this new discussion draft incorporates some new language based on the ongoing discussions, it reflects very little progress on the core issues and problems with the Federal chemicals management program under TSCA. It does not incorporate changes to address the major areas of concern that Democrats have raised. In short, it is disappointing.

I am willing to keep working on this. And I know the other Democratic members who are engaged in this process are also willing to continue. But time is short. We have little time left in this Congress, and we are going to have to engage in a more productive process if the goal is to produce a bill with real potential to become law.

This discussion draft falls far short of providing the Environmental Protection Agency with the authorities they need to evaluate the potential risks associated with chemicals currently in commerce or those that are entering the market for the first time.

At our last hearing, all the witnesses indicated that the safety standard in the bill should be determined on the basis of health and environmental information alone. Determining how you meet the standard, risk management should incorporate information about cost and benefits associated with alternate ways to reduce a chemical's risks. This draft does not achieve that necessary distinction. What happened to the safety determination? The public does not have confidence in this program. A revision of TSCA must restore public confidence in the safety of chemical products. Public confidence is indeed good for business, essential for business.

The stated purpose of the bill is to provide for the safe and efficient flow of chemicals in interstate and foreign commerce. But once you read beyond the findings, the word safety is not mentioned again until the section of the draft dealing with confidential business information. In that context, there is more emphasis on protecting intellectual property than ensuring that adequate health and safety information are available to risks or respond to an emergency.

Mr. Chair, I hoped for more progress by this points. And I am sure we all did. But this proposal does more to maintain the status quo than it does to move us forward. In some respects, it weakens current law. The draft does not reflect compromise or balance the desires of all stakeholders. A balanced approach is needed to garner broad-based support. Of course, as the majority, you can find the votes to move a bill forward. But a partisan bill that does not incorporate even the most modest recommendations of the public health and environmental communities will not become law. A bill that does not provide EPA with the authorities needed to ensure that chemicals in commerce are safe, authorities that independent analyses by the Government Accountability Office has recommended, will not become law. A bill that broadly preempts State's authorities to protect their citizens will not become law. There is still time to produce a good bill.

As I said earlier, I am willing to continue working on this with you. I believe the reform of TSCA is a worthy effort that we can

craft legislation that would be supported by a majority of our committee's membership. I know the Democratic members want to keep working toward a compromised bill that we can support, that will be supported by this administration and the public interest community and industry, and that has a chance to become law. Let us get back to work on this.

We have been very fortunate in having excellent witnesses on this topic. I look forward to today's testimony, and I hope that today's witnesses will provide us with additional suggestions on how to achieve a bill that will serve the public and serve this—the industry. Thank you all for participating in the important hearing. Again, Mr. Chair, thank you for hosting this hearing.

Mr. SHIMKUS. I thank my colleague. I now turn to 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.

You know, our work to reform TSCA indeed has come a long, long way. Member interest, direct involvement on a bipartisan basis has been encouraging and helpful. And I understand that we are not quite there yet. But today, we are going to get some constructive input from the administration, which is vital on any issue as important and as complex as TSCA reform.

While we made changes from our earlier draft to the legislation, our overarching objectives remain the same. We want to reinforce public confidence in the safety of chemical substances contained in a wide variety of products that we encounter every single day. And we want to ensure the free flow of commerce among States and with our trading partners.

The key focus of the legislation is on so called existing chemicals. These include the thousands of chemicals that have been on the market for decades, which have not gone through the TSCA new chemical review process. Some of these are particularly high priority, especially given human exposure to them. The draft legislation before us today is aimed at initiating a systematic process to review these chemicals and determine which uses of them are safe, and whether or not we need any requirements or restrictions.

The workload requires both a high level of expertise and effective program management at the EPA. That is why we are especially glad to have Assistant Administrator Jim Jones today with us. We appreciate this technical assistance that you have provided thus far, and want to continue working closely with your agency as we complete work on this legislation.

We also welcome our stakeholder panel. We need to hear from them how some of our ideas for structuring a legislation will play out in the real world. Does it reinforce public confidence in chemical safety? Does it encourage innovation and economic growth? We welcome constructive suggestions.

I particularly want to thank Mr. Shimkus for his leadership on this issue and efforts to find bipartisan common ground. The law has not been updated in nearly 40 years. It has been a very challenging task. But this draft bill gets us closer towards our objective

of a commonsense law that indeed does protect the public health and further encourages our manufacturing renaissance.

Yield back.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Our work to reform TSCA has come a long way. Member interest and direct involvement, on a bipartisan basis, has been encouraging and helpful. Today we will get some constructive input from the administration, which is vital on any issue as important and complex as TSCA reform.

While we have made changes from our earlier drafts of the legislation, our overarching objectives remain the same: we want to reinforce public confidence in the safety of chemical substances contained in a wide variety of products we encounter every day, and we want to ensure the free flow of commerce among States and with our trading partners.

A key focus of the legislation is on so-called "existing chemicals." These include the thousands of chemicals that have been on the market for decades, which have not gone through the TSCA newchemical review process. Some of these chemicals are particularly high priority, especially given human exposure to them. The draft legislation before us today is aimed at initiating a systematic process to review those chemicals and determine which uses of them are safe and whether we need any requirements or restrictions.

That workload requires both a high level of expertise and effective program management at the Environmental Protection Agency. That's why we are especially glad to have Assistant Administrator Jim Jones with us today. We appreciate the technical assistance EPA has provided thus far, and we want to continue working closely with the Agency as we complete work on this legislation.

We also welcome our stakeholder panel. We need to hear from them how some of our ideas for structuring the legislation will play out in the real world. Does it reinforce public confidence in chemical safety? Does it encourage innovation and economic growth? We welcome constructive suggestions.

I thank Mr. Shimkus for his leadership on this issue and efforts to find bipartisan common ground. This law has not been updated in nearly 40 years. It has been a challenging task, but this draft bill gets us even closer toward our objective of a commonsense law that protects the public health and further encourages our manufacturing renaissance.

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.

When the subcommittee convened in March to examine the chairman's proposal to reform the Toxic Substances Control Act, I said I wanted to work with the majority to see if we could reach a bipartisan agreement. My Democratic colleagues and I have been willing to be creative and bridge differences to make progress on this issue. We know that the Nation's chemical safety net is broken and inadequate.

Unfortunately, if the goal is a broadly supported bipartisan bill, this process is currently failing. To reach agreement, we need to acknowledge that industry cannot get its wish list. No one can. Environmental groups, public health organizations, labor unions and many others all have important interests at stake. And if we want a law, we will have to work together to address those concerns.

Over the last few months, our staffs have met periodically to discuss TSCA reform. But these discussions have never turned into

negotiations. The majority has wanted to write the bill unilaterally. And there has never been an attempt to work out bill language together. It is the chairman's prerogative to handle the subcommittee's business in this way, but I think it is a mistake.

Let us look at where the stakeholders are. Since our last hearing, six additional industry trade associations have announced their support for this process, though not necessarily for the draft itself. If the goal is building industry support, well, we are making progress. But the public health groups remain in strong opposition to the draft. They say the draft won't protect public health and the environment, and in fact remains weaker than even the status quo of chemical regulation. Key unions and environmental groups share their concerns. And State governments are raising serious objections as well.

A key premise of TSCA reform, which has been supported by almost all the stakeholders, is that the "cost-benefit" standard for regulating dangerous chemicals under current law is unworkable and should be replaced by a risk-based approach. But this draft retains the cost-benefit standard, leaving American families, and especially children, without adequate protection from the adverse effects of toxic chemicals.

The draft contains sweeping preemption provisions that will preempt popular State and local laws throughout the country, including recently enacted laws relating to hydraulic fracturing. Although it has been requested a number of times, the majority still hasn't explained which State and local laws they intend to target for preemption. The bill would even overturn recent reforms made by EPA to enhance transparency. Under these provisions, EPA would be prohibited from revealing the identity of chemicals that cause serious health and environmental harm. This will harm companies that are marketing safer consumer products and make it difficult, if not impossible, for consumers to protect themselves from toxic exposures.

I want TSCA legislation to pass. The President's Cancer Panel found that reform of the Toxic Substances Control Act is critically needed to reduce the incidence and burden of cancer in this country. Chemical exposures are ubiquitous in our society. According to the Centers for Disease Control, their most recent data says that 75 percent of people tested have the commonly used chemical triclosan in their bodies. That chemical has been shown to interfere with hormone levels in animals. Seventy-five percent of people tested have this chemical in their body. The CDC also found five different PBDEs in more than 60 percent of 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.

We need a law to protect the public from these exposures. But this process isn't working. We need to bridge our differences, not accentuate them. I am not ready to give up, but I do have a suggestion. I think we should consider scaling back the ambition of this effort. Let us focus on where we can find agreement. Let us see if we can return to the drawing board and come up with a streamlined proposal that can truly be bipartisan.

I know I am echoing the sentiments expressed by the Ranking Member of the subcommittee. And, Mr. Chairman, I hope you will take them to heart. Yield back my time.

Mr. SHIMKUS. The gentleman yields back his time, thanks you for your comments. The Chair now recognizes the Honorable Jim Jones, Assistant Administrator, Office of Chemical Safety and Pollution Prevention of the United States Environmental Protection Agency. Your full statement's in the record. You have 5 minutes. And welcome.

**STATEMENT OF JAMES JONES, ASSISTANT ADMINISTRATOR,
OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVEN-
TION, ENVIRONMENTAL PROTECTION AGENCY**

Mr. JONES. Good morning, Chairman Shimkus, Ranking Member Tonko, and other members of the subcommittee. Thank you for the opportunity to discuss reform of chemicals management in the United States.

It is clear that there is wide agreement on the importance of ensuring chemical safety and restoring the public's confidence that chemicals used in the products they and their families use are safe. This administration also believes it is crucial to modernize and strengthen the Toxic Substances Control Act to provide the EPA with the tools necessary to achieve these goals and ensure global leadership in chemicals management.

We continue to be encouraged by the interest in TSCA reform indicated by the introduction of several bills in recent years, the hearings on TSCA-related issues such as this one that are being held, and the bipartisan discussions that are taking place. Key stakeholders share common principles on how best to improve our chemicals management programs.

We at EPA remain committed to working with this committee and others in both the House and the Senate, members of the public, the environmental community and the chemical industry, the States, and other stakeholders to improve and update TSCA.

Chemicals are found in almost everything we buy and use. They can be essential for our health, our wellbeing and our prosperity. However, we believe it is equally essential that chemicals are safe. While we have a better understanding of the environmental impacts, exposure pathways and health effects that some chemicals can have than we did when TSCA was passed, under the existing law it is challenging to act on that knowledge.

TSCA gives the EPA jurisdiction over chemicals produced and used in the United States. However, unlike the laws applicable to drugs and pesticides, TSCA does not have a mandatory program where the EPA must conduct a review to determine the safety of existing chemicals. In addition, TSCA places burdensome legal and procedural requirements on the EPA before the Agency can request the generation and submission of health and environmental effects data on existing chemicals. It is also proven challenging to take action to limit or ban chemicals that the EPA has determined to pose significant health concerns.

The EPA believes it is critical that any update to TSCA includes certain components. In September of 2009, the administration announced principles to update and strengthen TSCA. These include

the need to provide the Agency with tools to quickly and efficiently obtain information from manufacturers that is relevant to determining the safety of chemicals. The EPA should also have clear authority to assess chemicals against the risk-based safety standard and to take risk management actions when chemicals do not meet the safety standard, with flexibility to consider children's health, economic costs, social benefits and equity concerns.

The principles further state that both chemical manufacturers and EPA should assess and act on priority chemicals, both existing and new, in a timely manner. This means that the EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear and enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive subpopulations. Legislation should also provide the EPA with tools to ensure the protections put in place are carried out and provide a level playing field for the companies that comply.

On April 22, 2014, the revised version of the Chemicals in Commerce Act discussion draft was released by Chairman Shimkus. While the administration has not yet developed a formal position on the discussion draft, there are several important observations that I would like to offer. As stated in the principles above, we feel strongly that updated legislation should include improvements that will provide the EPA with the ability to make timely decisions if the chemical poses a risk and the ability to take actions appropriate to address that risk. The current discussion draft does not include a mechanism that would provide for the timely review of the existing chemicals that may pose a concern, which we believe is vitally important to assuring the American public that chemicals they find in the products they buy are safe.

As stated earlier, the use of Section 6 of TSCA to limit or ban a chemical that poses a significant risk has been a major challenge. By including a standard very similar to the current TSCA Section 6 authorities, the bill fails to address another key element of meaningful chemical safety reform. In the administration's third principle, which states that when addressing chemicals that do not meet the safety standard, risk management decisions should take into account cost and availability of substitutes, as well as sensitive subpopulations and other factors. The draft bill's unreasonable risk standard does not align with the approach delineated in the principles.

The new chemicals provision in Section 5 of the current discussion draft also does not align with the principles in that they do not require that the EPA conclude that new chemicals are safe and do not endanger public health and the environment, elements of principle two and another keystone of credible chemicals management.

Mr. Chairman, thank you again for your leadership on TSCA reform. I would be happy to answer any questions that you or members of the subcommittee have.

[The prepared statement of Mr. Jones follows:]

**TESTIMONY OF
JAMES JONES
ASSISTANT ADMINISTRATOR
OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

April 29, 2014

Good morning Chairman Shimkus, Ranking Member Tonko, and other members of the Subcommittee. Thank you for the opportunity to discuss reform of chemicals management in the United States.

It is clear that there is wide agreement on the importance of ensuring chemical safety and restoring the public's confidence that the chemicals used in the products they and their families use are safe. This Administration also believes it is crucial to modernize and strengthen the Toxic Substances Control Act (TSCA) to provide the EPA with the tools necessary to achieve these goals and ensure global leadership in chemicals management.

We continue to be encouraged by the interest in TSCA reform indicated by the introduction of several bills in recent years, the hearings on TSCA related issues that are being held, and the bipartisan discussions that are taking place. Key stakeholders share common principles on how best to improve our chemicals management programs. We at the EPA remain committed to working with this committee and others in both the House and Senate, members of the public,

the environmental community, the chemical industry, the states, and other stakeholders to improve and update TSCA.

Chemicals are found in almost everything we buy and use. They can be essential for our health, our well being, and our prosperity. However, we believe that it is equally essential that chemicals are safe. While we have a better understanding of the environmental impacts, exposure pathways, and health effects that some chemicals can have than we did when TSCA was passed, under the existing law it is challenging to act on that knowledge.

TSCA gives the EPA jurisdiction over chemicals produced and used in the United States. Unlike the laws applicable to drugs and pesticides, TSCA does not have a mandatory program where the EPA must conduct a review to determine the safety of existing chemicals. In addition, TSCA places burdensome legal and procedural requirements on the EPA before the agency can request the generation and submission of health and environmental effects data on existing chemicals.

While TSCA was an important step forward in 1976, it has over the years fallen behind the industry it is intended to regulate. TSCA has also proven a challenging tool for providing the protection against chemical risks that the public rightfully expects. A strong reauthorization measure would enable us to significantly strengthen the effectiveness of this outdated law.

When TSCA was enacted, it grandfathered in, without any evaluation, about 60,000 chemicals in commerce at the time. In addition, the statute did not provide adequate authority for the EPA to

reevaluate existing chemicals as new concerns arose or science was updated. The law also failed to grant the EPA full and complete authority to compel companies to provide toxicity data.

It has also proven challenging in some cases to take action to limit or ban chemicals that the EPA has determined pose a significant health concern. For example, in 1989, after years of study and with strong scientific support, the EPA issued a rule phasing out most uses of asbestos in products. Yet, a federal court overturned most of this action because it found the rule had failed to comply with the requirements of TSCA.

As a result, in the more than three and a half decades since the passage of TSCA, the EPA has only been able to require testing on just a little more than 200 of the 84,000 chemicals listed on the TSCA Inventory, and has regulated or banned only five of these chemicals under TSCA's section 6 authority to ban or limit chemicals that pose an unreasonable risk.

TSCA should be updated and strengthened, including providing the appropriate tools to protect the American people from exposure to harmful chemicals. The EPA believes that it is critical that any update to TSCA include certain components.

In September 2009, the Administration announced the attached principles to update and strengthen TSCA. These include the need to provide the agency with the tools to quickly and efficiently obtain information from manufacturers that is relevant to determining the safety of chemicals. The EPA also should have clear authority to assess chemicals against a risk-based safety standard and to take risk management actions when chemicals do not meet the safety

standard, with flexibility to consider children's health, economic costs, social benefits, and equity concerns. The principles further state that both chemical manufacturers and the EPA should assess and act on priority chemicals, both existing and new, in a timely manner. This means that the EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive populations. Legislation also should provide the EPA with tools to ensure that protections put in place are carried out and provide a level playing for the companies that comply.

On April 22, 2014, a revised version of the "Chemicals in Commerce Act" discussion draft was released by Chairman Shimkus. According to materials released by the Subcommittee accompanying an earlier draft, the legislation seeks to provide needed updates and improvements to current law. The current discussion draft includes provisions on the regulation of new chemicals, protections for Confidential Business Information, and many provisions on existing chemicals, including the process for the EPA to obtain new information, the process for prioritizing chemicals for review, standards to determine if a chemical poses an unreasonable risk, the role of state governments in managing chemicals, and other miscellaneous provisions.

While the Administration has not yet developed a formal position on the discussion draft of the bill, there are several important observations that I would like to offer. As stated in the principles above, we feel strongly that updated legislation should include improvements that will provide

the EPA with the ability to make timely decisions if a chemical poses a risk and the ability to take action, as appropriate, to address that risk.

The Administration principles state that priority chemicals should be assessed and acted upon in a timely manner, with clear, enforceable and practicable deadlines for completion of chemical reviews. The current discussion draft does not include a mechanism that would provide for the timely review of existing chemicals that may pose a concern, which we believe is vitally important to assuring the American public that the chemicals they find in the products they buy and use are safe.

As stated earlier, the use of section 6 of TSCA to limit or ban a chemical that poses a significant risk has been a major challenge. By including a standard very similar to the current TSCA section 6 authorities, the draft bill fails to address another key element of meaningful chemical safety reform. Administration Principle 1 states that chemicals should be reviewed against a safety standard based on sound science and risk-based criteria protective of human health and the environment. By this, we mean that assessment of safety should not include consideration of costs or the availability of substitutes. We address those issues in Principle 3, which states that when addressing chemicals that do not meet the safety standard, risk management decisions should take into account cost and availability of substitutes, as well as sensitive subpopulations and other factors. The draft bill does not align with the approach delineated in the principles.

The new chemicals provisions in Section 5 of the current discussion draft also do not align with the principles, in that they do not require that the EPA conclude that new chemicals are safe and

do not endanger public health or the environment, elements of Principle 2 and another keystone of a credible chemical safety program. In addition, the risk management authorities for new chemicals in the current discussion draft are weaker than those in TSCA.

Mr. Chairman, thank you again for your leadership on TSCA reform. I will be happy to answer any questions you or other members may have.

APPENDIX: Essential Principles for Reform of Chemicals Management Legislation

The U.S. Environmental Protection Agency (EPA) is committed to working with the Congress, members of the public, the environmental community, and the chemical industry to reauthorize the Toxic Substances Control Act (TSCA). The Administration believes it is important to work together to quickly modernize and strengthen the tools available in TSCA to increase confidence that chemicals used in commerce, which are vital to our Nation's economy, are safe and do not endanger the public health and welfare of consumers, workers, and especially sensitive sub-populations such as children, or the environment.

The following Essential Principles for Reform of Chemicals Management Legislation (Principles) are provided to help inform efforts underway in this Congress to reauthorize and significantly strengthen the effectiveness of TSCA. These Principles present Administration goals for updated legislation that will give EPA the mechanisms and authorities to expeditiously target chemicals of concern and promptly assess and regulate new and existing chemicals.

Principle No. 1: Chemicals Should Be Reviewed Against Safety Standards That Are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA With the Necessary Information to Conclude That New and Existing Chemicals Are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations.

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 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.

Mr. SHIMKUS. Thank you very much, Mr. Jones. And, before I start, we gave your staff a head's up. And I think they have a copy of the draft bill. And I would ask that they give that to you, as I will probably refer to some pages in my opening questions. And I would like to recognize myself for the first 5 minutes.

Your written testimony suggests the discussion draft does not have a risk-based standard for review of chemicals that does not consider cost or benefits, and suggests that the standard in the discussion draft is very similar to current Section 6.

Let us take a look at Section 6(b) in the discussion draft. That is page 35, lines 15 to 22. And again, we gave your folks a heads up that we would be doing this.

[The discussion drafts are available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=102160>.]

So, in the old draft, that was a "safety determination." The new draft puts focus on risk by calling it more appropriately a "risk evaluation." Do you agree that the new draft takes the phrase of—and I quote—"unreasonable risk" out of Section 6(b), don't you?

Mr. JONES. Out of Section 6(b), I believe that that is accurate.

Mr. SHIMKUS. So that is a yes?

Mr. JONES. Yes.

Mr. SHIMKUS. Instead, Section 6(b) of the discussion draft requires the EPA to evaluate a chemical for significant risk of harm to human health or the environment, isn't that correct? That is page 35, line 15 to 22 also.

Mr. JONES. That is correct for Section 6(b). Yes.

Mr. SHIMKUS. Thank you. And it lays out explicit factors to weigh in making the risk evaluation, is that correct?

Mr. JONES. That is correct.

Mr. SHIMKUS. And that on page 37, line 16, and page 38, line 10, EPA is directed not to consider costs and benefits at this stage, isn't that correct?

Mr. JONES. That is correct.

Mr. SHIMKUS. And that on page 38, line 11 through 23, Section 6(b) includes requirements that EPA consider the likely impact of the chemical to potentially expose subpopulations, isn't that correct?

Mr. JONES. That is correct.

Mr. SHIMKUS. So there are some things that you like about this revised draft?

Mr. JONES. Yes. Absolutely, there are things that I like about—

Mr. SHIMKUS. Thank you. I think the surprising thing was in your opening statement, there was no acknowledgment and some of my colleagues on the other side make no acknowledgment of some significant movements that have been made in some of these areas. Your written statement suggests that the discussion draft version of Section 5 is weaker than existing Section 5. And we hear that from my friends on the other side. So isn't the "may present determination" in Section 5(c)(3) of the discussion draft—that is page 22—the exact same as what is contained in current Section 5(e)?

Mr. JONES. Well, that may well be the case. I don't have existing TSCA in front of me. But if you would like, I could talk about why I think that—

Mr. SHIMKUS. Well, is "may present" in this draft, and is "may present" in current law in Section 5?

Mr. JONES. It is.

Mr. SHIMKUS. OK.

Mr. JONES. But the subsequent findings that the EPA needs to make—

Mr. SHIMKUS. Well, that is what we will follow-up on in these questions. Isn't the Section 5 rulemaking authority substantially similar to what EPA currently has available to it under Section 5(e) or 5(f) on page 23?

Mr. JONES. I think the existing TSCA Section 5(e) standard allows the Agency much more flexibility to prevent a chemical from getting on the market—

Mr. SHIMKUS. So your testimony is that this is where it might be weaker, because you do not think that this language that we have is substantially similar to current Section 5?

Mr. JONES. That is correct.

Mr. SHIMKUS. OK. And we would then ask for you what kind of language would the EPA propose to clean that up?

Mr. JONES. Yes. Sure.

Mr. SHIMKUS. Because with all due respect to my friends on the minority side, we have been asking for months for language and never received any language from anyone on the minority side. So it is tough to negotiate when we propose language and we don't receive any in return.

Let me go to—please state whether you support or oppose the following policy choices in the discussion draft, expanding EPA's existing TSCA authority to require new testing by manufacturers and processors via rule, order or consent agreement. Does this draft do that?

Mr. JONES. Yes, it does.

Mr. SHIMKUS. And isn't order the ability to do an order—a significant improvement over current law and—

Mr. JONES. Yes.

Mr. SHIMKUS [continuing]. And previous drafts?

Mr. JONES. Yes, it is.

Mr. SHIMKUS. So that is a good thing?

Mr. JONES. Yes, it is.

Mr. SHIMKUS. All right. Thank you. And you are smiling. I like that. Providing this testing authority for prioritization if existing information is not sufficient, does this draft do that?

Mr. JONES. It does.

Mr. SHIMKUS. Another good thing?

Mr. JONES. That is a good thing. Yes.

Mr. SHIMKUS. Providing this testing authority for performing a risk evaluation on high-priority chemicals, does this draft do that?

Mr. JONES. Yes, it does that.

Mr. SHIMKUS. Providing this testing authority to ensure compliance with control measures for new and existing chemicals, does this draft do that?

Mr. JONES. You know, Chairman Shimkus, I can't remember specifically whether it does that, as I don't recall that.

Mr. SHIMKUS. OK. But you can see my line of—

Mr. JONES. Yes.

Mr. SHIMKUS. The answer is, we believe it does. My time has expired. I would like to know—I have two more questions. But I do not have time—I will let Mr. Tonko now ask questions for 5 minutes.

Mr. TONKO. Assistant Administrator Jones, there are many serious issues with this bill, but I would like to focus on the expansive preemption provisions. Later today, State Senator Michael Moore from the National Conference of State Legislators will testify that, and I quote, "States have enjoyed a long history of co-regulation with the Federal Government in environmental protection and have made sound policy decisions benefiting the American public." He goes on to say that the discussion draft will, and I quote, "strip State's residents of protections enacted by their elected officials." And again quote, "leave everyone more susceptible to increased harm from toxic chemicals." Mr. Jones, do you agree that the States play an important role in protecting human health and the environment from exposure to toxic chemicals?

Mr. JONES. I do agree with that.

Mr. TONKO. The preemption language in the discussion draft is sweeping in scope. We looked at the type of State or local laws and regulations that could be affected. The list is staggering. So, Mr. Jones, would you agree that the preemption language in this discussion draft is very broad?

Mr. JONES. I would agree it is very broad.

Mr. TONKO. In fact, this language is drafted so broadly that State and local regulations of hydraulic fracturing and the chemicals used in hydraulic fracturing could be preempted. Section 17 preempts State and local governments from establishing or implementing a law or regulation requiring the development or submission of information relating to a chemical substance. This could have serious consequences for State requirements for well operators to disclose the chemicals used in hydraulic fracturing fluids. So, Mr. Jones, do you agree that the preemption language could jeopardize State laws requiring the oil and gas industry to disclose the chemicals used in their hydraulic fracturing?

Mr. JONES. Yes, Congressman Tonko, I believe that 17(a)(1)(4) right off the bat will preempt some existing disclosure requirements. And then other elements of the provision would do it prospectively. So I think there will be some right off the bat that are preempted for some number of chemicals, and then prospectively there will be continuing additional chemicals preempted.

Mr. TONKO. Thank you. And what other—what about other States or local laws that are simply notices or disclosures about chemicals? It seems to me they would also be in question. Would you agree?

Mr. JONES. Yes.

Mr. TONKO. With respect to the identified problems with TSCA, lack of public confidence, lack of public information about chemicals, timely action to address chemical risks, would you say this

sweeping preemption provision is likely to do more or do less to address these issues?

Mr. JONES. I think that it will—over time, the role of States will be diminished. And I think that that will decrease the pressure on the Agency to move forward as aggressively as I think the drafters were hoping.

Mr. TONKO. And Section 17 preempts any State or local requirement that prohibits or restricts the use of a chemical substance for so called intended conditions of use. The bill includes disposal of a chemical as an intended use. As a result, this language could even override State or local laws that limit how drillers dispose of chemical fluid and waste water from hydraulic fracturing operations. In New York, for example, numerous counties have passed laws prohibiting out-of-State well operators from disposing of hydraulic fracturing waste water in county municipal water treatment plants, or using the waste water to treat local roadways in winter. Mr. Jones, are these the type of restrictions that could be preempted by this measure?

Mr. JONES. As I was saying earlier on some of the issues like notification, I think 17(a)(1)(B)(4) actually will do that for a number of chemicals. And then other provisions would—could do that prospectively, depending on decisions made at the EPA after the law was passed.

Mr. TONKO. Thank you. And since we have not received any specific examples of State and local regulations that are hampering the \$770 billion United States chemical business, I find this debate quite confusing. States have moved to regulate chemicals in response to public concern because the Federal program is not functioning properly. Instead of blocking the States from responding to public concerns about chemicals, I believe we should address the real problem of inadequate authorities from your Agency. Do you agree with that assessment?

Mr. JONES. I would agree with that.

Mr. TONKO. Frankly, with a stronger Federal program, I believe there would be less public pressure to enact State and local laws for chemical regulation. Public health, labor and environmental groups have stated that this draft would, and I quote, “curtail functioning State programs in exchange for a Federal program that will continue to be dysfunctional.” And I don’t think we ought to let that happen.

With that, Mr. Chair, I yield back.

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

Mr. LATA. Well, thank you very much, Mr. Chairman. And, Mr. Jones, thank very much for being with us today. I appreciate your testimony.

In your November 13 testimony, you testified that current TSCA places challenges—legal and procedural requirements—on the Agency before it can require industry to generate and submit the health and environmental effects information and data on existing chemicals. Does the Section 4 of the April discussion draft improve the Agency’s ability to require the submission of hazard and exposure data and information by authorizing the EPA to obtain it by rule, consent, agreement or issuing an order?

Mr. JONES. Yes, it does.

Mr. LATTA. You say it does. Thank you. Does the April discussion draft eliminate the need for EPA to find a substance poses an “unreasonable risk” before requiring new data to be developed?

Mr. JONES. That is correct. Yes.

Mr. LATTA. OK. And also in your testimony, you discuss how there are 84,000 chemicals listed on the TSCA inventory. And EPA’s most recent snapshot of chemicals actually in commerce from the 2012 chemical data reporting, the CDR roll, captured 7,674 chemicals from 2011. Do you believe that the 7,674 number is accurate of the current TSCA inventory, or where do you believe that number would be today?

Mr. JONES. Thanks. The 7,000 number are chemicals that are produced greater than 25,000 pounds per year at any given facility. The 84,000 number are those chemicals that have ever been on the inventory. So the actual number of chemicals in commerce would fall between those two. I think that the 7,000 number captures those that are produced at relatively large quantities. There are clearly going to be some number of compounds that are manufactured at less than 25,000 pounds or at a single facility that are just not required to report under the CDR.

Mr. LATTA. OK. And then when we talk about that 84,000 number, is that correct or is that misleading?

Mr. JONES. It depends on how one uses it. We don’t think it reflects the number of chemicals in commerce. It reflects the number of chemicals that ever have been placed on the TSCA inventory. So we think it doesn’t reflect the number of chemicals in commerce.

Mr. LATTA. OK. And then you also mentioned in your testimony on page 2, I saw that the 60,000 or so chemicals that were grandfathered in 1976. How long would you estimate it would take to evaluate those 60,000 chemicals?

Mr. JONES. Well, yes. That sort of goes back to your earlier observation about the 7,400 number.

Mr. LATTA. Um-hum.

Mr. JONES. I think that that represents the universe of chemicals we would want to keep our sights on first, because they are the ones that are being produced at relatively large quantities. And for that universe, I think it would take some time for the Agency to get through all that—

Mr. LATTA. Well, on an estimate, just—not just on the 60,000, but on that 7,674 number, how long—just say, you know, ballpark estimate would that take?

Mr. JONES. It would take several decades to get through a number of that size.

Mr. LATTA. OK. Like 30 years then, when you say several?

Mr. JONES. That’s not an—

Mr. LATTA. OK. Any idea—what would the cost be to do that evaluation on those—not on the 60,000. Now, we’re just going back to the 7,600.

Mr. JONES. So in the early years, because we are required to set priorities, we would be doing the harder things first. And so we would be doing fewer of them in early years. I think after we got through the first thousand or so, I think you would see the number we would complete in a given year could potentially increase very

dramatically so that you would see in the latter years a much higher number of chemicals being assessed than you would see in early years, even though you might have the same number of dollars being spent in any given year. We have not costed out what it would take to get through all of the chemicals. The discussion draft actually doesn't require us to operate at any pace. And so it would be hard to estimate what it would take to get through when you don't have a pace that you are mandated to work through.

Mr. LATTI. And also doesn't the State preemption under the discussion draft only kick in if EPA hasn't taken action on a particular chemical?

Mr. JONES. Well, that is the—and it may have been a drafting issue. I just don't—I don't know. But I have referred to it a number of times. And I am sorry if I am misstating it. But the provision in 17(a)(1)(B), and I believe it is (4), actually preempts a State if the Agency, before passage of the law, has issued an order, a consent agreement, or a rule under Sections 5 or 6. And that is a rather large universe of chemicals that is particular under Section 5. So again, I am not really sure what that provision was designed to do. But the way we are reading it, it preempts things from the date that the law passed for anything that already has a significant new use rule, anything that already has a consent agreement. Other than that provision, what you said, Congressman, is accurate. It is prospective action on the part of the EPA.

Mr. LATTI. Thank you very much. And, Mr. Chairman, my time has expired, and I yield back.

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

Mr. WAXMAN. Thank you, Mr. Chairman. For decades, the Toxic Substances Control Act has operated under an unreasonable risk standard, which requires EPA to perform a cost-benefit analysis to determine whether or not a chemical is to be regulated. This approach has proven unworkable. Only five chemicals have been regulated under Section 6 of TSCA since 1976.

Mr. Jones, you testified in November that EPA needs to have clear authority to assess chemicals against a risk-based safety standard and to take risk management actions when the chemicals do not meet that standard. Costs would still come into play in figuring out how best to regulate a chemical, but we shouldn't use cost to determine whether the public should be protected from a chemical exposure. Not only has EPA endorsed this risk-based approach, so have a broad range of stakeholders.

At our last hearing in March, there was unanimous agreement among the witnesses that chemicals should be held to a risk-based safety standard. Mr. Jones, does the revised draft use a risk-based safety standard, or does it maintain a cost-based approach to risk?

Mr. JONES. It, Congressman, takes a risk/cost balancing, which is pretty much the standard in TSCA right now.

Mr. WAXMAN. So if this language were enacted, EPA would have to balance the economic cost of regulating against the adverse health and environmental effects of a chemical before establishing any protections, is that right?

Mr. JONES. That is correct.

Mr. WAXMAN. I would like to explore how this would work in the real world. Let us say that this language is enacted and EPA evaluates a toxic chemical. Let us say that EPA determines that the chemical causes cancer. Before EPA would be able to take any action at all to limit the chemical's use in children's products, for example, EPA would need to weigh the cost to the industry of such action, is that right?

Mr. JONES. That is correct.

Mr. WAXMAN. So this proposal would require EPA to look at the cost to industry in determining whether to protect our kids from chemicals that cause cancer, is that accurate?

Mr. JONES. We would have to take into consideration the cost to industry and any broader societal costs as well.

Mr. WAXMAN. OK. I think many in the public would listen to this discussion and find this proposal morally questionable. I share those concerns, and we don't need to take this approach. Time and again, we have shown that when there is a clear goal for protecting health, industry has the creativity and know how to get the job done. I am also concerned whether the approach in this draft is even workable. Is EPA good at projecting industry innovation? Will EPA give the proper weight to industry costs?

Mr. JONES. That is a great question, Congressman. We tend to have a very difficult time predicting where innovation is going. So we often, almost always, will predict the cost in the absence of innovation, and then just straight line it out. Our experience, however, has shown that industry is incredibly innovative, and rarely do those costs hold over time. They typically drop off quite dramatically as industry innovates, and those costs go away.

Mr. WAXMAN. So as a result, when you look at the costs, you end up overstating those costs because you really can't predict whether they are going to be innovative enough to hold down the costs?

Mr. JONES. That is correct.

Mr. WAXMAN. Do you think that we can protect our kids and keep industry's costs manageable if we use a risk-based standard that sets a clear goal of protecting health and the environment?

Mr. JONES. I believe we can. Just to be clear, the administration principle thinks there should be risk-based standards, that cost should be a factor in how we achieve the standard. But it has a role, as opposed to having a balancing of trying to numerically quantify the monetary value of the benefits with the monetary value of the costs.

Mr. WAXMAN. But not in setting the standard itself?

Mr. JONES. In setting the standard, we think we need to have the flexibility to consider costs in the setting of the standard.

Mr. WAXMAN. But you would set the standard with the expectation that the standard would be met, and you are not looking at just what the industry says the cost will be because you can take into account if you have the flexibility that almost always in the environmental area that costs are less than what is predicted in the beginning?

Mr. JONES. The goal would always be to achieve the safety standard. We would want to be able to consider if the scenario where there is a very high cost for very marginal changes in safety that we may have a little lower bar in that kind of a context. We would

want—we would not want to be precluded from having a cost consideration.

Mr. WAXMAN. OK. Let me just say in closing, Mr. Chairman, that I think there is a consensus outside this room that the safety standard in TSCA should be risk-based. I am disappointed the draft doesn't reflect that consensus. I understand there will be a markup of this bill later in the month, and I hope we will be able to focus on areas of agreement and abandon these controversial proposals. Yield back my time. Thanks.

Mr. SHIMKUS. The gentleman yields back the time. The Chair now recognizes Chairman Emeritus Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman. We just heard from the chairman emeritus on the Democratic side, or the former chairman and the current ranking member. I am the former chairman, the chairman emeritus on the majority side. So you kind of get the good, the bad and the ugly here, I guess. Mr. Waxman seems to think that this discussion draft is too strong. And he talked about the risk-based standard approach that he would prefer. I think quite frankly Mr. Shimkus and Mr. Upton and their staffs are trying very hard to find the middle of the road approach. And I have some unease that maybe they are going too far to the left, quite frankly. But I understand what they are attempting to do. So you get both sides of it in these two rounds of questioning.

My first question to you as an Assistant Administrator of the Office of Chemical Safety, is that a Senate confirmation position, or is that a political appointee but not Senate confirmed?

Mr. JONES. It is a Senate confirmed position.

Mr. BARTON. It is Senate confirmed. And what did you do before you assumed this position?

Mr. JONES. I have been a career employee at the EPA until Administrator Jackson asked me if I would be interested in the Senate confirmed position—

Mr. BARTON. So you have a—I would assume you have a technical background in this field in—

Mr. JONES. I actually have a policy and economics background.

Mr. BARTON. OK. OK. I didn't—I wasn't here when you gave your opening statement. I would assume that EPA either has no position or is moderately opposed to this, is that fair?

Mr. JONES. We have identified a number of areas that we think are not in alignment with the administration principles that we have pointed out.

Mr. SHIMKUS. If the gentleman would yield just for a second? But—and being fair, you also identified a lot of "yes" answers to my questions on positive movements of this bill, would that be correct, Mr. Jones?

Mr. JONES. That is correct. Yes.

Mr. SHIMKUS. Thank you.

Mr. BARTON. Well, I would hope so. Well, given how hard you are working to make it acceptable, I think that is a good thing. If this—if what the chairman has suggested in this—these proposed changes stick, what would the recommendation be in terms of passage if we get it out of committee and to the floor?

Mr. JONES. Well—

Mr. BARTON. Do you think the administration would be—

Mr. JONES. And I think the administration would like to see a bill that aligns with its principles. And I think that the areas where I have pointed out that are not in alignment are a big enough deal that there would be—the administration would have some problems with the ones—

Mr. BARTON. What is the biggest problem in the discussion draft?

Mr. JONES. I think the safety standard is probably the biggest one. The new chemicals issue I pointed out is probably second. And then the pace of the Agency working on existing chemicals, are probably the biggest areas.

Mr. BARTON. If you go out into the real world, I think that the industry that TSCA regulates have really, really tried to do the right thing. Where do you see the biggest problem? Is it noncompliance with the existing regulations, or is it new—just is it the new chemicals coming online that are the biggest problem, or are existing chemicals not—the industry not properly evaluating under current law?

Mr. JONES. That is a great question, Congressman Barton. I couldn't agree with you more. As a matter of fact, until this hearing was called, I was supposed to be in Bentonville, Arkansas, today at Walmart, who I think has been a real leader in this space in trying to get ahead on safer chemicals. I think some of the companies coming behind me in the next panel have been real leaders. New chemicals, I don't believe, is where the challenge has been. I think it has been with existing chemicals. And there, I think it is a subset of existing chemicals. We looked at about 1,000 chemicals of that entire universe that Congressman Latta pointed out as chemicals that have expressed some hazard that we think it is really important for the Agency to evaluate for safety assessment purposes. But because we never have done that, unless a retailer who is telling you they won't accept it, I don't know why a company wouldn't continue to manufacture those. So I think it is existing chemicals. And there, I think it is actually a relatively—relatively narrow subset. I am talking about 1,000 and not, you know, 40,000 or 20,000.

Mr. BARTON. Right.

Mr. JONES. It is still a big number. But I agree that I think many consumer facing companies and retailers have been way out front on this issue, much further out front than we have.

Mr. BARTON. My time has expired. But, Mr. Chairman, I want to commend you and the ranking subcommittee member, Mr. Tonko. It sure looks to me like you all are trying to find a middle approach. And I am supportive of that. But I do, from the right, want to say let us don't throw the baby out with the bath water, because we still want to—if we are going to get a revision, it needs to be something that will work in the real world. And I am leery of continuing to give EPA too much discretion, because I think the more explicit we can be with what they should do, the greater the probability is that they will do their regulatory function in a fair manner. And with that, I yield back.

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

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. I commend you for the hearing. And I am very pleased to see you working on this legislation.

Back in 1976, I submitted report language in regard to weaknesses that exist in the current Toxic Substances Control Act. I stated it was essential for the protection of public health and the environment that EPA have a firm mandate for a comprehensive approach to protection from hazards due to chemical substances, and that such success would only lead to legislative directives and adequate funding support.

Mr. Jones, you stated in your testimony that in order to be successful, EPA must have the resources it needs to protect the American people from exposure to harmful chemicals. I am satisfied that that has been a lack that you have confronted down there. Now, under CICA, does EPA have appropriate resources to quickly and efficiently implement the various framework, process, criteria and guidance provision which must be in place prior to EPA beginning action on specific chemicals, yes or no?

Mr. JONES. I think it is more a question, Congressman Dingell, of the years which were provided is probably a little bit too short.

Mr. DINGELL. OK. So you are telling me "no" on this. And I am asking you to submit to us additional information—

Mr. JONES. Sure.

Mr. DINGELL [continuing]. So that we will have a clear picture of what the needs are. And I ask unanimous consent that that, Mr. Chairman, and other matters be inserted into the record in the appropriate fashion and place.

Mr. SHIMKUS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. DINGELL. Now again, Mr. Jones, once EPA is able to take action on specific chemicals under CICA, does the EPA have the resources needed to quickly and efficiently determine prioritizations, assessments, determination and risk managements, yes or no?

Mr. JONES. I am sorry, Congressman. Those are a little more than yes or no questions. But the bill doesn't require—

Mr. DINGELL. Just yes or no.

Mr. JONES. Well, the bill doesn't require—

Mr. DINGELL. And I am asking you to submit in greater detail, because we don't have a lot of time to toe dance around on this.

Mr. JONES. I would say yes, but the number we would do would be I think disappointingly small.

Mr. DINGELL. Well, that is almost a comical answer here. Now, EPA has over 84,000 chemicals listed in its TSCA inventory, and a little over 200 have been acted on in 37 years. It doesn't make it look like you have authority here, or that you have resources. EPA has identified an initial work plan of chemicals for assessment which includes 83 substances in addition to identifying several hundred chemicals on the safer chemical ingredients list. Is that true, yes or no?

Mr. JONES. Yes.

Mr. DINGELL. All right. Under current TSCA, does EPA have the appropriate resources to complete more than 20 risk assessments per year on existing chemicals?

Mr. JONES. No.

Mr. DINGELL. Please answer yes or no.

Mr. JONES. No.

Mr. DINGELL. Would you respond in addition for the record on that matter?

Mr. JONES. Yes.

Mr. DINGELL. Now, what kind of resources would EPA need in order to perform the 20 or more additional risk assessments per year, please submit that for the record.

Mr. JONES. Sure.

Mr. DINGELL. So we have a decent appreciation of our needs here. Now, as you know, I have had the privilege to live in the Great Lakes region, home for 20 percent of the world's fresh water supply, as well as tremendous hunting and fishing and recreational areas. Many of my constituents have voiced concerns that CICA does not ensure adequate public health and safety standards needed for high-risk toxic chemical contamination found in this region. Would EPA be better able to regulate new and existing chemicals if they were granted authority to set priorities for conducting safety reviews based on relevant risks and exposure conditions, yes or no?

Mr. JONES. Yes.

Mr. DINGELL. Would you please submit amplification for the record on that?

Mr. JONES. Sure.

Mr. DINGELL. Now, if both chemical manufacturers and EPA had the ability to assess and act on priority chemicals like those potentially found in the Great Lakes, would EPA be better able to regulate these chemicals in timely manner, yes or no?

Mr. JONES. Yes.

Mr. DINGELL. Now, would you please submit amplification on that for the purposes of the record?

Mr. JONES. Yes.

Mr. DINGELL. Now, it is my concern that if Congress fails to provide necessary funding to a new TSCA program, public health protections will be left without legs to stand on. As I mentioned in a number of previous hearings, any overhaul of this law must be a broad bipartisan one. It is my hope that this subcommittee will find a process to ensure that all stakeholders have the opportunity to see their concerns reflected in a final bill. I continue to be committed to fulfilling this need, and I intend to work with my colleagues in creating reform that industry, consumers, environmental and public health groups desperately want and need. And you, Mr. Chairman, I commend you for your legislation and for the hearings. I thank you. These are questions that have got to be answered if we are proceeding in the proper way on this. This is a piece of legislation that has sat around, and I think will probably sit around until hell freezes over if something is not done about it. So thank you for your leadership.

Mr. SHIMKUS. I thank my colleague. And the Chair now recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman. Let me just begin by applauding you. Your line of questioning at the beginning of this hearing was—they were right on. You were able to demonstrate

that there has been progress made with it. And I appreciate that. I think they were very good questions with that.

I am just curious, Mr. Jones, Mr. Tonko has said that this current draft weakens current law. I heard Mr. Waxman say that it doesn't protect public health. I heard him then go on to say that it may even be—chemicals may be contributing to the rate of autism in this country. Do you agree with all those three statements?

Mr. JONES. We have been trying to evaluate—

Mr. MCKINLEY. Let us take it—yes or no?

Mr. JONES. We have been trying to evaluate this and other forms of legislation—

Mr. MCKINLEY. Yes or no, please. Do you agree with it that it is—it weakens current law?

Mr. JONES. I don't think I would take an opinion on that.

Mr. MCKINLEY. OK. Does it—has it weakened public safety, public health?

Mr. JONES. It does not advance public health in the way that we think it—

Mr. MCKINLEY. Does it have a link to autism?

Mr. JONES. One of the problems that we have in the chemical space is that because there's not been enough data generated, it is hard to make statements with respect to issues like that.

Mr. MCKINLEY. I have heard—and I am just curious. If it does any of those three, who is responsible for that? Is it the industry? Is—are we developing a profile across America? Is that what is trying to come out of this Congress is the chemical industry is trying to weaken existing law? It wants to increase autism? It wants to increase—decrease public health? Is that what you see in an overview of 30,000 feet what this bill does?

Mr. JONES. I see an honest effort on the part of a lot of people to make improvements, and I see disagreements amongst stakeholders as to whether or not it is—

Mr. MCKINLEY. But if the threat continues to be that it is doing these and other things, you are saying about safety and new chemicals, if it has—are we—I want to make sure I understand your testimony and those from the other side of the aisle. That this is the chemical industry itself is causing these problems? Because if it is not the chemical industry, then it is our staff is writing these things to decrease public safety and public health and weaken the current law? Who has got the—who wrote the words to make it negative?

Mr. JONES. You know, I am on the outside here. And I am not holding the pen. And I can't speak to the motivations, nor do I choose to try to understand really the motivations.

Mr. MCKINLEY. Do you really think the chemical industry is trying to hurt the public health?

Mr. JONES. No, I don't.

Mr. MCKINLEY. OK. Do you think it is trying to weaken current law?

Mr. JONES. You know, I think those are questions for the chemical industry who are coming up right behind me. I—

Mr. MCKINLEY. No. I know it is your opinion. I—maybe we will ask them later. But do you really think they want to weaken current law?

Mr. JONES. Again, I don't—

Mr. MCKINLEY. Yes or no?

Mr. JONES. I have been in this game for quite a long time, and I don't attempt to understand all of the motivations behind all of the players. I try to evaluate what the facts are in front of me and make informed decisions based on that.

Mr. MCKINLEY. Do you really think that the rate of autism is going to be affected by this TSCA reform legislation?

Mr. JONES. I think that if we had better health and safety data we would be making more informed and protective decisions around chemical safety in the United States.

Mr. MCKINLEY. I would be curious to see—my grandson's autistic. And in a number of meetings and discussions we have had with doctors about this, they have never talked about the chemical industry being behind this. I just wonder perhaps if this is just one more scare tactic to try to cause consternation and confusion in our economy right now, because we have not heard that. So this was the first time I have heard that today. And shame on people if they are using a scare tactic to try to get something, because I think this committee has done a yeoman's job in trying to correct the problems. And I don't think it is the chemical industry that is trying to weaken any of these provisions. I think there is another agenda out there. And I would sure like to understand. I hope that you will be able to submit something to explain why people think the chemical industry wants to put the health of this Nation at risk.

Mr. JONES. I could only speak to what the administration's attempting to achieve, which is to strengthen the chemical safety laws in the United States.

Mr. MCKINLEY. Thank you. I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. Over the last few months, my staff has been at the table with your staff to discuss the draft Chemicals in Commerce Act and work towards the compromise bill. Changes have been made since the initial draft. But, unfortunately, the version before us today does not reflect sufficient input from Democratic members, including myself.

At the last TSCA hearing on March 12, every witness in attendance stated the chemicals in commerce should be held to a risk-based standard without consideration of cost. But, unfortunately, the draft before us does not meet that standard. Further, vulnerable populations are not sufficiently protected under the risk management standard in the draft.

So, Mr. Chairman, obviously reforming TSCA is crucial to protecting Americans from unsafe chemicals, and I am disappointed in the current draft before us today. And I would simply ask that before the subcommittee moves to markup this bill that you work to address the concerns raised by myself and other Democratic members.

I had—

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

Mr. PALLONE. Oh, certainly. Sure.

Mr. SHIMKUS. And I would ask that my friends on the other side start sharing some language with us, which we have been asking for for probably six weeks.

Mr. PALLONE. OK. Thank you. Let me ask some questions of Mr. Jones.

The Toxic Substances Control Act 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 in the corrosion proof fittings decision, EPA has been saddled with performing time and resource intensive cost-benefit analysis on every potential alternative, not just as on a regulatory control option selected. So, Mr. Jones, you referred to this problem as paralysis by analysis in the past. Is this a problem that should be addressed in TSCA reform?

Mr. JONES. It absolutely is a problem that should be addressed in TSCA reform.

Mr. PALLONE. Now, the draft removes the language least burdensome, but replaces it with a new requirement for cost effectiveness. So in your assessment, does this draft risk recreating the problems of the least burdensome requirement with this new cost effectiveness requirement?

Mr. JONES. Thanks, Congressman. I think it would be important in legislation to be clear about how expansive the cost effective analysis would need to be. What we would be worried about is that a court would decide that all 12 or so options of risk management had to be evaluated for us to be able to say that the one we selected was cost effective. Another reading would be as long as we have looked at a couple of options that bound the options that we would have achieved the cost effective. Cost effective is a relative term inherently. So I think it would be useful to have clarity on that point so that we don't have the same kind of paralysis by analysis that least burdensome created.

Mr. PALLONE. Well, would the EPA be able to act move effectively, but still adequately, considering the effects of its actions if this cost effective requirement were to be deleted?

Mr. JONES. That would be a way to achieve that objective.

Mr. PALLONE. All right. The bill also establishes a new requirement that when EPA decides to limit the use of a chemical for a specific use, the Agency has to determine that alternatives are technically and economically feasible. And this puts EPA in the position of having to project market innovation, rather than relying on the market to develop safer alternatives as necessary. So do you have concerns about that requirement?

Mr. JONES. I think that you are right that that has—there is an anti-innovation aspect of that that we have seen over and over again in many, many different contexts, the ability of the American industry to innovate things that may not have been available at any given time. And our ability to predict that is very limited.

Mr. PALLONE. So, Mr. Jones, when you look at the provisions we just discussed, are you concerned that they could have the effect of protecting the market position of dangerous chemicals and articles, rather than spurring innovation?

Mr. JONES. Yes.

Mr. PALLONE. Yes. OK. Well, as I had previously mentioned, I think they should be removed from the draft to enable the EPA to act and to encourage innovation. Those are my questions. Thank you, Mr. Chairman.

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

Mr. PITTS. Thank you, Mr. Chairman. Mr. Jones, are you familiar with Canada's approach when it prioritized 23,000 chemicals on its domestic substances list several years ago?

Mr. JONES. I have some familiarity with the Canadian approach. Yes.

Mr. PITTS. Well, after Canada completed its prioritization, it set aside approximately 19,000 chemicals as essentially low priority. Canada does not intend to conduct risk assessment on those substances, unless new information indicated a need to reevaluate that approach. Does the April draft provide the Agency authority to similarly review chemical substances in U.S. commerce and identify substances that may not warrant a reevaluation?

Mr. JONES. It does. I would not be able to speak to the standard that Canada used to call something a lower priority versus the standard that has been in the discussion draft, because we have just not—we have not thought about it in that context.

Mr. PITTS. Well—

Mr. JONES. But we would be able to set priorities.

Mr. PITTS. Well, in the proposed assessment of grandfathered chemicals, do you believe some form of prioritization would be key?

Mr. JONES. I think it is very important.

Mr. PITTS. Yes. Now, your prepared statement seems to suggest that you want a registration and licensing program under TSCA for new chemicals, do I understand you correctly?

Mr. JONES. No, I don't. I just think it is important for the Agency, before a chemical moves to the market, to speak to its safety.

Mr. PITTS. Do you believe that EPA will be able to make screening level priority determinations for most existing chemicals based on information that is currently available to the Agency?

Mr. JONES. I believe that there are enough existing chemicals that, for the first probably dozen years, we will be able to focus our work on those chemicals for which we can make such determinations. And then I think we will need to be in the mode of data gathering for chemicals that are not well characterized.

Mr. PITTS. Do you think the Agency would have any difficulty showing why available information on a chemical is insufficient for priority setting or risk evaluations? And, hence, why new information might be needed by the Agency for one of the regulatory purposes outlined in Sections 4—Section 4(a)(1)?

Mr. JONES. I think we would be able to do that. Yes.

Mr. PITTS. In your testimony on November 13 before this subcommittee, you testified that a necessary improvement to TSCA is a mandatory program that gives the EPA the authority to review the safety of existing chemicals. Does the April discussion draft include such a program?

Mr. JONES. It moves in that direction. What I think it is lacking is a requirement the Agency set a certain number of high priorities every year. Once a chemical is determined a high priority, we are

then on a pace. We have 4 years to do a safety assessment, and then 3 years after that to do risk management. But the Agency could choose to have a very, very low number of chemicals set as high priority. And thinking—creating something that creates that constant forward motion with some robust number I think would be important.

Mr. PITTS. Is a 4-year deadline to complete risk evaluations, established in Section 6, sufficient time for the Agency?

Mr. JONES. Yes, it is.

Mr. PITTS. Does the April draft provide flexibility—enough flexibility to take into account a range of considerations when chemicals do not meet a safety standard, including children's health, economic costs, social benefits, equity concerns? Does that draft provide the flexibility to the Agency that you desire in Section 6?

Mr. JONES. I think it requires a determination that this cost-benefit balancing we think will make it hard to be effective and is not as health-protective as we would like it to be.

Mr. PITTS. And does the discussion draft prohibit EPA from considering cost and benefits when making a risk evaluation on a chemical substance?

Mr. JONES. It prohibits us in the risk evaluation phase, yes.

Mr. PITTS. In the risk—yes. My time is up. Thank you, Mr. Chairman.

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

Mr. MCNERNEY. Well, I thank the chairman. Mr. Jones, in your testimony, you mentioned that the TSCA does not require the EPA to conduct a review and determine the safety of existing chemicals? You mentioned that the EPA—that the TSCA places burdensome legal and procedural requirements on the EPA before the Agency can request health and environmental effects on existing chemicals?

Mr. JONES. Correct.

Mr. MCNERNEY. So my question is, the Chemicals in Commerce Act gives the EPA 90 days to develop a profile of a particular chemical substance and a potential for exposure to humans and the environment. As of today, could the EPA meet this 90 day timeframe?

Mr. JONES. For new chemicals, we currently meet that timeframe in the vast majority of chemicals we are looking at. New chemicals.

Mr. MCNERNEY. OK. Thank you. Would asking companies to provide the EPA with a minimum data set assist the Agency in making timely, informed determinations on these chemicals?

Mr. JONES. We don't believe a standardized minimum data set is warranted for new chemicals. And—or for existing chemicals, for that matter.

Mr. MCNERNEY. Do you believe it would be beneficial for the United States to use the European model as a template?

Mr. JONES. No, but I believe it would be beneficial to use the data generated for purposes of the European model.

Mr. MCNERNEY. Oh.

Mr. JONES. That would be very beneficial to chemical safety in the United States.

Mr. MCNERNEY. Is that permitted in the Chemicals in Commerce Act?

Mr. JONES. It is not prohibited. The—some of the problems that we are dealing with relate to the way in which the European model was created. And some of the agreements manufacturers who joined consortia have with respect to when they can provide data. But the U.S. law, I don't believe can require another government to give us something, or a company who doesn't operate here to give us something. So I think these are some issues that just need to get worked through.

Mr. MCNERNEY. Is there an opportunity in the Chemicals in Commerce Act to do that?

Mr. JONES. I think it is worth exploring.

Mr. MCNERNEY. Thank you. We have heard from the GAO and other stakeholders throughout this process that the EPA needs more information and testing. But these so called scientific standards in the new draft simultaneously restrict the EPA's testing authority while establishing a mandatory duty to the EPA to consider a prescriptive list of elements when evaluating studies and tests. Mr. Jones, if enacted, would the scientific standards language provide additional opportunities for litigation, in your opinion?

Mr. JONES. I think it would. I think it deserves some looking at to make sure there aren't—that I would expect—unintended consequence.

Mr. MCNERNEY. Increased litigation could result in scientific issues being resolved in the courtroom.

Mr. JONES. That is correct.

Mr. MCNERNEY. Are judges well-equipped to make decisions about scientific issues?

Mr. JONES. I am not—I would prefer not to—I think in general, they would prefer that they are made in agencies like the EPA.

Mr. MCNERNEY. Right. So we should be concerned about putting courts in the position of rendering judgments on scientific matters?

Mr. JONES. Yes.

Mr. MCNERNEY. Thank you. Mr. Chairman, I yield back.

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

Mr. GINGREY. Mr. Chairman, thank you. And, Administrator Jones, I wanted to ask you a series of questions about fees and fee structures. So all of these will be quick questions. And first of all, how does the Agency—how does the EPA—currently collect user fees under TSCA?

Mr. JONES. We right now have authority to collect them only for the pre-manufacture notices, the new chemicals. And it is a relatively small amount of money, partly because that money goes directly to the Treasury. EPA does not get those fees right now, and it is only for pre-manufacture notices.

Mr. GINGREY. Well, that leads to the second question. Does the EPA anticipate that user fees would be additive or replacement for some of your existing funds, as appropriated?

Mr. JONES. I believe if the Congress' intent was that we move quickly and do many chemicals that they would need to be additive to our existing resources.

Mr. GINGREY. What is your budget breakdown by category for the individual sections of TSCA?

Mr. JONES. Funny you should ask that.

Mr. GINGREY. If that is going to take too long, I will just skip down to the next—

Mr. JONES. I got it right here. Yes. So we spend about 16—just under \$17 million for new chemicals, about \$28 million for existing chemicals, and \$12 million or thereabouts on the information systems that service both those.

Mr. GINGREY. So what is the EPA budget in both funding and full-time equivalent for the chemical review under Section 5?

Mr. JONES. Ballpark, about \$16.7 million.

Mr. GINGREY. I am sorry. How much?

Mr. JONES. Sixteen—just under 17 million, \$16.7 million for Section 5.

Mr. GINGREY. And what would the Agency expect the outlays to be under the new TSCA Section 4 authority?

Mr. JONES. I am sorry. Could you ask that again?

Mr. GINGREY. What would the Agency expect the outlays to be under the new TSCA Section 4 authority?

Mr. JONES. You know, we spend about \$12 million now in data gathering, but we have not costed out under the—you know, the discussion draft what we would spend under that authority. Interestingly, we would probably be getting more data. But it would be cheaper to get it, because the orders are much cheaper to do than rulemakings are.

Mr. GINGREY. How about Sections 6, 8 and 14?

Mr. JONES. So—and I have costs for what we are spending now on Section 6 and the other existing chemicals programs. But we have not costed out what it would be under the discussion draft. But I—it does allow me to make some general ballpark estimates of what a chemical under the provision would cost us.

Mr. GINGREY. Let me try this one, too. Evaluate, let us say, 20 chemicals per year. How much money and staff would you—do you think you would need?

Mr. JONES. I think early days where we are trying to work on the more difficult ones first, because the higher priority ones would be the more difficult ones—

Mr. GINGREY. Sure.

Mr. JONES. I think about a million dollars per chemical, so \$20 million. Over time, \$20 million will go a lot farther than that as the chemicals get easier to do. But at the beginning, I would say 20 chemicals—

Mr. GINGREY. Yes, that sort of leads to the rest of that question. What would you need to evaluate 50 chemicals, 100 chemicals? And is there an economy of scale?

Mr. JONES. There definitely would be—partly it would be more efficient as we learned. And then there would be this other phenomenon whereby the farther down we got with chemicals, they would get easier to do. And so it would become cheaper per chemical. That would take a little while to get to that point, but that would certainly happen.

Mr. GINGREY. And my final question for you, if the Agency got new fee authority provided in the discussion draft, how would you implement it?

Mr. JONES. That is an interesting question. In the other part of my operation, which is the pesticides program, we have fee authority. And the way it actually came about—and actually you have some panelists on the next panel who participated in it—is the stakeholders, the NGOs, and the industry actually came up with the construct. It gets into very great detail, but that is what they wanted. They wanted a lot of detail with respect to it. Whether the—you had a scenario where stakeholders developed the fee structure, or you gave EPA the authority—if we had the authority, we would get together with the stakeholders to figure out how to do something that was fair and equitable.

Mr. GINGREY. Mr. Jones, thank you. Mr. Chairman, I yield back.

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

Mr. GREEN. Thank you, Mr. Chairman. And we have other committee hearings going on, so you are going to see us jumping around and—but I want to thank both Chairman Shimkus and Ranking Member Tonko for holding the hearing today on the updated Chemicals in Commerce Act discussion draft. And I particularly want to thank the Chair, and appreciate your patience and leadership in working with us on the drafts. Ultimately, we want to get to a bill. And, hopefully, we will get there. But I also want to thank Assistant Administrator Jones and the witnesses on the second panel for joining us.

Mr. Jones, I need just—some of these are yes or no. If enacted, would the discussion draft—the latest one, as written—increase EPA's authority to protect human health and the environment from harmful chemicals over current law? Would the second draft be better than current law?

Mr. JONES. It has—there are marginal areas of improvement, as particular data gathering authority.

Mr. GREEN. OK.

Mr. SHIMKUS. So, that is a “yes”?

Mr. JONES. I would—

Mr. SHIMKUS. This is important. It is a “yes” or “no”?

Mr. GREEN. What it means if it is a “yes,” we are going in the right direction.

Mr. JONES. You are moving in the right direction.

Mr. GREEN. OK. Does the discussion draft provide EPA with full and complete authority to obligate companies to provide toxicity data?

Mr. JONES. Yes.

Mr. GREEN. OK. The discussion draft actually does that?

Mr. JONES. Yes.

Mr. GREEN. OK. Does the discussion draft provide the necessary authorities to protect vulnerable populations such as children, pregnant women and workers from harmful exposure to toxic chemicals?

Mr. JONES. It requires us to include them in our safety evaluations.

Mr. GREEN. OK. Does the EPA currently look at the aggregate exposure of chemicals today in meeting the current safety standard? If not, do you believe that the Agency should have that authority to do so?

Mr. JONES. In the toxics program, we have just started doing chemical assessments and have so far not aggregated all sources of exposure. I think that that is the direction that we need to move in though.

Mr. GREEN. OK. Do you know if the discussion draft has—addresses that?

Mr. JONES. I don't believe it mandates that we aggregate all exposures. But I will need to confirm that.

Mr. GREEN. OK. In the discussion draft, would information claimed as confidential business information be allowed as evidence in a court of law?

Mr. JONES. I can't answer that question. Sorry, Congressman.

Mr. GREEN. OK. Would amending TSCA so it would have judicial standard review found in the Administrative Procedures Act enhance the law's protection of human health?

Mr. JONES. The substantial evidence I believe is the judicial standard in the discussion draft.

Mr. GREEN. That is in the discussion draft. But if it was changed to be similar to what the Administrative Procedures Act, would that enhance the law's or the discussion draft's protection of human health?

Mr. JONES. And I am not able to answer that question.

Mr. GREEN. OK. Has the Agency ever reconsidered exemptions for chemicals regulated under Section 5 of current TSCA? And if so, what chemicals, and would a status reconsideration—has the Agency reconsidered exemptions for chemicals under Section 5?

Mr. JONES. We have added the number of exemptions under Section 5.

Mr. GREEN. OK. So if chemicals—can you name those chemicals, or give us a status of that reconsideration—

Mr. JONES. There would be categories of chemical—categories that included exemptions over time.

Mr. GREEN. OK.

Mr. JONES. And we can describe what those categories are.

Mr. GREEN. In your testimony, you state that EPA should have the flexibility to consider, among other things, equity concerns, which—when making a risk management action. Could you explain what you mean by equity concerns, and why are they important to the administration—to the Agency?

Mr. JONES. So the benefits of decisions don't always—aren't always enjoyed equally across society. And just understanding where those—where the benefits fall and where the costs fall so that we have our eyes wide open when we are making decisions.

Mr. GREEN. OK. Well, Mr. Chairman, this is the first time I think in a long time I have any time left. Does anybody on our side need another half a minute or so? I yield back my 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. Mr. Jones, I understand that printed circuit board manufacturers recently met with EPA officials to discuss TSCA reporting obligations on byproducts sent for recycling.

Mr. JONES. Yes.

Mr. JOHNSON. Now, the good news is this meeting has been characterized to me by those manufacturers as a constructive step in addressing industry's concerns that TSCA reporting on byproducts is unnecessarily burdensome and complex. So I would simply like to ask today for your commitment to continue working closely with industry over the next month to determine how reporting on byproducts sent for recycling can be reduced or eliminated.

Mr. JONES. I think we are going to—I know we are going to continue to have some discussions, both inside and with the manufacturers to get this to a better place. I don't think it will be a place that has absolutely no reporting, but the reporting may fall in a completely different group than where it is at.

Mr. JOHNSON. Well, we are looking for commonsense. And I appreciate it.

Mr. JONES. I agree with that.

Mr. JOHNSON. That is what I heard from the industry. So I appreciate that. I fear that if EPA continues to seek information through TSCA which duplicates reporting under other statutes and therefore is of minimal regulatory value, byproducts manufacturers who currently recycle may choose to landfill that waste in order to avoid the regulatory burden and enforcement liability. You know, we should do all that we can do encourage recycling of those secondary materials—

Mr. JONES. Yes.

Mr. JOHNSON [continuing]. Which are often rich in metals and other valuable materials, by establishing sensible and non-overlapping reporting regimens that minimize the burden on industry. It ought to be a business friendly environment.

Mr. JONES. I think we can figure out a—

Mr. JOHNSON. I would very much like to work with you in concert with manufacturers to more closely align TSCA reporting with the goal of supporting byproducts recycling. While I believe this committee is prepared to legislatively remedy this issue, I hope we can all agree then that an administrative remedy is the preferred short-term solution. So can I have your commitment to work with the industry and our committee today to determine how this can be resolved as quickly as possible?

Mr. JONES. Yes, you can.

Mr. JOHNSON. Well, those were easy questions, weren't they?

Mr. JONES. They were.

Mr. JOHNSON. Good deal. All right. Thank you. Mr. Chairman, 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 very much, Mr. Chairman. And thank you, Administrator Jones, for coming. You know, I have to say that I—that there are members on both sides of the aisle, as you know, who have been working together on trying to find consensus on this

bill. And we have been meeting for quite some time, Mr. Green and me and Mr. Tonko and the chairman and others. And we have made a big investment of our time and effort into trying to untie this very complicated knot. But I would agree that time is running short. And I would also agree with what you said, Mr. Administrator, that this latest discussion draft is moving the ball forward a little bit. But I still think we need to have some substantive changes before we get to that sweet spot. And I also agree with the chairman that I think at this point, the—this side of the aisle, my side of the aisle needs to put some specific language forward. So, Mr. Chairman and Mr. Tonko, I look forward to working with both of you so that we can get some language that will help address the concerns that we still have.

The one issue—I always try to not repeat what everybody else said. And I think there is—but I do have concerns with some of the other issues other members have raised. But something we haven't talked a lot about yet today is Section 14 of the discussion draft, confidential information. Under the current law, if a company designates certain information as confidential business information, the EPA has to shield that information from the public. And because company's claims don't have to require justification and there is no penalty for over claiming, virtually everybody agrees there has been a lot of misuse of this provision.

Now, in the proposed draft, this trend continues. There is no upfront substantiation required for confidential business information, except in this specific identity of a chemical. So this is what I want to ask you about.

There is also a new restriction in the latest draft that places on EPA's ability to share the most critical piece of chemical information, health and safety studies. While current law provides that health and safety studies can never be claimed as CBI, the new draft would allow companies to keep secret the identity of chemicals implicated in a health and safety study. So that is what I want to ask you about, Mr. Jones. Isn't it true that the Agency has been tightening its policies on CBI in an effort to increase transparency?

Mr. JONES. That is correct.

Ms. DEGETTE. And in 2010, didn't the Agency issue a policy that it would generally deny confidentiality claims for the chemical identities and health and safety studies?

Mr. JONES. That is correct.

Ms. DEGETTE. And so the proposal we are examining today would essentially overturn these 2010 reform efforts, is that correct?

Mr. JONES. Yes.

Ms. DEGETTE. Now, would that be consistent with the administration's principles on TSCA reform?

Mr. JONES. No, it wouldn't.

Ms. DEGETTE. Now, what is the problem with in allowing companies to keep chemical identities secret in health and safety studies?

Mr. JONES. So although the public would have access to a toxicological study, let us say a study on developmental effects or cancer reproductive effects, they wouldn't be able to discern what chemical was associated with the effect.

Ms. DEGETTE. So they wouldn't know what chemicals to avoid, is that right?

Mr. JONES. They wouldn't know what chemicals to avoid.

Ms. DEGETTE. Right. Now, we heard from others that a generic name for a chemical is sufficient. Now, in your review, has that been the case?

Mr. JONES. It can be, but it really is a function of how much information is conveyed in the generic name.

Ms. DEGETTE. OK. Now, the latest draft attempts to resolve the problems with generic names by introducing a new term, unique identifier, so that the administrator may disclose the maximum amount of information about the chemical structure. Will this get at the problem?

Mr. JONES. Well, a unique identifier is important, but it may—you can have a unique identifier that actually doesn't really tell the public or anyone else about the key element of the structure that they might be concerned about.

Ms. DEGETTE. OK. Now, are there cases where the only appropriate unique identifier would be the actual identity of the chemical?

Mr. JONES. Well, you could just make up a name, and that would be a unique identifier.

Ms. DEGETTE. I guess so. OK. So, Mr. Chairman, I think this is one issue we can really continue to work on, because I think you are trying to make some effort. But I think we need some more work. And I look forward to continuing to participate in this effort. And I yield back.

Mr. SHIMKUS. The gentlelady yields back her time. I thank her for her questions. The Chair now recognizes the gentleman from Louisiana, Dr. Cassidy.

Mr. CASSIDY. Hey, sir. Whenever I go to a TSCA hearing, my head always ends up being turned around, because it seems as if people are disagreeing on things which should be common ground. So let me kind of see if you can get my head turned on right. And I don't mean this to challenge, I just mean this to whatever. I read on page 36 that—or beginning perhaps page 35—that you are supposed to—the EPA would do a high-priority risk evaluation. And among other things, determine the hazard. Hazard being, if you will by definition, or risk—determine the risk, which is by definition hazard times exposure.

Mr. JONES. Um-hum.

Mr. CASSIDY. OK. And then once determining that, going over to maybe the next subsection, subsection C, there is a method by almost a graduated scale. You can say listen, it is a high risk, but there is—so it is never—you are never going to be exposed under these circumstances, so don't worry about it. And you keep on kind of working your way all the way to where there is a total ban. Now, that seems the way it should work.

Mr. JONES. Um-hum.

Mr. CASSIDY. Would you agree with that?

Mr. JONES. That we should be making risk-based determinations, yes.

Mr. CASSIDY. And that there should be some latitude for EPA to make a determination as to what is the potential exposure. If the

potential exposure is nil, it sure may be a great hazard, but exposure if nil so therefore we are OK with it.

Mr. JONES. Anything times zero is zero.

Mr. CASSIDY. All the way up until oh, my gosh, we just need to totally eradicate this from society?

Mr. JONES. Correct.

Mr. CASSIDY. Now, that seems that mechanism is laid out here. And it seems like that is what we should—that is the paradigm we should be employing. Would you agree with that?

Mr. JONES. I think that the risk evaluation side is laid out that way. When it gets to actually what EPA should do as it relates to regulating, it no longer follows that paradigm but says the Agency should look at the risks, compare them to the benefits, and only if the benefits outweigh the risks should the Agency regulate. And then there are some other things—

Mr. CASSIDY. If the benefit of regulation outweighs the risk?

Mr. JONES. The health benefits needs to outweigh the cost.

Mr. CASSIDY. So we had something that came up last year, and it is the Safe Drinking Water Act bill. But it comes to mind where apparently in a previous Congress, lead was not allowed in drinking water except when it involved a bidet, toilet, or some other device, because the brass fittings there have a little bit of lead and they have your bidet apparently really sealed tightly. But it didn't allow fire hydrants. And EPA put out a rule that they were not going to allow the use or I guess the sale or manufacturing of fire hydrants. Now, that is kind of like one of those death of common-sense—

Mr. JONES. Um-hum.

Mr. CASSIDY [continuing]. But EPA rightly said this is the statute. It doesn't give us wiggle room. Now, in that case, wouldn't it have been nice to have a risk benefit analysis that would have said really your exposure of drinking water from a fire hydrant or so minimal, et cetera, we can waive this and not require literally an act of Congress in order to preserve it. Is that a fair—

Mr. JONES. Well, that is why the administration's articulated a view that the standard ought to be risk-based, but we should be able to consider costs. Which in the scenario you described would have allowed you that wiggle room to do something that, on the face of it, it sound like it wasn't the smart thing to do, which is very different from actually being able to say I have monetized the benefits and they numerically outweigh the monetization of the costs. Which in a perfect world would make sense, but we rarely have the kind of information that really can lead to accurate decisionmaking in that context.

Mr. CASSIDY. But how else then do you do it?

Mr. JONES. If you are able to consider costs in your risk management, you can make choices as to whether or not you think, as the costs of achieving the ideal level of safety may be such that you may not want to get to that level of safety but a little bit below that—

Mr. SHIMKUS. Would the gentleman yield?

Mr. CASSIDY. Yes.

Mr. SHIMKUS. Doesn't the Presidential Executive Order require you to do that anyway?

Mr. JONES. The Executive Order requires us to do cost-benefit analysis, but—and we do that even in statutes that are—have risk only standards—

Mr. SHIMKUS. So it is not like a crisis of monumental proportions that you do a cost-benefit analysis in evaluating risk?

Mr. JONES. No, but it matters in terms of ultimately the judicial review that occurs, which the OMB requirement is irrelevant to the judicial review. It is the statute that governs that.

Mr. SHIMKUS. I would yield back to my colleague. Thank you.

Mr. CASSIDY. And I am sorry. I got all my pages—my staple came off, and it is—and my staples are apart. But it did seem as if there is a graduated way in which the EPA would be able to do some sort of cost-benefit analysis and ultimately—and concluding with the total banning of the substance. But I am hearing from you that you either don't want that authority or that you think you should have the authority. What am I hearing?

Mr. JONES. We don't think that the decision framework should be that you have to show that the benefits outweigh the costs, as we don't think that the information that we will generally have available allows that balancing to be as accurate as people would hope it would be.

Mr. CASSIDY. I don't think people are talking about scientific precision. I think they are talking about some sort of weighing of commonsense.

Mr. JONES. Courts have generally found that if you can't show that the actual dollar value of the human health benefits aren't literally bigger than the dollar value of the cost—

Mr. CASSIDY. Can I have a little bit—one extra question? So my frustration is obviously this leads to where we are going to ban something even though it costs a million dollars to ban it, and there is only a buck of—if you totally discharge the responsibility for coming up with such a thing—don't want the authority, then you actually come into a situation where there is the death of commonsense, where you really need to no longer sell fire hydrants because we can't quantitate the relative exposure. Now, we can't have it both ways. We can't say give you a little bit of wiggle room so that we are not banning fire hydrants, and on the other hand saying oh, my gosh, we don't want that authority because we don't have the ability to pull off the analysis.

Mr. SHIMKUS. Gentleman—

Mr. JONES. Well, it is very different from saying I would like to be able to consider costs, so I don't do something like you just described, versus I have to literally calculate the human health benefits, which are nearly impossible to do most of the time. And I have to show that that number is bigger than the cost, which is usually easily able to calculate but often overestimated.

Mr. SHIMKUS. The gentleman's time has far exceeded. And I know—I hope you will come back for the second panel, which I think we'll have a further discussion on this. The Chair now recognizes the gentelady from California for 5 minutes.

Mrs. CAPPS. Thank you, Mr. Chairman. And thank you, Mr. Jones, for your testimony today, for being with us. Many stakeholders have raised concerns about the need to protect vulnerable populations in any modernized TSCA. It has been a point I have

made in our previous hearings on this topic. I think it is absolutely essential.

If we reform TSCA but fail to adequately protect children, pregnant women or seniors, we have really failed. As you know, vulnerable populations include infants and children, the elderly, the disabled, the workers and those living near chemical facilities. In their 2009 report, *Science and Decisions*, the National Academies of Science recommended that all vulnerable populations should receive special attentions at all stages of the risk assessment process.

In its current form, the discussion draft only examines potentially exposed subpopulations when evaluating the risk of existing chemicals. But the draft does not direct the EPA to protect any of these risks when they are identified. It strikes me as a glaring oversight.

Mr. Jones, you previously testified that a chemical should not be able to pass the safety standard under reformed TSCA if it is dangerous to a vulnerable population. But my understanding is that this revised draft does not provide this guarantee. Instead, it uses a cost-benefit standard to direct EPA to balance the health risks to vulnerable subpopulations against the cost to the industry to take protective action. Is it your opinion that this is an accurate statement? Or if not, would you correct me?

Mr. JONES. The only modification I would make is that it is not just the cost to the industry but any costs to society.

Mrs. CAPPS. OK.

Mr. JONES. Otherwise, I think your characterization is accurate.

Mrs. CAPPS. OK. So that means if we enact this proposal, we couldn't tell parents that the law always puts the health of their children first, right?

Mr. JONES. That is correct.

Mrs. CAPPS. Does the administration support this approach, or does it think the law should require that children and vulnerable populations are protected from toxic chemicals?

Mr. JONES. We prefer the latter.

Mrs. CAPPS. Mr. Chairman, this proposal doesn't make sense to me. For the last 40 years, we have had a law that does not adequately protect children, seniors, and other vulnerable populations. Why would we want to pass another law that simply continues that failed approach? And I yield back.

Mr. SHIMKUS. The gentlelady yields back her time. Seeing no other members present, we want to thank you—oh, no. I am sorry. Mr. Bilirakis is now recognized from the State of Florida for 5 minutes.

Mr. BILIRAKIS. Thank you. Thank you, Mr. Chairman. The first question, does this section of the April discussion draft improve the Agency's ability to require the submission of hazard and exposure data and information by authorizing EPA to obtain it by rule, consent agreement or issuing an Order?

Mr. JONES. Section 4 does that, yes.

Mr. BILIRAKIS. Say that again.

Mr. JONES. Section 4 does that, yes.

Mr. BILIRAKIS. Very good. Does the expansion of testing authority to cover the chemical prioritization process provide the Agency

sufficient flexibility to obtain additional information necessary to take—to make decisions in priorities?

Mr. JONES. Yes, it does.

Mr. BILIRAKIS. OK. Thank you very much. I appreciate—thank you. I yield back, Mr. Chairman.

Mr. SHIMKUS. The gentleman yields back.

Mr. TONKO. Mr. Chair?

Mr. SHIMKUS. The gentleman—for what purpose does the gentleman ask recognition?

Mr. TONKO. Right. If I might, you have mentioned a number of times that you would like to see language from our side of the aisle. There seems to be an implication that somehow we have refused to engage in the process. I just want to clarify the record. After you released your discussion draft in March, our staff sat down on a bipartisan basis to discuss it. Our staff identified 12 areas where we needed to have further discussion in order to reach a bipartisan agreement. Staff discussed these issues. With many of the issues, your staff informed our staff that changes would not be possible. In other cases, I am told your staff expressed some receptivity, but they did not want to work out language with us. Our staff offered to go to legislative counsel with your staff to work together on the text, but that offer was refused. So if this is a misunderstanding and you would like our staff to work out language together, I would suggest we direct them to do so. We are happy to engage, and I hope there is sufficient flexibility to address the stakeholders' concerns.

Mr. SHIMKUS. If the gentleman would yield?

Mr. TONKO. I will yield.

Mr. SHIMKUS. Yes, this has been an interesting process for me in that we have worked diligently with members, with staff, with full committee staff, sometimes with individual staffs at other times. We continue to have asked for language. We have not received language. We can go through this process of junior high, he said what to who and who is talking to who, and why aren't they doing this to the other person? I am telling you, it is a tad frustrating. All we are trying to do is drop a draft of a bill. We have accepted language. We have moved the process forward. We want to continue to do that. We hope that you will work with us in that process. But there is a time when members need to talk to members. And with all due respect to our staff who are very, very smart, if there is a problem with this process, then you can walk down the hall. You can pick up the phone. We can meet with our staff together, which we have done with some members. So we are moving forward. We appreciate the help and support. And if there has been frustration, it is just this is a very difficult process. Many of us are not lawyers. And this thing has not been revised since I was in high school. We can do better, and that is all we are trying to do.

Mr. TONKO. Right. And all I am asking is that if there is a request to have us sit down and work out language, let us come to the table together and get that done. This is much more serious than junior high. And if the request for language is made, let us come to the common table. They did not—as I am told, there was not a receptivity to work out language with us. And I am just ask-

ing that we come to the table, get that done, because time is fleeting.

Mr. SHIMKUS. All I have said, I have asked for language for two months from the minority staff and have not received any language.

Mr. TONKO. OK.

Mr. SHIMKUS. So——

Mr. TONKO. I was told that that was not the case. So let us meet at the table and produce the language.

Mr. SHIMKUS. That is the case. And I want to again thank Mr. Jones for his time. This is a difficult process. We appreciate your testimony, long. And you can see the members were well prepared by directed comments, directly to the draft bill. We appreciate your forthright answers. We know it is not done. It is not perfect. We encourage you and ask you to continue to be involved and engaged in this process, because we can get to a better product by working together. So with that, we would like to dismiss you and we would like to ask for the second panel to sit down.

I think we are going to hire Mr. Dooley to be a good staffer. He knows the ropes. If we can get the door closed? Again, we want to thank you. Hopefully you have found the first panel interesting, educational, enlightening. And we do appreciate you coming for this second panel. In the sake of time, we want to continue to go forward.

I will introduce everybody first and then call you individually for your opening statements. I think that is, for me, the most expeditious way of—from my left to right, we are joined by the Honorable Cal Dooley, President and CEO of American Chemistry Counsel, former colleague, great friend. And we appreciate you being here.

Dr. Beth Bosley, President, Boron Specialties, on behalf of the Society of Chemical Manufacturers and Affiliates. Again, thank you for being here.

Mr. Mark Greenwood, Principal of Greenwood Environmental Counsel. Sir, welcome. You have testified before. So we—good to see you again.

Dr. Len Sauers, Vice President of Global Sustainability for Proctor & Gamble Company. Again, another familiar face.

Mr. Steven Goldberg, Vice President and Associate General Counsel, Regulatory & Government Affairs for BASF. You have also been here before.

Mr. Andy Igrejas——

Mr. IGREJAS. Igrejas.

Mr. SHIMKUS. Igrejas. Oh, you are over there? OK. We have got our things mixed up—National Campaign Director of Safer Chemicals, Healthy Families. Another familiar face.

And the Honorable Michael Moore on behalf of the National Conference of State Legislators. Sir, welcome. So we will start with Mr. Dooley. Your full statement is in the record. You are recognized for 5 minutes. And thank you for coming.

STATEMENTS OF CALVIN DOOLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN CHEMISTRY COUNCIL; BETH BOSLEY, PRESIDENT, BORON SPECIALTIES, LLC, ON BEHALF OF THE SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES; MARK GREENWOOD, PRINCIPAL, GREENWOOD ENVIRONMENTAL COUNSEL, PLLC; LEN SAUERS, VICE PRESIDENT, GLOBAL SUSTAINABILITY, PRODUCT SAFETY AND REGULATORY AFFAIRS, THE PROCTOR & GAMBLE COMPANY; STEVEN J. GOLDBERG, VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL, REGULATORY AND GOVERNMENT AFFAIRS, BASF CORPORATION; MICHAEL MOORE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES; AND ANDY IGREJAS, DIRECTOR, SAFER CHEMICALS, HEALTHY FAMILIES

STATEMENT OF CALVIN DOOLEY

Mr. DOOLEY. Thank you, Chairman Shimkus and Ranking Member Tonko. Thank you for the opportunity to testify about the latest draft of the Chemicals in Commerce Act. The ACC greatly appreciates the time and effort that you and your staff have devoted to his critical issue. And we believe this draft addresses key issues and questions that have been raised by a variety of stakeholders, and questions that have been raised by a number of members of this committee at the February 27 hearing on the previous draft.

You know, I think if you look at some of the modifications in this draft, they responded to some of the concerns that Member Tonko offered about the preemption of State laws. This draft provides for a robust national chemical regulatory program, while also maintaining abilities of States to protect their citizens when EPA has not acted.

Unlike the earlier draft, a low priority designation of a chemical by EPA will no longer preempt existing State laws. Only a final EPA decision after a risk evaluation of a high-priority chemical will preempt a State regulation or law.

And, Congressman DeGette, you asked about EPA's testing authority. This draft greatly strengthens the EPA's ability to demand more data by allowing EPA the demand further testing for purposes of prioritization. And this is also a major change from the earlier version.

Our colleague, Congressman Green, asked about TSCA's safety standards should be based solely on health and exposure. And this draft clarifies that only hazard use and exposure considerations may be applied to determine the risk associated with an intended use of chemical. Cost benefit considerations are only considered in the risk management phase of the regulation.

And, Congressman Capps, who has a great concern about vulnerable subpopulations, this draft explicitly requires EPA to consider exposures to infants, children, pregnant women, workers and the elderly during the prioritization process and throughout the risk evaluations.

And Congressman Pallone has asked about TSCA's current requirement to apply the least burdensome option. He mentioned that in his questions earlier today. This draft eliminates the least

burdensome requirements, enhancing EPA's ability to efficiently and effectively impose regulations on chemicals.

This legislation—or draft legislation provides a national approach to ensure the safety of chemicals in commerce. It empowers EPA to evaluate the risks associated with the exposure to a chemical, to determine if the cost—or the risk of exposure can be safely managed, and to also assess whether the cost and benefits of the restrictions on the use of a chemical are in the interest of consumers.

I think it is instructed to see how the CICA could apply to the use of this fluorescent—CFL fluorescent light bulb. This light bulb uses about a quarter of the energy and lasts about 10 times as long as a traditional light bulb. But, you know, widespread adoption of CFL's are helping to reduce energy demand, reduce carbon emissions and are reducing energy costs for consumers. But there is a small amount of mercury that is required to make these highly efficient bulbs effective. Under CICA, EPA would certainly find mercury to be a high-priority chemical based on hazard. EPA then would conduct a risk evaluation as to determine whether mercury used in this CFL posed a significant risk. Finding that EPA would next consider whether the exposure to mercury in this bulb could be managed to protect against an unreasonable risk of harm to human health and the environment. In EPA's development of regulations on the use of mercury in this bulb, they would consider the cost and benefits of allowing mercury to be used, and whether there were alternatives. This approach is a compelling from a public policy perspective as EPA would be ensuring the risk of exposure to mercury was acceptable in this bulb, while encouraging the development of a product that has significant societal and environmental benefits. This example of the CFL bulb also demonstrates why preemption provisions of CICA are sound public policy.

Unfortunately, many State regulatory programs are based solely on whether a chemical can cause harm in any circumstance. This means that if a State—my home State of California decided to impose a blanket ban on the use of mercury, CFLs could not be sold there. This would have a significant negative consequences, and innovators and companies throughout the country would be reluctant to invest in the development and manufactured of advanced products such as this bulb if it was banned in what is the fifth largest economy in the world.

The current draft of the Chemicals in Commerce Act is a positive contribution to reforming TSCA, and we believe it provides a roadmap to legislation that the American Chemistry Counsel can strongly support.

[The prepared statement of Mr. Dooley follows:]

Written Statement of
The Honorable Cal Dooley
President and CEO
American Chemistry Council

Before the
House Energy and Commerce Committee
Subcommittee on Environment and the Economy

*Legislative Hearing on the April 22, 2014 Discussion Draft
Cited as the Chemicals in Commerce Act*

April 29, 2014

American Chemistry Council
700 Second St. NE
Washington, DC 20002

Summary of Major Points
In Testimony of the Honorable Cal Dooley, President and CEO
American Chemistry Council
Submitted for the Legislative Hearing on the April 22, 2014 Discussion Draft
Cited as the Chemicals in Commerce Act

The American Chemistry Council (ACC) supports efforts to reform TSCA's federal chemical regulatory system to give Americans greater confidence in the safety of chemicals. The April 22 discussion draft of the Chemicals in Commerce Act (CICA) would modernize TSCA in a sensible way that focuses on those elements of TSCA most in need of improvement. Overall, the CICA discussion draft is an appropriate step forward in TSCA reform.

The CICA discussion draft takes a creative approach to address the TSCA safety standard issue. It makes clear that EPA's risk evaluations of high priority chemicals will be based strictly on a science based finding of significant risk of harm to human health or the environment. Economic cost and benefit would be considered only in EPA's determination of what regulation is needed to manage that risk.

The changes to the TSCA new chemicals and SNUR programs will contribute to greater efficiencies and protections in the chemical regulatory framework, while still allowing industry the opportunity to bring new innovations to market quickly and efficiently.

The discussion draft's inclusion of appropriate deadlines for EPA decisions will strengthen the public's confidence in EPA's safety assessment and regulatory process.

The discussion draft's requirement for EPA to prioritize existing chemicals for risk evaluations based on consideration of a chemical's hazards, uses and exposures, including to potentially exposed subpopulations, will ensure EPA applies resources to the highest priorities.

The improvements to the testing provisions of TSCA will reduce EPA's current regulatory burdens when new information is needed because available information is insufficient. The expansion of EPA authority to mandate testing for prioritization purposes is a significant change that ACC can support.

The CICA's data protection provisions are balanced and will go a long way to improving the justification for and protection of CBI.

Improvements to TSCA's preemption provisions should foster a robust, national chemical regulatory system.

Introduction

My name is Cal Dooley. I am President and CEO of the American Chemistry Council, the national trade association representing chemical manufacturers in the United States. I am testifying today on behalf of the ACC, and our member companies, who employ nearly 800,000 men and women.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The U.S. business of chemistry is a \$770 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for 12 percent of all U.S. exports. Chemistry companies are among the largest investors in research and development, and rely heavily on the Toxic Substances Control Act (TSCA) to help bring their innovations to market.

TSCA Modernization is Required to Protect Health and the Environment and America's Competitive Edge.

The American chemical industry is a major source of innovation and economic growth in the U.S. In fact, over 25% of the US GDP is derived from industries that depend on chemicals. TSCA is the major US law governing the reporting, testing and regulation of chemicals in commerce. It's as much a law governing the commerce of chemicals as it is about protecting health and the environment from exposure to chemicals.

The chemical industry takes very seriously its responsibility to manufacture products that can be used safely. There have been many advances in our understanding about chemicals,

about science and technology, our health and our environment in the 35+ years in which TSCA has been in place. Over time, however, public confidence has eroded in the safety of chemicals and in the federal government's regulation of the production and use of chemicals. As a result, ACC strongly supports efforts to reform TSCA's federal chemical regulatory system to give Americans greater confidence in the safety of chemicals.

Safety has always been a top priority of our member companies, as evidenced by ACC's 25 year old Responsible Care® program - a health, safety and security performance initiative that's a requirement of ACC membership. One of the program's most recent enhancements was the addition of a Product Safety Code, to update the program's Product Stewardship management system. The Product Safety Code is an industry complement to an effective and reliable chemical regulatory system achievable through TSCA Reform.

Five years ago ACC released its Ten Principles for Modernizing TSCA. These principles create a general outline for a modern chemical regulatory system that will protect public health and the environment, while preserving the ability of American chemical companies to continue to drive innovation, grow jobs, and compete in the global marketplace. Since 2009, ACC has engaged in constructive efforts to develop and promote a TSCA reform proposal that would put consumer health and safety first, while ensuring that the U.S. is the best place in the world to innovate.

In May of last year the first ever bipartisan bill on TSCA reform, the Chemical Safety Improvement Act (CSIA, S. 1009) was introduced in the Senate. ACC believes S. 1009 holds great promise for achieving meaningful and balanced TSCA reform. The legislation calls for a rigorous chemical regulatory framework that is consistent with the ACC's Ten Principles of TSCA Modernization.

The April 22 discussion draft before this committee today, the Chemicals in Commerce Act (CICA), holds similar promise. It would modernize TSCA in a sensible way that focuses on those elements of TSCA most in need of improvement. It includes a systematic process by which EPA would prioritize existing chemicals in commerce, conduct risk evaluations of high priority chemicals using science and improved regulatory tools, and impose risk management restrictions as necessary. The CICA will go a long way to making chemical regulation in the US both more effective and efficient. Under the revised discussion draft, EPA, the American public and American manufacturers would have the information they need to make well informed decisions about chemicals in commerce.

Key elements of the April 22 discussion draft would improve TSCA's approach to chemicals management.

TSCA Reform Should Appropriately Expand EPA's Authority to Mandate Testing (Section 4)

Like the Senate bipartisan bill, the CICA April 22 discussion draft fixes the "Catch 22" testing requirements of current TSCA. The CICA replaces TSCA's current findings requirement with provisions allowing EPA to require new testing or exposure information if needed for certain specified purposes (subsections 4(a)(1), (3) and (6)). Testing can be required for

- priority designation purposes
- risk evaluations
- restrictions imposed on new chemicals;
- regulation of exports;
- implementation of other Federal laws. (See subsections 4(a)(1)(A-E)).

The CICA also allows EPA to use rules, consent agreements or orders to require the development of new information. (Section 4(a)(2)).

ACC supports these improvements to the testing provisions of TSCA. They will reduce EPA's current regulatory burdens when new information is needed because available information is insufficient for the specific purposes described in this section.

TSCA Reform Must Include a Workable Safety Standard (Sections 5 and 6)

TSCA chemicals can have hundreds of different industrial, commercial or consumer uses. Unlike pesticides or pharmaceuticals, industrial chemicals are not intended to be biologically active, and the standard by which decisions on safety are made should be appropriately different. The TSCA safety standard must not only be protective of health and the environment, it must also be workable when applied to the multitude of TSCA chemical uses.

ACC believes that TSCA reform must help assure that chemicals are safe for their intended uses. This means safety is not just a matter of a chemical's hazard profile; it is also a question of how a chemical is used and the exposures and risks that result from that use. The safety of TSCA chemicals should be determined by integrating hazard, use and exposure information in the risk evaluations for determining safety.

There is no definition of "safety standard" in the revised discussion draft. Instead, the discussion draft applies slightly different approaches to new chemical and existing chemicals and addresses concerns raised about the "unreasonable risk" safety standard in the Feb. 27 discussion draft. This approach recognizes that EPA's evaluation of new chemicals differs from its review of existing chemicals for important reasons. This approach also addresses one of the major criticisms of TSCA related to cost and benefit considerations in the Agency's review of chemical risk.

For new chemicals, EPA must determine whether the substance "may present an unreasonable risk of harm to human health or the environment," or that the new chemical does

not warrant regulation before it is introduced into commerce. This approach largely reflects EPA's practice today with respect to new chemicals, a practice which has enabled innovation in chemistry to flourish in the U.S.

The standard for evaluating the risk of existing chemicals is expressed in the subsection 6(b)(1)(A)'s high priority risk evaluation provision. EPA must conduct a risk evaluation to determine whether an existing, high priority chemical "presents or will present, in the absence of regulation under subsection (c), a significant risk of harm to human health or the environment under its intended conditions of use."

Existing chemicals that EPA determines do or will present a significant risk must then be regulated by EPA. These regulatory restrictions must meet a second standard, expressed in subsection 6(c)(1) as "necessary to protect adequately against an unreasonable risk of harm to human health or the environment from the chemical substance under its intended conditions of use."

The CICA's risk evaluation standard differs from TSCA's "unreasonable risk" standard in two very important ways. First, the draft makes clear that cost and benefit considerations would apply only after EPA makes determination of significant risk based strictly on the science. Second, it must be applied under the chemical's intended conditions of use. This statutorily imposed bifurcation of EPA's decision-making is very different from Section 6 of TSCA today. ACC believes this approach is very similar in effect to the bipartisan Senate bill's (S. 1009) articulation of the safety standard.

ACC commends the creative approach taken in the revised discussion draft to address the TSCA safety standard issue in a way that makes clear that economic cost and benefit considerations apply only in EPA's determination of what regulation is needed to manage

that risk. ACC's TSCA reform principles make clear our support for risk determinations based solely on health and environmental considerations. Both the revised discussion draft and S. 1009 achieve that objective.

TSCA Reform should Retain Essential Elements of the Existing New Chemicals Program (Section 5)

TSCA's new chemical program has made a significant contribution to innovation in products and technologies in the US. There is broad agreement among many stakeholders - including former EPA officials - that TSCA's new chemicals program today provides a science-based, tailored, and timely regulatory review of new chemicals before they can be manufactured.

The CICA discussion draft streamlines the regulatory requirements of EPA's current new chemicals program and aligns it effectively with improvements being made to other sections of TSCA. The CICA also codifies the new chemical program's current, effective regulatory practices. Just as EPA does today, under the CICA the Agency may request additional information needed either for its new chemical review or for its determination about the new chemical. The CICA also appropriately recognizes that new chemical reviews are most often conducted on the basis of scientifically robust models, structure activity and read-across information, rather than on actual test data. These tools have proven their value in the 35+ years of TSCA, are scientifically reliable, and protective. Under the CICA, once on the market, new chemicals would still be subject to the prioritization screening process in subsection 6(a), and potentially, to subsection 6(b) risk evaluations and subsection 6(c) regulations.

With respect to EPA's significant new use rule (SNUR) authority, the CICA clarifies the considerations for determining whether a use is a significant new use and further clarifies EPA's authority to regulate use of chemicals as part of an article (Section 5(a)(2) and 5(a)(3)).

Until recently, articles were largely exempt from TSCA regulation. This is an area, however, of increasing EPA interest. Appropriately, the CICA proposes workable criteria for regulation of chemicals in articles.

In ACC's opinion, the changes to the TSCA new chemicals and SNUR programs will contribute to greater efficiencies and protections in the chemical regulatory framework, while still allowing the industry the opportunity to bring new innovations to market quickly and efficiently.

TSCA Reform Should Ensure EPA Applies Resources to the Highest Priorities (Section 6(a))

ACC has long held that EPA should systematically prioritize existing chemicals in commerce for evaluation under TSCA, based on available information about their hazards, uses and exposures, so that resources (both EPA's and industry's) could be focused on chemicals of highest concern. Section 6(a)(1) of the CICA would require EPA to establish a risk-based process for obtaining available information and designating chemicals as high or low priority. EPA must designate all active chemicals in commerce as soon as feasible. Factors for assigning priorities would include consideration of a chemical's uses and exposures to potentially exposed subpopulations, defined as including infants, children, pregnant women, workers and the elderly (Section 6(a)(4)). Chemicals designated as high priorities would be subject to risk evaluations.

The revised discussion draft at Section 6(b)(2) also allows EPA to conduct risk evaluations of chemicals not designated as high priorities and determine at any time that they will not present a significant risk of harm under one or more specific conditions of use. This

provision effectively creates a third category of priorities that should promote efficiencies in the overall chemical management framework of an amended TSCA.

There are several differences in how the discussion draft addresses prioritization as compared to the Senate bill. For the most part, ACC does not think these differences are significant. For example, the House discussion draft does not require EPA to establish a prioritization process by rulemaking because it anticipates that the prioritization process may need to be modified over time. The CICA provision does not speak directly about current EPA priorities under its Work Plan Chemical program, but Section 28 of the discussion draft preserves EPA's authority and continues application of actions taken by the Agency under TSCA before enactment of the CICA. In ACC's view, it is clear that EPA can continue to assess priority chemicals previously identified even as it develops a process for prioritizing additional chemicals.

Unlike the Senate bill, the CICA discussion draft does not specify a particular role for the States in prioritization. The extent of State regulation of a chemical, however, would be a factor in designating a substance as a low priority under the discussion draft. ACC believes that legislative history should make clear that under the prioritization process States are able to engage completely in the prioritization process.

Finally, in response to criticisms of the initial version of the discussion draft, the April 22 revised draft authorizes EPA to require companies to develop new hazard or exposure information under Section 4 for prioritization purposes. (Sections 4(a)(1)(A) and 4(a)(3)). *ACC supports these requirements for prioritization of existing chemicals for risk evaluations. The expansion of EPA authority to mandate testing for prioritization purposes is a significant change that ACC can support as long as it is made clear that the*

provision does not confer broad authority to impose minimum data set requirements, and is only applied by EPA on a case by case basis. As a general rule, EPA should be able to identify high and low priorities based on available information on chemicals, as the Agency has demonstrated in its existing Work Plan Chemicals program.

TSCA Reform Should Create Effective, Efficient Processes to Evaluate Risk, including Appropriate Deadlines for Action (Section 6(b) and (c))

Subsection 6(b) of the revised draft requires EPA to determine whether a high priority substance “presents or will present a significant risk of harm to human health or the environment,” no later than 4 years after designation as a high priority. Science-based risk assessment practices are at the heart of this provision. The discussion draft includes four factors that EPA must consider when applying the standard for evaluating risk:

- The nature of the risk
- The likely impact of the risk on potentially exposed subpopulations
- Whether harm has occurred under its intended conditions of use
- The probability that harm will occur (Section 6(b)(3)(A)).

The discussion draft also makes very clear (Section 6(b)(3)(B)) that in the risk evaluation, EPA may **not** consider economic costs and benefits of the intended uses of the chemical or of reducing the exposure by rule under subsection (c).

Under subsection 6(c) of the legislation, no later than 3 years after determining that a substance presents or will present a significant risk, EPA must promulgate a rule with restrictions that EPA determines are “necessary to protect adequately against an unreasonable risk of harm to human health or the environment” from the chemical under its intended conditions of use. The discussion draft lays out the broad range of restrictions EPA may apply in these rules, including warnings, recordkeeping, and monitoring, as well as use specific, quantity specific or broad bans/phase-outs.

The discussion draft also addresses TSCA's current requirement that EPA choose the "least burdensome" restriction. In its place, the discussion draft requires that EPA determine whether the restrictions are cost effective in ensuring a chemical will not result in an unreasonable risk of harm. The subsection provides for a reasonable transition period to implement restrictions. The revised draft also improves language in the February 27 discussion draft regarding EPA's consideration of alternatives and addresses concerns raised about the burdens on EPA that the earlier discussion draft language may have imposed. The revised discussion draft makes clear that if prohibitions or substantial restrictions on specific uses are being considered by EPA, EPA must determine whether technically and economically feasible alternatives are "reasonably available" as a substitute. This clarifies that the discussion draft does not require EPA to take an exhaustive look at all possible regulatory options or alternatives.

As noted earlier, the discussion draft's inclusion of a "significant risk of harm" standard in the subsection 6(b) risk evaluation provision and the factors to be considered make clear that this standard is separate and distinct from both the TSCA "unreasonable risk" standard of today as well as from the "unreasonable risk" standard in the next subsection 6(c). ACC believes that appropriate deadlines for EPA decisions will strengthen the public's confidence in EPA's safety assessment and regulatory process.

TSCA Reform Must Protect Confidential Business Information (Section 14)

The CICA discussion draft's provisions on confidential business information largely mirror those in the Senate bill. Section 14 presumes certain information as confidential but requires upfront substantiation of claims for CBI protection even for the categories presumed to

be entitled to protection. These provisions strike an appropriate balance between the public's right to know health and safety effects information and industry's interest in protecting the confidentiality of competitive information.

ACC supports the CICA data protection provisions because they are balanced and will go a long way to improving the justification for and protection of CBI.

TSCA Reform Should Foster a Robust, National Chemical Regulatory System (Section 17)

The discussion draft contains many of the same preemption provisions that are included in the Senate bill, with certain important exceptions. For example, Section 17 of the CICA discussion draft does **not** include language relating to the use of safety determinations in evidence. The CICA would not preempt common law or statutory causes of action for civil relief or criminal conduct (Section 17(c)). Under the CICA, EPA will be making many more affirmative determinations about both existing and new chemicals than it does today, and it is vital to efficient interstate commerce that EPA's determinations create the basis for a robust, uniform national system of chemical regulation.

The revised discussion draft modifies the Feb. 27 version to reduce the preemptive impact of EPA's low priority designations. The revised draft now clarifies that low priority decisions by EPA do not preempt existing State law, and that future State law is preempted by a low priority decision only to the extent that the State law regulates a chemical for the intended conditions of use. (Section 17(a)(2)). In other words, like the Senate bill, preemption of State regulation only occurs when EPA makes a decision, and even then the preemptive effect is only to the extent of the decision. States can certainly engage EPA to identify high priority chemicals for safety determinations and to provide EPA with State-specific use and exposure information for these safety determinations and for any restrictions they believe are warranted. States can

also petition EPA under the Administrative Procedure Act (APA) to allow the States to take state-specific actions on TSCA chemicals.

ACC believes improvements to TSCA's preemption provisions should appropriately put EPA "in the driver's seat" in the regulation of chemicals that are manufactured, processed, used, and distributed throughout interstate commerce. This in turn will help restore the public's confidence in the federal chemical regulatory regime.

The CICA Discussion Draft is an Appropriate Step Forward in TSCA Reform.

The April 22 revision of the CICA discussion draft addresses many of the criticisms and concerns raised about the initial February 27 discussion draft. It is consistent with ACC's views on the needed reform of the federal chemical regulatory framework under TSCA. ACC urges this Subcommittee's serious consideration of the CICA. ACC remains hopeful that bipartisan TSCA reform will be possible in this Congress. We welcome the Subcommittee's efforts to work cooperatively toward meaningful, balanced reform and we remain ready to assist the committee to that end.

Mr. SHIMKUS. Thank you. Time has expired. The Chair now recognizes Dr. Bosley for 5 minutes.

STATEMENT OF BETH D. BOSLEY

Mr. BOSLEY. Thank you, Chairman Shimkus, Ranking Member Tonko and members of the subcommittee. I am pleased to be back in Washington to share my perspective as a small business owner and on behalf of the Society of Chemical Manufacturers and Affiliates regarding the April 18 discussion draft of the Chemicals in Commerce Act.

You and your staffs have been doing great work on TSCA reform, and TSCA very much appreciates it. I would particularly like to thank you for recognizing that TSCA is as much about products as it is about health and the environment. It is an important inter-relationship we need to protect against unreasonable risks, but we also need to be able to make—keep making the products that make every other aspect of our society useful.

As we work towards strengthening EPA's authority to regulate industrial chemicals, we must be careful that it does not come at the expense of innovation. This is how we create and sustain jobs. It is also how we can develop greener chemicals and bolster public confidence.

You have obtained positive approaches from the February 27 draft on issues that matter most to SCMA. You have also made additional improvements in several other areas. There are some aspects of the current draft that concern us, and we would like some clarification on those.

Regarding new chemicals and CBI, timely approval of new chemicals and reliable protection of trade secrets are SCMA's two top priorities, because they are critical to facilitating innovation. And the draft makes some changes to new chemicals in commerce—provisions of the bill, but these two sections continue to be very, very workable.

As you continue to deliberate these sections, consider that new chemicals do tend to be greener. Note also that if a manufacturer does not have test data, EPA will continue to use precautionary approaches involving potential exposures, modeling tools and data on analog chemicals before a chemical ever reaches commerce. If the Agency then still feels like it needs measured data, it can request it and often does.

Finally, companies regularly continue to test chemicals, even after EPA approves them.

Regarding existing chemicals, the new draft contains an additional requirement for EPA to review available information on a chemical, including any screening level information, before requiring testing. We support this change. It only makes sense that EPA leverage all the available data and information before pursuing potentially burdensome testing regimens.

Prioritization, repeatedly—or relatedly, the prioritization process in the bill now allows EPA to require development of additional data to determine whether a substance falls into a high-priority bucket in cases where existing information is insufficient. This is a great improvement.

We also believe that enhanced process of reporting is an important aspect of any new bill. In the same way EPA can see additional toxicity data to prioritize a chemical, we would like to see language specifically authorizing the EPA to require processors to report use and exposure data for particular product categories, especially where commercial or consumer uses can be significant. We understand this is a challenging issue, but is essential to well informed risk evaluations.

As I have mentioned in prior testimony, the bill should also expand TSCA's Section 8(e) to authorize submission of non-adverse data and to require EPA to take that data into account when prioritizing and evaluating chemicals. Presently, Section E is biased toward only adverse data, because that is all that we can submit. Such an enhancement would greatly increase the amount of data submitted under this authority, which can only improve the EPA's understanding of chemical hazards.

Regarding deadlines, SCMA has called for a mandate for EPA to remove a minimum number of chemicals, or some percentage of chemicals, over time in order to assure that it will act more expeditiously on existing chemicals. And it has thus far. While the bill does not yet do that, it does include deadlines for reviewing existing chemicals. I think the deadlines may be too generous in aggregate. It would give EPA a total of up to 10 years from release of a high-priority determination to issue a final rule and posing risk management requirements or restriction. I think 4 years for the risk evaluation is probably too long. Something like 18 to 24 months should be workable.

We noticed that the phrase in Section 6 and 9 is significant risk, and we look forward to understanding your intent here. I think it is probably improvement over unreasonable risk.

Risk management now, this bill clearly separates the risk evaluation and risk management steps, and it makes even clearer the former is purely a health-based standard. We think this is good and still leaves the bill with fewer steps than in the Senate bill.

As for the risk management process, we support the bill's requirement that restrictions of chemicals be cost effective. However, we are concerned that the bill would allow EPA to ban a chemical even when it concludes there was no technically or economically feasible safer alternative. The draft drops the definition of best available science and the concept contains there, and they don't appear elsewhere in the bill. We are disappointed by this, because the credibility of EPA risk evaluations will depend on the strength of the science supporting them.

We are pleased to see that the bill did retain language on good science and the requirement that EPA evaluate chemicals by weight of that evidence. I would think both sides of the aisle would agree that the only—would only defeat our common goal of enhancing public confidence if EPA could be accused of cherry-picking data or methods.

In conclusion, the bill represents an improvement over the status quo and shows continued promise for a bipartisan solution. We appreciate your intense focus on TSCA reauthorization and remain committed to helping in any way we can.

[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”

April 29, 2014

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 April 18 discussion draft of the Chemicals in Commerce Act. You – and your staff – have been doing great work on advancing TSCA reform, and SOCMA very much appreciates it. You have really exceeded the expectations that many had for TSCA reauthorization in the House.

I would particularly like to thank you for recognizing that TSCA is as much about products as it is about health and the environment. This is an important interrelationship. We need to protect against unreasonable risks. But we also need to be able to keep making the products that enable every other aspect of our society. As we work towards bolstering EPA's authority to regulate industrial chemicals, we must be careful that it does not come at the expense of innovation. We should reform TSCA in a way that incentivizes entrepreneurs and start-ups, and helps small businesses stay competitive and expand. That's how we create and sustain jobs. It's also how we can develop greener chemistries and give the public the confidence it deserves.

I will now provide some comments on the new draft. In a nutshell, you have retained the positive approach of the February 27 draft on the issues that matter most to SOCMA. You have also made some additional improvements in several other areas. There are, however, some aspects of the current draft that concern us, and need some additional work or at least clarification.

New chemicals and CBI. Timely approval of new chemicals and reliable protection of trade secrets are SOCMA's two top priorities, because they are critical to facilitating innovation. The new draft makes some changes to the new chemicals and confidential business information provisions of the bill, but these two sections continue to be very workable and we remain very pleased with them.

As you continue to deliberate over these sections, be mindful that new chemicals tend to be greener. Note also that if a manufacturer does not have test data, EPA will continue to use precautionary approaches involving potential exposures, modeling tools, and data on analog chemicals and chemical categories before a chemical ever reaches commerce. If the agency feels it needs measured data it will request it. Finally, companies regularly continue testing chemicals even after EPA approves them.

Existing chemicals. The new draft contains an additional requirement for EPA to review available information on a chemical, including any screening-level information, before requiring testing. We support this change. It only makes sense to have EPA leverage all available information before pursuing potentially burdensome testing regimens.

Prioritization. Relatedly, the prioritization process in the bill now allows EPA to require development of additional data to determine whether a substance falls into a low or high priority bucket in cases where existing information is insufficient. This should address the concern some have had that chemicals with limited data will be tagged high priority by default. It is unclear to us, however, why EPA should be able to initiate a risk evaluation of a low priority chemical. If the EPA remains free to evaluate low priority chemicals at its discretion, what is the purpose of a rigorous prioritization process?

Enhanced processor reporting. In the same way that EPA can seek additional tox data to prioritize a chemical, we would like to see language specifically authorizing EPA to require processors to report use and exposure data for particular product categories, especially where commercial or consumer uses can be significant. We understand this is a challenging issue, but it can be crucial to making well-informed risk evaluations. It also would address a fundamental problem with current TSCA implementation that SOCMA has long flagged. If that is the purpose for the bracketed placeholder on p. 48, we are encouraged, and we urge you to continue to try and reach agreement on this issue.

As I have mentioned in prior testimony, the bill should also 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 in prioritizing and evaluating chemicals. 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.

Deadlines. SOCMA has repeatedly called for a mandate for EPA to review a minimum number of chemicals, or some percentage over time, in order to assure that it will act more expeditiously on existing chemicals than it has thus far. While the bill does not yet do that, it does include deadlines for the review of existing chemicals. However, we think these deadlines are too generous in the aggregate. They would allow EPA up to 10 years from release of a high-priority determination to issuance of a final rule imposing risk management requirements or restrictions. We think allowing four years for a risk evaluation is particularly problematic. Four years languishing in the high-priority bucket could spell the end for a product. We recommend that the committee consider a much shorter period, like 18-24 months.

"Significant risk." We note that the bill uses this phrase in Sections 6 and 9. We look forward to understanding your intent here; we don't know enough now to be supportive or concerned.

Risk management. The bill now clearly separates the risk evaluation and risk management steps, and makes even more clear that the former is purely a health-based standard. We think this is good, and still leaves the bill with fewer steps than the Senate bill. As for the risk management process, we support the bill's requirement that restrictions on uses of chemicals be cost-effective. However, we are concerned that the bill would allow EPA to ban a chemical even when it concludes that there are no technically and economically feasible safer alternatives. We are still vetting this change, but it seems to us that EPA should not be allowed to increase overall risk to public health by banning or substantially limiting a chemical.

Good science. The draft drops the definition of “best available science,” and the concepts contained there do not appear elsewhere in the bill. We are disappointed by this, because the credibility of EPA risk evaluations will depend on the strength of the science supporting them. We are pleased to see the bill retain language on good science; most important, a requirement that EPA evaluate chemicals by the weight of evidence. I would think both sides of the aisle would agree that it will only defeat our common goal of enhancing public confidence if EPA could be accused of cherry picking data or methods.

In conclusion, while more remains to be done, this bill represents an improvement over the status quo and shows continued promise for a bipartisan solution. We appreciate your intense focus on TSCA reauthorization and remain committed to helping in any way we can.

Thank you again for this opportunity to share SOCMA’s perspective. I look forward to your questions.

Mr. SHIMKUS. Thank you very much. Mr. Greenwood, you are recognized for 5 minutes.

STATEMENT OF MARK GREENWOOD

Mr. GREENWOOD. Chairman Shimkus, Ranking Member Tonko, members of the committee, thank you for the opportunity to testify today. I am Mark Greenwood. I am an environmental lawyer. I have been working on TSCA for over 25 years. As part of that, I was the chief lawyer for the TSCA program from 1988 to 1990. I was director of the Office of Pollution Prevention Toxics from 1994, and advised clients on these issues for over 20 years.

What I would like to do is offer some comments of the strengths of this bill in the context of some of the historical issues that have occurred in the TSCA program. And I really would like to respond to something that I think is a fairly puzzling characterization I have heard that somehow this discussion draft is worse than the current law. And just as kind of a reality check and—I thought I would reflect back on 1990 when I started as an office director at EPA. And if they could have given me a choice between the law that was there on the books, which by the way is the law we have today, and this discussion draft, which would I have preferred to do the best job I could to protect the American people from chemical risk? I found it very easy. I would select the discussion draft.

It has in it key elements that will increase the protection, the ability of EPA to act in ways that I think are extremely important. I have documented those in my written testimony. I will highlight just a couple of points in the interest of brevity.

For Section 6, which we know is the centerpiece of the existing chemical program, as others have mentioned, your draft removes the least burdensome requirement provision. That was the most difficult problem that came out of the asbestos corrosion proof fitting decision. You have removed it. It removes the specter of that decision from the program.

A second one that is very important is prioritization. One of the curses that TSCA is that it has always been the statute, particularly in Section 6, that can do anything but has a mandate to do nothing. And that has been a problem institutionally. EPA and the TSCA program has always had problem getting more resources for the program. It has had a problem getting its regulations through the review process. We often saw the phenomenon which I experience several times when new political leaders would come into EPA, they look at this wonderful new tool and say this can be used for this special project. And that special project then disappeared when they left. And the career people at EPA were left with another failed project.

I think what happens with this prioritization system is it creates a system that legitimizes the establishment of a long-term agenda for this program, which it desperately needs, and allows the program to have a sustained effort to implement that agenda.

The third thing which I think you have added, which is an improvement over other drafts, is this distinction in the safety standard/now risk evaluation and risk management provisions to distinguish what you call a significant risk and an unreasonable risk. And what is important there is probably less the specific words of

the standard than the fact that you articulate the considerations that go into that decision. And they are very distinct. So you do have a significant risk decision that looks solely at health and environmental factors, and explicitly says that costs and benefits are not part of that decision. And I thank you for Jim Jones recognized that that is an important change.

Similarly, in the risk management area, you have tried to clarify what factors should be considered. Previously, there was some overlapping factors that you have taken out. I think it is a big improvement.

The second area I want to address is actually confidential business information, which has often been identified as a systematic problem with TSCA. Now, this perception I think unfortunately can be traced back to some events that occurred during my tenure at EPA. Back in 1990, we decided to create a new strategy for the program in which we tried to, as we said, go public with the information that we had about health and environmental risks of chemicals. It was very much aligned with—at that time with the public right to know programs. We were in charge of the toxic release inventory. And we thought that was a good thing to do. Now, in going on and doing this, I am afraid we kind of stirred a rather serious debate. And we have had a debate on CBI reforms and CBI changes, which have gone on for many years. It was not productive. It was very polarized. The debate was not very well explained. However, a group of people working on this bill, in the Senate and in the House, have come together. NGO groups are involved. Industry was involved, to come up with some commonsense reforms which I think, as a package, have really advanced this debate, and I think can resolve a lot of the issues that have plagued the program for over 20 years. So in a sense, you had a guerilla war for the last 20 years on this topic. And you have the ability in enacting this to perhaps ratify the TSCA CBI treaty of 2014 and resolve this war. And that has got to be a success story in any case.

Thank you for your time.

[The prepared statement Mr. Greenwood follows:]

**Testimony of Mark Greenwood
Before the U.S. House of Representatives Energy and Commerce
Subcommittee on Environment and the Economy**

**Hearing on
“Chemicals in Commerce Act Discussion Draft”**

April 29, 2014

Summary

The Subcommittee’s Discussion Draft of the Chemicals in Commerce Act (“CICA Discussion Draft”) would make important substantive changes to the Toxic Substances Control Act (“TSCA”) that would substantially enhance the ability of the U.S. Environmental Protection Agency (“EPA”) to improve how chemicals are managed in this country.

The CICA Discussion Draft makes important changes to TSCA’s Section 6 authority to regulate existing chemicals in the following areas:

- Removing the “least burdensome requirements” provision in Section 6, which was the source of court-imposed burdens on EPA that frustrated effective implementation of the statute.
- Creating a prioritization step in the existing chemical program that will allow EPA to establish and sustain a coherent agenda.
- Clarifying the substantive standard and factors to be considered in the risk evaluation and risk management stages of the regulatory process.

The CICA Discussion Draft makes important changes to TSCA's Section 4 authority to require testing of existing chemicals in the following areas:

- Integrating the Section 4 information collection authority into the risk management provisions of Section 5, for new chemicals, and Section 6, for existing chemicals.
- Providing EPA with authority to collect testing information by order, without the necessity of rulemaking.

In regard to protection of Confidential Business Information ("CBI") under Section 14, the CICA Discussion Draft incorporates a compromise that has been developed between industry and public interest groups that will substantially resolve policy and procedural disputes that have continued for over twenty years regarding how CBI information should be handled under TSCA.

**Testimony of Mark Greenwood
Before the U.S. House of Representatives Energy and Commerce
Subcommittee on Environment and the Economy**

**Hearing on
“Chemicals in Commerce Act Discussion Draft”**

April 29, 2014

Chairman Shimkus, Ranking Member Tonko and members of the Subcommittee, I thank you for the invitation to testify today on the Subcommittee’s Discussion Draft of the Chemicals in Commerce Act (“CICA Discussion Draft”), a bill that would make substantial reforms to the Toxic Substances Control Act (“TSCA”) and thereby enhance the ability of the U.S. Environmental Protection Agency (“EPA”) to improve how chemicals are managed in this country.

My name is Mark Greenwood. I am an attorney currently practicing environmental law through my firm Greenwood Environmental Counsel. I have worked on implementation of TSCA for over twenty-five years, both in government service at EPA and in private practice. From 1988 to 1990, I was EPA’s Associate General Counsel for Pesticides and Toxic Substance, and from 1990 to 1994 I served as Director of the Office of Pollution Prevention and Toxics (“OPPT”), the office in EPA with the primary responsibility for the implementation of TSCA. In private practice I have advised a wide range of clients, including chemical producers, downstream companies, non-profit institutions and investors on TSCA-related matters.

My testimony today will offer an historical perspective on some of the major components of the TSCA chemical management program and the significance of the CICA Discussion Draft in

setting a new direction for that program. In some of the commentary on the previous CICA Discussion Draft that the Subcommittee issued in February, there have been suggestions that the bill your Subcommittee is developing represents no significant change from the status quo, or may even be worse than existing law. While it is understood that strong words are spoken in the context of political debate, I have found it puzzling and surprising to hear these kinds of opinions expressed. The CICA Discuss Draft that is before the Subcommittee today would achieve important substantive changes to TSCA and would substantially improve EPA's ability to protect human health and the environment. The remainder of my testimony will highlight some of the most important changes of this nature.

Section 6: The Approach to Existing Chemicals

As originally enacted in 1976, TSCA gave EPA broad authority under Section 6 of the statute to regulate existing chemicals as necessary to protect adequately against unreasonable risk of injury to health or the environment. In accomplishing this goal, EPA was expected to use the "least burdensome requirements." Other than a specific program for polychlorinated biphenyls, TSCA established no agenda of chemicals, or a process for setting such an agenda, under Section 6. At the time, TSCA was hailed as an innovative, flexible new tool for EPA, which would allow the Agency to address public risks of high concern that fell outside the jurisdiction of the other major environmental statutes.

A. Addressing the "Least Burdensome Requirement" Provision

At an early point in the history of the TSCA program, EPA decided that it would use the new authority of Section 6 to control exposure to asbestos, a substance that demonstrated clear

adverse health effects and was pervasively used. The EPA rulemaking on asbestos was a complicated and controversial proceeding that took over ten years to complete. On July 12, 1989, EPA issued its final rule on asbestos, which called for a complete ban and phase-out of the chemical. The rule drew legal challenges from multiple parties in the U.S. Court of Appeals for the Fifth Circuit. The court issued its decision on the various challenges to the rule on October 18, 1991 in *Corrosion-Proof Fittings, et al. v. Environmental Protection Agency*, 947 F.2d 1201 (5th Cir. 1991). The decision represented a major loss for the Agency, as the court vacated the primary sections of the rule.

In the history of EPA programs, it is difficult to identify a comparable situation where one court decision on one Agency action has had a more profound and lasting impact on the entire course of a program's future. Since 1991, Section 6 has not been used to take any major regulatory action on an existing chemical in the United States. Instead, EPA has used other TSCA authorities, most notably Significant New Use Rules issued under Section 5 of the statute, as the principal tool for imposing risk management actions on existing chemicals.

Since 1991 there has been substantial public discussion about the court's opinion in the *Corrosion-Proof Fittings* case, in part as a guide to how the TSCA statute might be changed. The clearest point of consensus about the opinion is that the court's expansive interpretation of EPA's burden to identify the "least burdensome requirements" imposed a crippling analytical obstacle that would involve potentially unending assessment of regulatory alternatives. This was certainly EPA's conclusion at the time of the court's decision and that view continues to the current day. Accordingly, one of the most important changes to TSCA made by the CICA

Discussion Draft is its removal of the reference to “least burdensome requirements” from Section 6. By that simple act, enactment of this bill will remove the shadow of the *Corrosion-Proof Fittings* decision from the EPA chemicals program.

Some commenters on the February version of the CICA Discussion Draft have also expressed concern that the retention of an “unreasonable risk” standard in Section 6 would stifle EPA’s ability to take effective action to protect the public, in part because an unreasonable risk standard permits consideration of cost-benefit analysis. The historical record does not support such a broad conclusion. In the case of the EPA asbestos rule of 1989, EPA conducted a cost-benefit of the rule under the then-existing Presidential Executive Order on Regulatory Review. Despite the fact that the calculated costs of the ban for certain uses were substantial, the rule proceeded through Administration review at the time and was issued. As noted above, the unreasonable risk standard was not the central rationale for the court’s decision to remand the rule.

A more recent example also underscores the point that important regulatory actions to protect public health can be issued under an “unreasonable risk” standard. On March 19, 2014, EPA proposed for comment a major set of upgrades to its Agricultural Worker Protection Standard for workers exposed to pesticides.¹ These standards are being proposed in accord with EPA’s broad mandate under the Federal Insecticide, Fungicide, and Rodenticide Act to “prevent unreasonable adverse effects on the environment”, which according to EPA’s proposed rule includes protections for “agricultural workers and pesticide handlers; vulnerable groups, such as minority and low-income populations, child farmworkers and farmworker families; and the general public.” It is notable that the cost-benefit analysis prepared on this rule, in accord with the

¹ 79 Fed. Reg. 15444 (March 19, 2014)

Obama Administration's Executive Order on Regulatory Review, showed quantified costs exceeding quantified benefits, but the Administration determined that the rule offered important qualitative benefits that supported the action.

B. Creating a Prioritization Framework

Section 6(a) of CICA establishes a framework for EPA to set priorities for risk evaluation, an essential step if EPA is to establish a meaningful agenda given the large number of distinct chemicals that are in commerce. This is a critical component of the bill because it addresses a politically important defect in the original statute – the ability to do anything, but the mandate to do nothing on existing chemicals.

As noted earlier in my testimony, the original TSCA was viewed as the cutting edge of environmental law because it provided EPA with wide discretion to set its own agenda on what existing chemical warranted attention. This freedom to act ultimately became a profound liability for the EPA TSCA program for several reasons. First, the TSCA program could never cite “statutory mandates” to support its resource requests for the existing chemical program. As a result, the TSCA existing chemical program has been relatively small compared to other EPA programs. Second, since the agenda of the TSCA program was not grounded in specific statutory provisions, the program has sometimes been subject to shifting priorities as new teams of political leadership have entered or departed the Agency. Historical examples of efforts to use TSCA in creative ways that were not ultimately successful have included EPA consideration of Section 6 to address issues as diverse as the effect of chlorofluorocarbons on stratospheric ozone, the disposal of used oil, replacement of leaking underground storage tanks and a prohibition on

lead fishing sinkers. Third, the TSCA program has often had great difficulty expediting review of its regulatory actions in Agency and Administration review processes because its actions were almost always “discretionary.”

It is certainly not necessary for Congress to set forth by statute how EPA will set priorities for the existing chemical program. In theory, under CICA as under the original TSCA, EPA would have the ability to set such priorities. There are times, however, when the function of legislation for regulatory agencies is not the creation of new legal authorities, but rather providing guidance on the direction that a program should take. For the TSCA program, history teaches us that providing such guidance on the process and criteria that should be used to set priorities would be extremely valuable. The universe of chemicals in commerce is large and the task of regulating chemicals that may already be widely used is inherently complicated. Providing EPA with direction on what chemicals warrant priority consideration provides legitimacy to the Agency’s agenda and facilitates sustained implementation of that agenda. Section 6(a) is one of CICA’s most important provisions.

C. Clarifying the Standard for Risk Evaluation and Risk Management

When controversial issues arise in legislation, there is natural tendency to resolve disputes through the adoption of ambiguous language that allows all sides to claim that their viewpoint was adopted. This is a particular risk in a complex statute like TSCA, in which there are many specific terms of art that have been subject to EPA interpretations and clarifications over several decades. Ambiguity, however, is the enemy of effective implementation of statutes like TSCA.

To the extent possible, it is important for Congress to be as clear as possible in its statutory directions to EPA under CICA.

Nowhere is this need for clarity more important than in defining the substantive standard for decisionmaking under Section 6. In previous hearings, this Subcommittee has heard EPA Assistant Administrator Jim Jones emphasize the importance of having Committee Members, and related stakeholder groups, achieve a clear understanding of the principles and factors that are to guide EPA's decisions under Section 6. Previous drafts of CICA, as well as the Senate version of TSCA reform in S.1009, have been somewhat ambiguous about what factors will guide EPA's initial "safety determination" (now referred to as the "risk evaluation" in the latest CICA Discussion Draft) and what factors will guide any risk management actions that EPA believes are warranted based on the risk evaluation.

The CICA Discussion Draft before us today has wisely made a particular effort to resolve those ambiguities. First, it articulates two standards for the two distinct decisions. As a first step, EPA must decide whether a high-priority substance presents or will present a "significant risk of harm" to human health or the environment under its intended conditions of use. If a significant risk is present, then EPA must proceed to write a rule under Section 6(c) applying "requirements or restrictions that the Administrator determines are necessary to protect adequately against an unreasonable risk of harm to human health or the environment from the chemical substance under its intended conditions of use."

To eliminate any potential uncertainty that these two standards are intended to be different, this section of the bill specifically identifies different factors to be considered at the two stages in the process. For the “significant risk” decision in the risk evaluation, Section 6(b)(3)(A) identifies exclusively health and environmental factors (including the likely impact on potentially exposed subpopulations) that must be considered, and then further clarifies in Section 6(b)(3)(B) that economic cost and benefit factors shall not be a part of the “significant risk” decision. In turn, when setting forth the basis for a decision in a Section 6(c) rule under the “unreasonable risk” standard, Section 6(c)(4) identifies a set of factors to guide EPA’s decision, such as cost-effectiveness, reasonable transition periods and the profile of alternatives, that are clearly distinct from the factors to be considered at the risk evaluation stage of the process.

Taken as a whole, these changes greatly contribute to the clarity of Congressional intent on one of the most strategically important aspects of CICA. If this degree of clarity can be maintained as this bill proceeds forward in the process, Congress will have substantially reduced the likelihood that a new TSCA program will become mired in an unproductive revisiting of the legislative debate that preceded enactment of CICA.

Section 4: An Opportunity for More Strategic and Timely Information Collection

Over its history, the TSCA program has had a mixed record in using its testing authority under Section 4 to generate data about chemicals of potential concern. A brief examination of that history offers insights into the value of certain CICA provisions.

While TSCA was enacted in 1976, EPA did not start issuing Section 4 rules to any significant degree until the mid-1980's. What some would see as a delay in the testing program reflected a combination of EPA-centered decisions. For example, EPA had to focus on other aspects of the TSCA program, including establishment of the TSCA Inventory and the new chemical program, as well as the initiation of a substantial regulatory program to address PCBs. In addition, EPA made a decision to create a series of Section 8 rules that would collect information about what was already known about chemicals of interest before issuing Section 4 testing rules.

Once EPA began to issue Section 4 testing rules in the 1980's, those rules came under legal attack by the chemical industry. Most of this litigation challenged the scope of EPA's authority under Section 4, and the Agency was inclined to await the outcomes of those cases before initiating a significant number of new rules. The court decisions issued in response to these challenges generally affirmed EPA's interpretations of its authority, but in some areas EPA was compelled to clarify further what information would be necessary to support a Section 4 testing rule.² Completion of these policy clarifications occurred in 1993.³

In the 1990's EPA began a series of testing initiatives using Section 4 in combination with other mechanisms for collecting data. EPA developed a Master Testing List ("MTL") that attempted to assemble an agenda for Section 4 testing that would identify the testing needs of the TSCA program as well as the testing needs of other EPA programs and other government entities. The list included "chemical categories of concern" that had been identified through the TSCA new

² Leading cases on these issues included *Shell Chemical vs. EPA*, 826 F.2d 295 (5th Cir. 1987), *CMA vs. EPA*, 859 F.2d 977 (D.C. Cir. 1988), and *CMA vs. EPA*, 899 F.2d 344 (D.C. Cir. 1990).

³ 58 Fed.Reg. 28736 (May 14, 1993).

chemical program, as well as chemicals that were being released in high volumes according to EPA's annual Toxic Release Inventory.⁴ In addition, the MTL identified a set of chemical testing needs that had been expressed by other EPA programs, such as air toxics, indoor air contaminants and hazardous waste constituents. The MTL further identified testing needs for other agencies, including the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Agency for Toxic Substances and Disease Registry, and the Organization for Economic Cooperation and Development ("OECD"). The MTL included hundreds of chemicals and far exceeded EPA's capacity for issuing Section 4 test rules, but it set the stage for a series of testing initiatives that followed on a variety of fronts.

One of the more important developments in the 1990's was the advent of voluntary testing initiatives in which EPA collaborated with stakeholders and other governmental organizations, such as the OECD. The most notable of these efforts was the High Production Volume ("HPV") Challenge Program under which companies committed to provide screening level toxicity information, based on the OECD Screening Information Data Set, on chemicals produced or imported in the United States in quantities of one million pounds or more.⁵ According to EPA, the HPV program received commitments for development and disclosure of information on over 2,200 chemicals, leading to the submission of thousands of studies.⁶ Another important voluntary data development initiative that occurred during this period was the Voluntary Children's Chemical Evaluation Program (VCCEP), which focused on assembling valuable

⁴ At that time, the Toxic Release Inventory was managed by the same EPA office that administered TSCA.

⁵ The HPV Challenge program was initiated by EPA, Environmental Defense, the American Chemistry Council, and the American Petroleum Institute in 1998.

⁶ <http://www.epa.gov/chemrtk/pubs/general/basicinfo.htm>

toxicity information concerning a set of chemicals to which children had a high likelihood of exposure.⁷

In response to concerns about the possibility that certain chemicals might cause adverse effect to humans and wildlife through the mechanism of endocrine disruption, the Congress enacted legislation in 1996 creating a mandate for testing that has become known as the Endocrine Disruptor Screening Program (EDSP). While this program focused initially on pesticides, EPA expanded the program to include other industrial and commercial chemicals, and the staff of the TSCA testing program was responsible for that aspect of the EDSP. Under the program, EPA was authorized to issue testing orders to companies to produce tests regarding the potential for certain chemicals to affect the endocrine system. EPA began issuing such orders in 2009. While these orders are being issued pursuant to the 1996 statute, rather than Section 4 of TSCA, the EDSP provides another example of how information is being collected on chemicals under the jurisdiction of TSCA.

A review of more recent Section 4 activity by EPA indicates that EPA has been less active in requiring testing. As an example, one of the commitments EPA made in the context of the HPV Challenge Program was to use its Section 4 testing authority to pursue screening level testing for chemicals that met the volume threshold for the program but had not been the subject of a voluntary industry commitment to provide the testing. These so-called “unsponsored HPV Chemicals” were divided into four groups and were to be the subject of four separate Section 4 test rules. EPA issued a rule on the first of these groups in 2006 (71 Fed.Reg. 13708). In 2011, EPA issued final rules for the second group (76 Fed.Reg. 1067) and the third group (76 Fed.Reg.

⁷<http://www.epa.gov/oppt/vccep/index.html>

65385). A proposed rule to address the fourth group was proposed for comment on October 21, 2011, but a final rule on this group of chemicals has not been issued by EPA.⁸

EPA's experience in using its TSCA Section 4 testing authority offers important lessons about what conditions can make that program most successful. Fortunately, the Subcommittee's CICA Discussion Draft addresses those conditions. First, it has proven very difficult for EPA to move forward on testing proposals that are not directly related to TSCA-based risk management actions. The MTL that EPA developed in the 1990's included a long list of chemicals that were of interest to other EPA programs and to other federal agencies. Yet EPA only completed three significant rules that were responsive to these needs – a rule on hazardous waste constituents (40 CFR §799.5055), a rule on drinking water constituents (40 CFR §799.5075), and a rule on chemicals of interest to the Occupational Safety and Health Administration (40 CFR §799.5115).

In contrast, EPA has been much more successful obtaining needed testing in the context of the new chemical program, where it has mandated data development through the issuance of Section 5(e) Orders. In those circumstances, the data of interest is directly related to a risk management decision that EPA will make under TSCA. Both the Agency and PMN submitter understand the relevance and importance of the data for the chemical under review. In this context, EPA has been able to obtain the information it needs on a reasonable schedule that it specifies.

In the CICA Discussion Draft, the information collection authority under Section 4 has been closely linked to both the Section 5 new chemical program and the Section 6 existing chemical program. While EPA would retain a general authority to require testing to assist other programs

⁸ Press reports have indicated that EPA set this rule aside due to other priority matters under TSCA.

and agencies under Section 4, the clear signal in the bill is that the primary role of EPA's information collection authorities is to make sure that TSCA decisions related to new and existing chemicals are well-informed. This is an important direction to EPA that will ground the testing program in the central risk management functions of the law, reducing the possibility that EPA testing resources will be diverted into special projects that do not advance the core mission of the TSCA program.

The other lesson learned for the TSCA program, particularly based on recent experience with Section 4, is that rulemaking is a slow-moving tool. The long timelines that have developed in federal rulemaking are not attributable to any one cause, nor are they unique to the TSCA program or to EPA. Nonetheless, it is quite clear that rulemaking takes much longer to complete today than it did when TSCA was enacted in 1976. As a result, one of the most important new elements of TSCA that would result from enactment of the CICA Discussion Draft is Section 4(a)(2)(C), which authorizes EPA to require the generation of data through the issuance of an order. This authority, which would bypass the ponderous nature of the rulemaking process, would allow EPA to obtain information in a more expeditious manner.

It should be noted that this new order authority will not always provide the best approach for collecting new testing data. In cases where it is unclear what specific parties make up the universe of manufacturers or processors that should be providing the data, issuance of a rule will still be warranted. The new order authority for existing chemicals, however, will undoubtedly be of great value to EPA. The Agency's experience with other order authorities to mandate the generation of data, such as Section 3(c)(2)(B) of the Federal Insecticide Fungicide and

Rodenticide Act for pesticides and Section 5(e) of TSCA for new chemicals certainly suggest that a similar authority for existing chemicals would be one of the most important changes to the TSCA program in its history.

Section 14: A “Treaty” on Confidential Business Information

One of the strengths of the CICA Discussion Draft is the new framework it sets forth under Section 14 for the protection of Confidential Business Information (“CBI”). The elements of this provision have not been as controversial as other elements of CICA or of S.1009. That fact is the strength of these changes to Section 14.

EPA’s approach to CBI protection under TSCA was first developed in the context of the top priority matters that the Agency had to address immediately after the enactment of the statute in 1976. Specifically, EPA needed to establish the TSCA Inventory of existing chemical and provide for review of new chemicals that were being brought to market. To conduct an effective review of a new chemical, EPA necessarily needed access to data about the specifics of the chemical, its production process, the company’s intended markets and its planned production volume, information that would routinely be maintained as trade secrets to protect innovation and business strategy. As a result, the TSCA program put in place a set of policies and procedures for the handling of CBI information that were, and remain today, the most rigorous approach to this issue found in any part of EPA. Those procedures required that each CBI document would be catalogued and tracked, staff handling CBI data had to receive training on required procedures and pass a proficiency test, CBI documents were to be kept in locked safes

when not in use, and office areas where CBI data was under review were kept under lock and key so unauthorized personnel could not enter the area.

The prevailing view of CBI data among TSCA staff during this period was that the data warranted absolute protection because such an approach facilitated industry's willingness to provide such data expeditiously and thus allow EPA to do its job – conduct a full review of the data and make a judgment about the safety of a new chemical for introduction into commerce. At that time EPA did not view its role as promoting public access to information collected under TSCA, particularly in regard to information that had been claimed as CBI.

This perspective began to change in the late 1980's. In response to the Bhopal, India chemical accident of 1984 and a 1985 chemical release at a facility in Institute, West Virginia, Congress enacted the Emergency Planning and Community Right to Know Act of 1986 ("EPCRA"). A central feature of that statute was the establishment of the Toxic Release Inventory Program ("TRI"), the first program in EPA history where the primary purpose of the Agency's information collection effort was to disseminate the information for public use. This TRI program was further expanded by the Pollution Prevention Act ("PPA"), which passed in 1990.

In assigning responsibility for the administration of EPCRA, EPA decided to assign the TRI to the Office of Toxic Substances (the predecessor of OPPT), to align that program with the expertise of the office and the data that had been collected and assessed under TSCA.⁹ This new alignment created a rather unique juxtaposition of program cultures - a traditional TSCA

⁹ The emergency response and planning functions of EPCRA were assigned to the Office of Solid Waste and Emergency Response to align this work with EPA's responsibilities under the Superfund program.

program that did see the data it collected as a resource for public use and a new TRI program that viewed public use of information as the central purpose of all of its activities. The office was further challenged when the Agency assigned the broader functions and staff of the PPA to the TSCA office. When I became the Director of this office in 1990, the need to align these differing perspectives became one of our first priorities.

Two other events were influential on EPA strategy at this time. The Agency had commissioned a contractor study that reviewed the types of data that were being routinely claimed as CBI in the new chemical program.¹⁰ While the study found that the vast majority of data claimed as CBI fell into categories that were legitimate trade secrets, there were many examples of frivolous claims by new chemical submitters that were not justified (e.g., CBI claims for newspaper articles and corporate annual reports.) The second major event, discussed above, was the 1991 court remand of the Section 6 rule on asbestos, which forced EPA to reconsider its entire strategy for addressing existing chemicals under TSCA.

What emerged from OPPT's discussions of how best to integrate these new responsibilities and program limitations was the adoption of a set of four principles to guide the office's work, a new name for the office (i.e., it became OPPT), and a reorganization to facilitate the new direction of the office. Of particular importance to the issue of CBI protection, one of the core principles adopted by OPPT became known as the "Going Public" effort, a commitment to providing public access to health and safety information. In the reorganization, OPPT created an Information Access Branch of staff to facilitate the dissemination of toxics information collected under TSCA, EPCRA and the PPA. OPPT also committed staff resources to the review and

¹⁰ Hampshire Associates, "Influence of CBI Requirement on TSCA Implementation," (March 1992)

challenge of unjustified CBI claims related to health and safety studies, in light of the high value of public access to such studies and the explicit recognition in Section 14 that such studies could not be the subject of CBI claims.

Beginning in 1992, OPPT also engaged stakeholder groups to obtain public comments on a broader set of policy changes and activities to enhance the “Going Public” effort. In 1993, OPPT issued a document responding to the comments that had been received and set forth a set of actions that it intended to initiate on these matters.¹¹ The list of actions in this document included measures that have remained part of the debate on CBI protection to the current day, including upfront substantiation of CBI claims, periodic re-substantiation of CBI claims, certification of CBI claims by executive-level corporate officers, and strategies to provide states with access to CBI information where they have CBI protection programs comparable to EPA’s protections.

While we did not appreciate it at the time, these initiatives marked the beginning of a long period of public debate, characterized by substantial discord, about the appropriate level of CBI protection to be afforded to chemical information under TSCA. What we have seen over the last twenty years on these issues can best be characterized as a guerilla war fought among industry, EPA and the NGO community. The intensity of the debate has varied over the last two decades depending on the relative attention that EPA has given to the issues, but the perception that CBI protection is a systemic problem with the TSCA statute has remained a constant element of the push for statutory reform.

¹¹ U.S. EPA, “Proposed Actions to Reform TSCA Confidential Business Information,” (May 20, 1993).

The substantive debate on this topic has tended to be very polarized, and thus less productive. As an example, when OPPT first proposed these reforms in 1992, one of the primary critiques of the Agency from the chemical industry was that TSCA was not a “right to know” statute, despite the clear language in Section 14 that health and safety studies were not subject to CBI protection. On the other side of the debate, some NGO representatives (including law professors) have argued that trade secret protections are no longer needed because modern patent law can provide all the protection that industry needs. Such an argument, however, is not grounded in the reality of global commerce and the fact that U.S. patent law principles are not accepted as enforceable international norms. To maintain the ability to innovate in the modern world, trade secret protection is likely to be more important today than it was 20 years ago.

As stakeholder groups have been working on statutory reforms of TSCA over the last several years, a quiet but extremely useful dialogue has occurred. Mainly in the context of the Senate bill, representatives of industry and NGO groups engaged in a series of discussions aimed at bridging areas of disagreement about TSCA CBI protection. What has resulted from these discussions is a significant rewrite of Section 14, which first appeared in S. 1009 and has been substantially accepted in the latest CICA Discussion Draft, articulating the principles of an historic compromise on these issues.

The compromise would include the following elements:

- Section 14 lists the categories of information that will generally be protected as CBI and the categories of information that will generally not be protected as CBI.

- In presenting a claim for confidentiality, the information submitter must provide upfront substantiation of a claim for confidentiality regarding the identity of the chemical substance that is the subject of the submission.
- EPA may provide states access to TSCA CBI for purposes of development, administration or enforcement of a law, where the state has procedures in place that are as stringent as those used by EPA.
- EPA may provide CBI information about a chemical to specified medical professionals to aid diagnosis or treatment of individuals who have likely been exposed to the chemical, with differing procedural obligations for these professionals in emergency and non-emergency circumstances.
- The section specifies procedural rules for the duration of confidentiality claims and how those claims may be re-asserted by the information submitter.
- When EPA denies a CBI claim, the statute specifies when EPA may release the information to the public or specific parties, in recognition of the information submitter's right to bring a timely legal challenge to the Agency's decision.

These changes represent a reasonable accommodation of the interests that need to be balanced, providing EPA with much clearer direction on how it should handle disputes that might arise on access to TSCA data. While no statutory provisions can eliminate all issues that might arise in a complex area like this one, enactment of the CICA Discussion Draft's revised Section 14 would substantially resolve a set of issues that have plagued the TSCA program for decades. In historical terms, the CICA Discussion Draft incorporates what might be referred to as the "TSCA CBI Treaty of 2014" that would resolve a 20 year guerilla war of unproductive public

discourse on how sensitive business information should be handled under the statute.

Enactment of this provision can only be a success story.

Conclusion

Chairman Shimkus, Ranking Member Tonko and Members of the Subcommittee, I thank you again for the opportunity to testify before you today. I applaud your efforts to work together on these revisions to TSCA that offer the opportunity for substantial improvement in EPA's chemical management program.

Mr. SHIMKUS. I thank you. And now, I would like to recognize Dr. Sauers for 5 minutes.

STATEMENT OF LEN SAUERS

Mr. SAUERS. Um-hum. Chairman Shimkus, Ranking Member Tonko, members of the subcommittee, thank you for inviting me to testify today. My name is Len Sauers. I am Vice President of Global Sustainability, Product Safety and Regulatory Affairs at the Proctor & Gamble Company. P&G is the largest consumer products company in the world. And our products are used by more than 4.8 billion people worldwide. Ninety-nine percent of American households contain at least one P&G product.

Since our founding in 1837, innovation has been integral to everything we do and critical to our success. At P&G, we believe innovation is our lifeblood. I congratulate and thank the subcommittee for continued bipartisan collaboration to further refine and improve the draft legislation. We firmly believe that any legislative effort to modernize TSCA must have a strong foundation built on common ground from a broad range of stakeholder interests.

The time for action is now. A strong and effective Federal chemical management program will lessen pressure on States or markets to independently take action to regulate chemicals. Enhancing consumer confidence is P&G's single most important objective for modernizing TSCA. We recognize and hear from our consumers that they are concerned about chemicals used in everyday products. We believe a modernized TSCA will strengthen public confidence in EPA's oversight of the safety of chemicals used in the everyday products that consumers bring into their homes and use around their families.

The latest discussion draft makes some very important improvements over the current statute. For example, CICA requires EPA to identify and account for active chemicals in U.S. commerce, and then apply transparent criteria to prioritize them. CICA instructs EPA to conduct a risk evaluation of high-priority chemicals to examine their probable or demonstrated harm to humans or the environment, with attention given to the most vulnerable subpopulations potentially exposed by these priority chemicals. CICA expressly prohibits EPA from considering economic costs and benefits in their risk evaluation for priority chemicals, which is a noted improvement over the earlier discussion draft and acknowledges the common ground reached by industry and NGO stakeholders that a new safety standard in a modernized TSCA should be health-based only.

EPA subsequent regulatory actions must impose requirements or restrictions that sufficiently and effectively manage the risk, while carefully evaluating practical consideration to assure market benefit and continuity. And importantly, CICA offers new authority for EPA to collect additional information on chemicals in commerce when such information is most useful to the Agency in decision-making.

Another important element of the proposed CICA act is support for innovation through protection of confidential business information. Proctor & Gamble invests \$2 billion annually in research and

development. It is 60 percent more than our next closest competitor, and more than most of our competitors combined. Once we bring new products to market, we have significant interest in protecting our confidential business information from public disclosure to our competitors. Appropriate protections for confidential information allow innovative companies to succeed, and for P&G to earn our consumers trust and loyalty. We rely heavily on the protection of confidential business information afforded by Section 14 of TSCA to remain competitive.

We recognize that EPA has to carefully balance the protection of confidential business information under TSCA, with providing public access to health and safety information. P&G fully supports transparency with health and safety information, and the disclosure of confidential information to States and medical professionals to assist with the diagnosis and treatment of illnesses. The discussion draft appropriately authorizes EPA to disclose such information.

We also strongly support provisions to the discussion draft that provide adequate protection for confidential chemical identities, even when associated with a health and safety study. A specific confidential chemical identity is not needed to conduct a health and safety study, interpret its results, or communicate the study's observed health effects and conclusion. Structurally descriptive, generic chemical names are sufficient to provide the public with information about the structure of the chemical and its hazard profile, which in turn provides a linkage and access to publicly available scientific and toxicological literature on structurally related materials.

In our industry, confidential chemical entities are often the most valuable type of intellectual property. Disclosure of a specific confidential chemical entity can provide watchful competitors with clues needed to replicate our product formulations. P&G agrees with other industry stakeholders that CBI protection must be properly substantiated at the time of the initial claim, and upon EPA request to renew or extend the duration of protection. We support the CICA provisions that address the need for upfront substantiation of CBI claims for confidential chemical identities and encourage the authors to consider broadening the requirement.

Mr. Chairman, Ranking Member Tonko, thank you again for the invitation to testify this morning. We believe the time to modernize TSCA is now.

[The prepared statement of Mr. Sauers follows:]

Testimony of Len Sauers, PhD
Vice President, Global Sustainability, Product Safety and Regulatory Affairs
The Procter & Gamble Company

United States House of Representatives Energy and Commerce
Subcommittee on Environment and the Economy

Hearing on
The Revised Discussion Draft entitled "The Chemicals in Commerce Act (CICA)"

Tuesday, April 29, 2014

Introduction

Chairman Shimkus, Ranking Member Tonko, members of the Subcommittee, thank you for inviting me to testify today and reaffirm The Procter & Gamble Company's (P&G) support for modernization of the Toxic Substance Control Act (TSCA). We are encouraged by the significant investment this Subcommittee has made in reviewing the existing law and engaging in a series of hearings dedicated to this important topic. Many hours of member and stakeholder discussions have led to this newest Discussion Draft of the proposed Chemicals in Commerce Act (CICA), which we believe reflects the serious intent of this Subcommittee to improve public confidence in our nation's chemical management system while preserving innovation flexibility and the free flow of U.S. commerce.

My name is Len Sauers. I am Vice President, Global Sustainability, Product Safety and Regulatory Affairs at Procter & Gamble where I am responsible for the company's sustainability program, as well as the product safety and regulatory affairs organization.

P&G serves more than 4.8 billion people around the world everyday with our trusted household and personal care brands. Ninety-nine percent of American households contain at least one P&G product. Our trusted, quality, leadership brands, include Pampers, Tide, Pantene, Bounty, Crest, Olay, Gillette and many others, touch and improve the lives of consumers in more than 180 countries.

Innovation is integral to everything we do to improve the value consumers receive from putting their trust in P&G brands. Since our founding in 1837, we have been inspired and driven by our Purpose — to touch and improve the lives of our consumers, in small but meaningful ways each and every day. As a company, we have chosen to deliver on our Purpose through innovation driven by consumer insight. At P&G, we believe innovation is our lifeblood, and the consumer is boss.

I want to thank you, Mr. Chairman and Ranking Member Tonko, for your interest in P&G's perspective on how the proposed Chemicals in Commerce Act may best accomplish the task of TSCA modernization. We congratulate and thank the Subcommittee for continued, bipartisan collaboration to further refine and improve the draft legislation. We firmly believe that any legislative effort to modernize TSCA must have a strong foundation built on common ground from a broad range of stakeholder interests. This philosophy has motivated P&G's long-standing engagement in stakeholder dialogue on TSCA modernization to find solutions that will enhance consumer confidence in our federal chemical management system.

The time for action is now. Never before in the 38-year history of TSCA has there been such bipartisan interest in both houses of Congress to modernize the statute. A strong and effective federal chemical management program will lessen pressure on states or markets to independently take action to regulate chemicals. Furthermore, a modern TSCA statute will well-position the US to reassert its leadership in the global marketplace and provide a much needed alternative to the EU's approach with REACH.

Enhancing consumer confidence is P&G's single most important objective for modernizing TSCA. We recognize and hear from our consumers that they are concerned about chemicals used in everyday products. We believe a new approach to US chemical management – one in which EPA systematically and transparently prioritizes existing chemicals in commerce; evaluates the risk to public health and the environment of the highest priority chemicals; and where necessary manages the risk of chemicals in an effective and timely manner, will strengthen public confidence in EPA's oversight of the safety of chemicals used in the everyday products that consumers bring into their homes and use around their families.

Now I'll address some important improvements in the latest Discussion Draft over the current TSCA statute and the importance of CBI protection in any TSCA reform effort. CICA requires EPA to identify and account for active chemicals in US commerce and then apply transparent criteria to prioritize them. CICA instructs EPA to conduct a risk evaluation of high priority chemicals to examine their probable or demonstrated harm to humans or the environment, with attention given to the most vulnerable subpopulations potentially exposed by these priority chemicals. CICA expressly prohibits EPA from considering economic costs and benefits in the risk evaluation for priority chemicals, which is a noted improvement over the earlier Discussion Draft of CICA and acknowledges the common ground reached early on among stakeholders that limited priority chemical assessments to hazard and exposure considerations only. EPA's subsequent regulatory actions must impose requirements or restrictions that sufficiently and effectively manage the risk while carefully evaluating practical considerations to

ensure market benefit and continuity. Importantly, CICA offers new order authority for EPA to collect additional information on chemicals in commerce when such information is most useful to Agency decision-making, whether to better inform prioritization or during the risk evaluation of high priority chemicals.

CICA Support of Innovation

As I discussed previously before this Subcommittee in my July 2013 testimony, Procter & Gamble invests \$2 billion annually in research & development (R&D), which is about 60% more than our next closest competitor and more than most of our competitors combined. Over the last 30+ years, P&G has either submitted or been the major contributor to over 175 Pre-Manufacture Notices (PMNs) that have spanned commodity chemical manufacturing as part of our global P&G Chemicals business and for use in new chemistries in the formulation of our household brands. From our experience, we believe that EPA's governance of the New Chemicals Program has provided for scientifically robust reviews of the potential hazards and exposures of new chemicals entering the US market to ensure appropriate health and environmental protection.

Once we bring our new products to market, we have significant interest in protecting our formulation designs, process technology, and other confidential business information from public disclosure to our competitors. Appropriate protections for confidential information allow innovative companies to succeed in the marketplace and, for P&G, to earn our consumers' trust and loyalty in our brands. P&G holds 55,000 active patents globally, but patents alone are not enough to protect the continual improvements we

make to our product formulations. We rely heavily on the protection of confidential business information afforded by Section 14 of TSCA to remain competitive in the US and global marketplace.

We recognize that EPA has to carefully balance the protection of confidential business information under TSCA with providing public access to health and safety information on chemicals in U.S. commerce. P&G fully supports transparency with health and safety information and the disclosure of confidential information to states and medical professionals to assist with the diagnosis and treatment of illnesses. The CICA Discussion Draft appropriately authorizes EPA to disclose such information accordingly. We also strongly support provisions in the CICA Discussion Draft that provide adequate protection for confidential chemical identities, even when associated with a health and safety study. A specific, confidential chemical identity is not needed to conduct a health and safety study, interpret its results, or communicate the study's observed health effects and conclusions. Structurally descriptive, generic chemical names are sufficient to provide the public with information about the structure of the chemical and its hazard profile, which in turn provides a linkage and access to publicly available, scientific and toxicological literature on similarly structured substances.

In our industry, confidential chemical identities are often the most valuable type of intellectual property. Disclosure of a specific, confidential chemical identity can provide watchful competitors with the clues needed to unravel our formulary science and

replicate our product formulations – all without investing the same significant time, resources, and billions of dollars in research and development as P&G.

P&G agrees with other industry stakeholders in the recognition that CBI protection must be properly substantiated at the time of the initial claim and upon EPA request to renew or extend the duration of protection. We support the CICA provisions that address the need for upfront substantiation of CBI claims for confidential chemical identities and encourage the authors to consider broadening this requirement for all eligible information elements for which a manufacturer or processor may seek CBI protection.

Conclusion

Mr. Chairman, Ranking Member Tonko, thank you again for the invitation to testify this morning. We believe the time to modernize TSCA is now and we encourage this Subcommittee to quickly come together in bipartisan agreement. P&G values our partnership with you and this Subcommittee and we remain committed to working with you and other stakeholders to develop and advance formal legislation that achieves an effective and scientifically sound chemical management program that enhances consumer confidence and supports U.S. innovation in the global marketplace.

Mr. SHIMKUS. Thank you. Now, the Chair now recognizes Mr. Goldberg for 5 minutes.

STATEMENT OF STEVEN J. GOLDBERG

Mr. GOLDBERG. Thank you. Chairman Shimkus, Ranking—

Mr. SHIMKUS. I think there should be a button for that.

Mr. GOLDBERG. Chairman Shimkus, Ranking Member Tonko, members of the subcommittee, thank you for this opportunity. I am Steve Goldberg, Vice President and Associate General Counsel for Regulatory & Government Affairs at BASF Corporation. BASF Corporation is the North American arm of BSF Group, which is the world's largest chemical company.

BASF Corporation supports modernization of TSCA. We believe substantial progress has been made towards that goal by the most recent draft of the Chemicals in Commerce Act. And we appreciate the subcommittee's focus on this important matter, and are grateful for the opportunity here before you—appear before you today.

A number of key principles and concepts for TSCA modernization are the subject of agreement among a wide variety of stakeholders, including the fact that TSCA should provide for additional authority for EPA to review and manage risks from existing chemicals on the market as it has successfully done for new chemicals since TSCA's inception. A prioritization process is an appropriate way for EPA to commence reviewing existing chemicals in order to ensure its resources are spent in the most efficient way.

EPA requires additional authority to call for testing of chemicals where existing data is insufficient to permit reasoned conclusions either as to priority status or to make risk assessments. And the appropriate approach for a safety assessment of chemicals is a risk-based standard that is one that takes into account not just hazards but also exposure and use in order to leave to safety conclusions.

And while I am not testifying on their behalf today, while I participate in the chemical management teams at American Chemistry Counsel, I also do so at the leading downstream associations, the American Cleaning Institute, Consumer Specialty Products Association. And those associations are committed to participating in this process to provide appropriate use data so that the standard can be risk-based, not just hazard-based.

The benefit and cost considerations are not appropriate when making a safety assessment, but are critical in deciding the appropriateness of risk management measures. As discussed, there should be appropriate protections for CBI. And, finally, EPA will require sufficient resources to be able to fulfill its mandate in a timely manner under a modernized TSCA.

While provisions in the proposed bill on use exposure data and resource needs require some fleshing out, overall we are pleased that the updated CICA is directed towards meeting these principles and is a substantial improvement over current law. While all these subjects are important, I want to focus on the subject raised by Mr. Dingell, and that is the issue of resources.

Ultimately, one key to success of a modernized TSCA is ensuring that EPA has the resources to do its job. And there was extensive discussion about how many chemicals it could review and what sort of time period. Ultimately, a program that provides EPA the au-

thority but not the resources to do that job is a losing proposition for the chemical industry, our customers and the public. And so the program posited by the CICA clearly will require additional resources in EPA's Office of Pollution Prevention and Toxics to allow this program to work.

Having been extensively involved in development and implementation of a pesticide fee system under the Pesticide Registration Improvement Act, which has been in place at EPA for about 10 years, I can provide some perspective on the possible application of a fees approach as part of increasing the resources for EPA to meet the needs of the program. And those fee provisions generally revolve around a number of, again, commonly held principles. That is fees charged must be dedicated to the program itself, not to the general treasury or other programs within EPA. And those fees generally should go for adding FTEs within EPA. Fees need to supplement not replace appropriations for the functions of chemical safety review. They need to be reasonable in amount and such that will not stifle innovation, which is critical to our industry. A fee should be focused on activities that provide a direct benefit to the person being charged. A fee system needs to take into account small business considerations. And, lastly, the Agency needs to be accountable and transparent about how those fees are being used.

Ultimately, while PRIA provides some direction for possible approaches towards meeting resource needs in the chemicals area, it is a somewhat imperfect model. It is a different type of statute. It is a product registration statute instead of a substance statute, as more fully noted in my written testimony. However, there are some models I think that will help.

So while there are things to be learned from the experience with PRIA, ultimately a fee program for chemicals needs to be based on any processes called for in TSCA and under the CICA, and requirements of a chemical management system.

Industry is prepared to discuss the need for additional fees in this particular context, if it meets those principles I enunciated. And BASF stands ready to help inform Congress' consideration of the resource needs of the Agency, including appropriate fee approaches.

And we thank you very much for your consideration.
[The prepared statement of Mr. Goldberg follows:]

**Testimony of Steven J. Goldberg
Vice President and Associate General Counsel, Regulatory & Government Affairs
BASF Corporation**

The Chemicals in Commerce Act

**United States House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment and the Economy**

April 29, 2014

Chairman Shimkus, Ranking Member Tonko, Members of the Subcommittee:

I am Steven J. Goldberg, vice president and associate general counsel for regulatory and government affairs at BASF Corporation.

BASF Corporation supports modernization of the Toxic Substances Control Act (TSCA). We believe substantial progress has been made towards that goal by the most recent draft of the Chemicals in Commerce Act (CICA). We appreciate the subcommittee's focus on this important matter and are grateful for the opportunity to appear before you today.

About BASF

BASF Corporation is the North American affiliate of BASF Group, the world's leading chemical company, which is headquartered in Ludwigshafen, Germany. BASF has nearly 17,000 employees in North America, of which approximately 14,000 are in the U.S. We have facilities in more than 30 states. Our North American headquarters is located in Florham Park, New Jersey. Key U.S. manufacturing locations for BASF include Freeport, Texas; Geismar, Louisiana; and Wyandotte, Michigan. Our major research & development sites in the U.S. include Research Triangle Park, North Carolina; Tarrytown, New York; and Iselin, New Jersey.

As the world's leading chemical company, BASF cares greatly about ensuring that regulatory systems around the world provide assurance to the public that the products of the business of chemistry are safe and ensure that companies can innovate to meet the needs of our customers and society. Our portfolio ranges from chemicals, plastics, performance products and crop protection products to oil and gas. BASF combines economic success with environmental protection and social responsibility. Through science and innovation, we enable our customers in nearly every industry to meet the current and future needs of society. Our products and solutions contribute to conserving resources, ensuring nutrition and improving quality of life. We have summed up this contribution in our corporate purpose: *We create chemistry for a sustainable future.*

Working With Our Trade Associations

At BASF, one of our pillars is "helping our customers be successful." To this end, we work closely with our basic chemical association, the American Chemistry Council, and key downstream associations including the American Cleaning Institute and the Consumer Specialty Products Association in support of modernizing TSCA. All of these associations and many others have provided a strong voice in favor of reestablishing U.S. and Environmental Protection Agency (EPA) leadership in chemicals management. We at BASF thank them for their work and commend their efforts to members of this subcommittee.

Support for TSCA Modernization and the CICA

BASF strongly supports reform and modernization of TSCA. While the law was groundbreaking when it was adopted in 1976, it has not been successful in recent years in meeting all of the needs of the chemical industry, our customers and consumers. And, although we strongly

believe that the products we manufacture and market are safe, assurance for consumers needs to come from the agency charged with the ultimate goal of assuring safety, *i.e.*, the EPA. In the absence of that assurance, industry has been faced with a multiplicity of efforts from a variety of stakeholders, including state and local governments, which call for regulation of chemicals in different ways. We believe that a consistent approach to chemicals management in the U.S. is required. That approach -- leadership by EPA with modern tools for gathering data and making risk assessment and risk management decisions -- is reflected in the updated discussion draft of the CICA. We believe the updated draft provides a substantial step forward towards reaching sensible chemical management reform. Its provisions are a marked improvement over current law and would provide EPA with the authority to review chemicals, both new and existing, and manage their risks.

The CICA Meets Key Principles for Modernizing TSCA

A number of key principles and concepts for TSCA modernization are the subject of agreement among a wide variety of stakeholders, including the following:

- TSCA should provide for additional authority for EPA to review and manage risks from existing chemicals on the market, as it has successfully done for new chemicals since TSCA's inception;
- A prioritization process is an appropriate way for EPA to commence reviewing existing chemicals in order to ensure its resources are being spent in the most efficient way;
- EPA requires additional authority to call for testing of chemicals where existing data is insufficient to permit reasoned conclusions either as to its priority status or to make risk assessments;
- The appropriate approach for a safety assessment of chemicals is a risk-based standard, *i.e.*, one that takes into account not just hazards but also exposure in leading to safety conclusions;¹
- The safety standard should, at its heart, be one revolving around the concept that the EPA should take action where risks are significant, not when they are insignificant;
- EPA should take into account the needs of identified sensitive subpopulations where appropriate to be able to make a safety assessment;
- EPA requires additional regulatory means, *e.g.*, protective labels or use conditions, to allow it to efficiently manage the risks of chemicals where those risks are more than insignificant;
- Benefit and cost considerations are **NOT** appropriate when making a safety/risk assessment, but **ARE** critical in deciding the appropriateness of risk management measures;

¹ This will require increased authority to gather use information.

- There should be appropriate protections for confidential business information; and
- EPA will require sufficient resources to be able to fulfill its mandate in a timely manner under a modernized TSCA.

While provisions in the proposed bill on exposure data and resource needs require some fleshing out, overall we are pleased that the updated CICA is directed towards meeting these principles and concepts, and thus is a substantial improvement over current law. While all of these subjects are of critical importance, I will focus the remainder of my statement on three key areas.

(1) Risk Assessments and Appropriate Risk Management Measures

A workable, modernized TSCA will only succeed if EPA in fact can do the job it is required to do. This includes requirements that the agency prioritize chemicals for safety review, conduct safety reviews and take appropriate risk management actions. We are pleased that the latest discussion draft of the CICA advances these requirements by setting forth timeframes by which risk assessments and risk management actions must take place once a chemical is designated as high priority. Some stakeholders have noted that one element missing from the current discussion draft is the pace by which this process should take place. In short, it is important to have an understanding of the number of chemicals that must go through the risk assessment process and the timeframe in which EPA must make a prioritization decision. While we share some of this concern, we note that the ability to make an assessment of the appropriate pace of the program depends upon two key elements yet to be assessed: (1) the resources available to the agency and (2) the number of chemicals that are truly active and require prioritization. Without these key facts, we believe it is difficult to legislate an appropriate pace for how many chemicals go into the system.

(2) Risk Assessment Depends Upon the Availability of Use and Exposure Data

As noted earlier, and is reflected in the latest draft of the CICA, the appropriate standard for review of chemical safety is on the basis of risk, not just hazard. This requires the availability of sufficient use and exposure data to allow EPA to make reasoned judgments. While not testifying on their behalf, as a member of the chemical management teams at the American Cleaning Institute and Consumer Specialty Products Association, the leading associations of downstream chemical formulators, I know that the downstream members are committed to an appropriate system of providing adequate use information to help inform chemical safety assessments. That commitment comes with the acknowledgment that TSCA reform must ensure the protection of confidential business information.

(3) Sufficient Resources to Fulfill the Objectives of the Chemicals in Commerce Act

Ultimately, one key to the success of a modernized TSCA is ensuring that EPA has the resources necessary to review new chemicals and prioritize and review active chemical substances under the authority proposed under the CICA. A program that provides EPA the authority, but not the resources, to do its job is a losing proposition for industry, our customers and the public. The

program posited by the CICA clearly will require additional resources in the EPA Office of Pollution Prevention and Toxics to allow the program to work.

While it may be appropriate to consider a “user fee” system for providing some of the resource needs, certain principles are critical in reaching an acceptable fee approach:

- Fees charged must be dedicated to the program itself, not to the general Treasury or other programs within EPA;
- Fees need to supplement, not replace, appropriations for the functions of chemical safety review;
- Fees must be reasonable in amount;
- Fees must not stifle innovation;
- Fees should be focused on activities that provide a direct benefit to the person being charged; and
- A fee system needs to take into account small business considerations.

Having been extensively involved in the development and implementation of the pesticide fee system under the Pesticide Registration Improvement Act (PRIA), which has been in place for the Office of Pesticide Programs (OPP) for 10 years, I can provide some perspective on the possible application of a fees approach as part of increasing the resources for EPA to meet the needs of the program.

Ultimately, PRIA provides some direction for possible approaches towards meeting resource needs in the chemicals area, but it is also a somewhat imperfect model for TSCA fees. This is because the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the pesticide law of which PRIA is a part is a product registration statute. Similar to the Prescription Drug program at the Food and Drug Administration, pesticide applicants receive what amounts to a marketing license that is specific to that applicant. Under FIFRA, each product marketed as a pesticide must be approved. By contrast, TSCA is a substance based system—once a chemical is on the TSCA Inventory, anyone (subject to any patent restrictions) is free to market the same product. And, unlike under FIFRA, each product containing a chemical does not require registration².

Under FIFRA, there are two types of fees that registrants pay. The first is a registration fee. Applicants seeking the approval to market a new active ingredient, new product, new use or even new conditions of use must pay an application fee, which varies in amount depending upon the nature of the application. The second is the annual maintenance fee. All registrants of products must pay a fee per product that they have registered (with a cap on total fees out of any one company).

One can see some similarities in the notion of registration fees for chemicals. Indeed, an application fee for Pre-Manufacturing Notifications already exists. However, those fees go to the Treasury and are not directed specifically to EPA’s chemicals program. Under PRIA,

² One can readily see the impracticality of a product registration system for chemical products. Such a system would result a separate approval for each formulation or even each product/article that contains a chemical.

maintenance fees go to help fund OPP's "Registration Review" program, a program similar to risk assessment program for priority chemicals proposed under the CICA.

While there are things to be learned from the experience with PRIA, ultimately a fee program for chemicals would need to be based on the unique processes and requirements of the chemical management system. BASF stands ready to help inform Congress' consideration of the resource needs of the EPA, including appropriate fee approaches.

Conclusion

Thank you, again, for the opportunity to share BASF's views on the modernization of TSCA and the revised discussion draft of the CICA. BASF supports the approach of the CICA towards reaching bipartisan solutions for the critical issues required to make a modernized TSCA a success. The chemical industry needs, and the public deserves, a predictable, scientifically-based and efficient federal chemical management system that will create greater certainty and promote innovation that will help to create a more sustainable future. BASF looks forward to working with members of the subcommittee to accomplish this task.

Mr. SHIMKUS. All right. Thank you for attending. And the business community obviously represents their customers. It is great to have a State senator here who has constituents. I think there is obviously members, who are legislators also, have great respect for anyone who puts their hat in the ring and runs for political office. So I would like to recognize Senator Michael Moore from the Commonwealth of Massachusetts. And you are recognized for 5 minutes.

STATEMENT OF MICHAEL MOORE

Mr. MOORE. Thank you very much. And it is an honor to be here today. Chairman Shimkus and Ranking Member Tonko and distinguished members of the subcommittee, as a member of the Massachusetts State Senate and a member of the National Conference of State Legislators, I speak today on behalf of the NCSL, a bipartisan organization representing 50 State legislators and the legislators of our Nation's commonwealths, territories and the District of Columbia. I thank you for the opportunity to testify today.

Mr. Chairman, while the NCSL encourages Congress to reform and modernize TSCA, we must insist that any changes do not eliminate States' abilities to protect the health and safety of their citizens through sweeping Federal preemption. CICA preempts nearly 40 years of State policy in an attempt to provide a one-size fits all approach to toxic chemicals regulation. To strip States' residents of protections enacted by their elected officials would be a serious breach of State sovereignty and will leave everyone more susceptible to increased harm from toxic chemicals.

CICA would essentially eliminate the ability of State policymakers to regulate toxic chemicals at the State level by divesting all authority away from States and localities and placing this authority solely with the EPA administrator. This approach may have adverse effects on State regulatory structures, which I detailed in my written testimony.

CICA may also have unintended and adverse consequences that extend into the other areas of State environmental regulation. Air and water quality in States like New York may suffer because of current language does not explicitly exempt State pollution laws. In the absence of Federal action to address issues related to TSCA, lack of—TSCA's lack of revision, half of the States, including the Commonwealth of Massachusetts, have enacted legislation to regulate individual chemicals. Nearly one-third of States, including Massachusetts, have developed comprehensive State chemical regulations. The CICA would preempt all of these laws. I have attached a chart detailing the laws adversely impacted by CICA with my written testimony.

Throughout my career in public service, I have seen the benefits of State and Federal chemical policy firsthand. As a State environmental police officer, I worked under the office of the State attorney general's environmental strike force to investigate crimes associated with illegal chemical practices. The State plays a vital enforcement role in chemical incidents as the primary investigatory authority in these matters, often coordinating with several Federal and State organizations to ensure a safe and efficient response. For

18 years, I investigated serious violations of State law that had significant impacts on local communities.

In 1993, I was involved with a case in which a metal manufacturing plant failed to use standard procedures when disposing of residual sodium, resulting in an explosion. Beyond these basic failures, fire fighters responding to the blaze were significantly injured due to inexcusable mistakes. This included a failure to warn responding officers about the current state of the involved chemical, which explodes upon contact with water. When firefighters began routine containment procedures, a larger explosion occurred and several were critically burned through their protective gear by the reacting chemical. Through the Attorney General's strike force, Massachusetts was able to hold the responsible party accountable and bring justice to those injured in the incident.

Without State participation, enforcement of a chemical policy would be nearly impossible. But current CICA language would drastically hinder State enforcement. By eliminating State ability to enforce laws that are comparable to the Federal standards, the responsibility of holding violators responsible would fall primarily on the Federal Government. States embrace the opportunity to provide an improved safety for their residents and the environment and accept this burden. But preemption language in CICA significantly endangers the—that enforcement ability.

When I became a State legislator, it became more apparent how intricately States must be involved in chemical policy. The—TSCA has not been updated for nearly 40 years, and States have acted to pass laws that complement the Federal policy. All of these State laws would pass with the welfare of the public in mind. Beyond the host of Massachusetts' law that provides increased protection from toxic chemicals, several communities in my district are currently experiencing difficulties in costs associated with Federal preemption of railroad operations. That really adds—I commend the subcommittee for their commitment to business and interstate commerce in this draft, and understand the motivations for a uniform Federal chemical policy to promote these goals. However, the advancements of these ideas cannot come at the expense of public and environmental safety. I share the residents' belief that approximately—I share the residents' belief that live on the other side to the potential spills—to the potential problems of spills entitles them to a measure of involvement in ensuring chemical safety. When 100 gallons of a chemical called Styrene, used in the manufacturing of Styrofoam, was spilled in one of these preempted yards, a cooperated effort of rail yard employees and workers from State municipal agencies were responsible for the cleanup. The incident was handled safely and professionally by all involved parties with only minor complaints of irritated eyes and lingering smells. However, if a rail yard is federally preempted from State law, and chemicals being transported are preempted, the citizens of these communities have no recourse to protect their homes and families from future spills. There must be a balance struck between the benefits of interstate commerce and the need for public safety. State legislators have and must continue to play a role in chemical policy in order to reach that balance.

The NCSL encourages Congress to reform and modernize TSCA, but does not believe that the CICA adequately accomplishes this goal. At a minimum, the NCSL believes proposes TSCA reform legislation should embody the elements outlined in the NCSL's Federal Chemical Policy Reform directive, which is attached to my written testimony. Most notably, any reform of TSCA should preserve State rights to manage chemicals and resources, and should be provided for the State level implementation.

And I thank you for this opportunity and look forward to any questions.

[The prepared statement of Mr. Moore follows:]



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

TESTIMONY OF
SENATOR MICHAEL MOORE
MASSACHUSETTS STATE SENATE

ON BEHALF OF THE
NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING
CHEMICALS IN COMMERCE ACT – DISCUSSION DRAFT

BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 29, 2014

444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001
Tel: 202-624-5400 | Fax: 202-737-1069

Chairman Shimkus, Ranking Member Tonko and distinguished members of the House Environment and the Economy Subcommittee, I am Senator Michael Moore, Member of the Massachusetts State Senate and a member of the National Conference of State Legislatures (NCSL). I appear before you today on behalf of NCSL, a bi-partisan organization representing the 50 state legislatures and the legislatures of our nation's commonwealths, territories, and the District of Columbia. I thank you for the opportunity to testify on the important issue of reforming the federal chemical regulatory program.

Mr. Chairman, NCSL is appreciative of your efforts to engage in the necessary work to reform our federal chemical regulatory program, which has not been updated since the Toxic Substances Control Act (TSCA) was enacted in 1976. NCSL believes reforming TSCA is important to reflect the advances in science and technology to better evaluate and regulate chemicals that have been developed since 1976. While NCSL encourages Congress to reform and modernize TSCA, we must insist that any changes to the existing statute do not eliminate, through sweeping federal preemption, states' abilities to protect the health and safety of their citizens.

As currently drafted, The Chemicals in Commerce Act (CICA) includes onerous preemption language that would handcuff states from acting against harmful chemicals to protect their population. CICA essentially ignores nearly 40 years of state policy in an attempt to provide a one-size-fits-all approach to toxic chemicals regulation. It is very disconcerting for me as a state policymaker to think that the good work done in my state and in other states to regulate toxic substances since 1976 will be nullified if this draft bill becomes law. To strip states' residents of protections enacted by their elected officials would be a serious breach of state sovereignty and would leave everyone more susceptible to increased harm from toxic chemicals.

Sections 5, 6, and 17 of CICA, would essentially eliminate the ability of state policymakers to regulate toxic chemicals at the state level by divesting all authority away from states and localities and placing this authority solely with the Administrator of the Environmental Protection Agency (EPA). The EPA would decide what constitutes a "significant new use" of a chemical substance, the notice requirements for the development of new chemical substances or mixtures and safety determinations would all be federalized under CICA, and the designation of

a chemical as “low” or “high” priority would also fall to the EPA. This approach would: (1) prevent states from establishing or continuing to enforce any state regulation of chemicals if the EPA has made a safety determination and priority designation of the chemical; (2) prohibit states from regulating or banning any new chemical when the EPA makes a safety determination, and, (3) eliminate states’ abilities to enact stricter or stronger laws than the federal government. States’ inability to go beyond federal requirements to protect health and safety is especially troubling and runs counter to current law which allows for states to regulate toxic substances in a manner that complements the federal scheme.

CICA may also have unintended and adverse consequences that extend into other areas of state environmental regulation, such as air and water pollution. CICA’s broad preemption language may also negate state laws directed towards air or water quality, because current language does not explicitly exempt such pollution laws. For example, the ambiguity of the CICA draft may preempt such laws as New York’s Mercury Reduction Program that regulates the amount of mercury in the air.

States have enjoyed a long history of co-regulation with the federal government in environmental protection and have made sound policy decisions benefitting the American people. We do not want to see such collaborative protections eroded, or in the case of CICA, completely eradicated. NCSL has long standing policy on environmental federalism that recognizes the need to preserve and strengthen uniform minimum federal standards for environmental protection while maintaining statutory authority for states to enact state environmental standards that are more stringent than minimum federal standards. There must surely be a more harmonious solution to update TSCA, which sorely needs reforming and harmonize our shared federal/state goals of protecting our citizens and regulating chemical substances than CICA.

In the absence of federal action to address issues related to TSCA implementation, many state legislatures have enacted legislation to regulate individual chemicals. States such as my own state of Massachusetts joined by California, Connecticut, Illinois, Maine, Michigan, Montana, New Hampshire, Ohio, Oregon, Tennessee, South Carolina, and Wisconsin have also developed comprehensive state chemical policies that aim to establish broad and permanent frameworks to systematically prioritize chemicals of concern, close data gaps on those chemicals and restrict

their uses in those states. More broadly, there are laws in 24 states that regulate toxic chemicals. The CICA would preempt those state laws, rendering them useless, and would prevent states from regulating chemicals in the future.

In my home state of Massachusetts we have enacted many laws aimed at protecting our citizens from harmful chemicals and pollutants which are all now in jeopardy under CICA. My state of Massachusetts has laws on the books that ban the sale of mercury-added products; laws that regulate lacquer sealers and flammable floor products; and a comprehensive chemicals management scheme, that requires companies that use large quantities of particular toxic chemicals to evaluate and plan for pollution prevention, implement management plans if practical, and annually measure and report the results.

As an environmental police officer I worked under the office of the State Attorney General's Environmental Strike Force to investigate environmental crimes associated with illegal chemical practices. During my 18 years there, I participated in every facet of criminal investigations, from investigating crime scenes, to examining corporate manifests and records, to serving search warrants for criminal, civil and administrative proceedings. The state plays an essential role as the primary investigative authority in these matters, often coordinating with several federal and state organizations to ensure a safe and efficient response. For 18 years my colleagues and I were tasked with holding individuals and companies responsible for their violations of state chemical laws. These were not investigations into trivial incidents, but cases that required strong state action to serve justice. In 1993, I was involved with a case in which a metal manufacturing plant failed to use standard procedures when disposing of residual sodium, resulting in an explosion. Upon the arrival of first responders, firefighters attempting to quell the blaze were significantly injured due to several failures by the company. This included a failure to warn responding officers about the current state of the involved chemical, which explodes upon contact with water. When firefighters began containment procedures, several were critically burned through their protective gear by the reacting chemical. Through the Attorney General's Strike Force, Massachusetts was able to hold the responsible party accountable, and bring justice to those injured in the incident. Without state participation, enforcement of a comprehensive chemical policy would be nearly impossible, current language would drastically hinder state enforcement.

By eliminating the ability of state's to enforce laws that are comparable to the federal standards, the responsibility of holding violators responsible would fall solely on the federal government, despite established state organizations that have been proven successful. States embrace the opportunity to provide improved safety for their residents and the environment, but preemption language in this draft significantly endangers that enforcement ability.

As I shifted the focus of my public service to that of a legislator, it became even more apparent how intricately states must be involved in chemical policy. I commend the Subcommittee for their commitment to businesses and interstate commerce in this draft, and understand the motivations for a uniform federal chemical policy to promote those goals. However, the advancement of these ideas cannot come at the expense of public and environmental safety. The TSCA has not been updated for nearly 40 years, and states have acted to pass laws that complement the federal policy. This action may have been motivated by a desire to regulate a chemical like mercury that is acknowledged as dangerous, but fails to meet the current federal standards. Or they could have been passed to address a specific need relating to an industry with greater prevalence in one state. While the reasoning behind specific bills may change, they are all passed with the welfare of the public in mind. Beyond the host of Massachusetts laws that provide increased protection from toxic chemicals, several communities in my district are currently experiencing difficulties and costs associated with federal preemption of chemical laws at rail yards. I share the resident's belief that their proximity to a potential spill entitles them to a measure of involvement in ensuring chemical safety. When 100 gallons of a chemical called styrene, which is used in the manufacture of Styrofoam, were spilled in one of these preempted yards, a cooperative effort of rail yard employees and workers from state and municipal agencies was responsible for the cleanup. The incident was handled safely and professionally by all involved parties with only minor complaints of irritated eyes and lingering smells. However, if a rail yard is federally preempted from state law, the citizens of those communities have no recourse to protect their homes and families from future spills. There must be a balance struck between the benefits of interstate commerce and the need for public safety. State legislatures have and must continue to have a role in chemical policy in order to reach that balance.

Modernizing TSCA

NCSL encourages Congress to reform and modernize TSCA but does not believe the current discussion draft adequately accomplishes this goal. At a minimum, NCSL believes proposed TSCA reform legislation should embody the elements outlined in NCSL's Federal Chemical Policy Reform Policy Directive:

- **States Rights:** State governments play a critical role in environmental regulation. For nearly all federal environmental statutes, there are provisions to extend the reach of the federal government by delegation of program authority and/or provision of federal grants to support state implementation of environmental requirements in lieu of or in addition to the federal requirements. Any reform of TSCA should preserve state rights to manage chemicals, and resources should be provided for state level implementation.
- **Act on the Harmful Chemicals First and Promote Safer Alternatives:** Persistent, bioaccumulative and toxic chemicals (PBTs) are uniquely dangerous and should be phased out of commerce except for critical uses that lack viable alternatives. Exposure to other toxic chemicals, like formaldehyde, that have already been extensively studied should be reduced to the maximum extent feasible. Research into chemicals and chemical processes designed to reduce or eliminate negative environmental impacts of chemicals should be expanded, and safer chemicals favored over those with known health hazards.
- **Ensure Broad Access to Mandatory Safety Data on All Chemicals:** Chemical manufacturers should bear the burden of proof of safety of their products, and should be required to provide full information on the health hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed. The public, workers, and businesses should have full access to such information.
- **Protect All People, and Vulnerable Groups, Using the Best Science:** All chemicals should be assessed against a health standard that protects all people and the environment, especially the most vulnerable subpopulations, including children, low-income people, racial and ethnic minorities, workers, and pregnant women. EPA should adopt the recommendations of the National Academy of Sciences for reforming risk assessment.

Biomonitoring by the Centers for Disease Control and Prevention should be significantly expanded and used by EPA to assess the effects of pollution on people.

Modernizing TSCA can help assure that we protect the nation's interest in a strong American business of chemistry – and assure that the United States produces products that save lives, protect our children, make our economy more energy efficient, and reduce greenhouse gas emissions. While NCSL wholeheartedly supports the need for toxic chemical reform legislation, we must oppose any bill that so egregiously preempts states laws.

NCSL is encouraged by the fact that the Chairman has released this language as a draft, and hopes the committee will continue to engage in meaningful discussion with the states before introducing TSCA reform legislation that would preempt state laws. NCSL staff stands ready to work with this subcommittee if it moves forward with formal legislation on TSCA. Thank you again for the opportunity to provide a voice for the importance of state sovereignty in protecting the health and welfare of our citizens against harmful chemicals. I look forward to questions from members of the subcommittee.

Appendices:

NCSL Federal Chemical Reform Policy
NCSL Environmental Federalism Policy
State Laws Chart



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Federal Chemical Policy Reform Policy Directive

NCSL Natural Resources and Infrastructure Standing Committee

The Toxic Substances Control Act (TSCA) of 1976 provides the US EPA with authority to require reporting, record-keeping and safety testing of chemical substances and/or mixtures. TSCA also gives EPA the power to restrict the use of chemicals. Certain substances are generally excluded from TSCA, including food, drugs, cosmetics and pesticides.

Since its enactment, increasing evidence linking toxic chemicals to adverse human health effects has eroded the public's confidence in the safety of consumer products containing toxic chemicals, prompting many state legislatures to act. In the absence of Federal action, states have passed legislation to regulate individual chemicals. States have also begun to develop comprehensive state chemical policies that aim to establish broad and permanent frameworks to systematically prioritize chemicals of concern, close data gaps on those chemicals and restrict their uses in those states. Appropriate modifications to federal law will help enhance public confidence and the efforts of the state governments.

Current federal chemical policy has not kept up with modern science. The science of testing chemicals and understanding their health or environmental effects has improved considerably since TSCA was enacted. NCSL believes TSCA should be updated to reflect the advances in science and technology to better evaluate and regulate chemicals.

TSCA's failures have caused the United States to fall behind our trading partners in the quality of our public health and environmental standards, and these failures now threaten the competitiveness of our manufactured products in a world market that increasingly demands safer chemicals and products.

Modernizing TSCA can help assure that we protect the nation's interest in a strong American business of chemistry – and assure that the United States produces products that save lives, protect our children, make our economy more energy efficient, and reduce greenhouse gas emissions.

Toxic Substances Control Act (TSCA) Reform

NCSL encourages Congress to reform and modernize The Toxic Substances Control Act (TSCA) of 1976. At a minimum, NCSL believes proposed TSCA reform legislation should embody these policy elements:

Act on the Harmful Chemicals First and Promote Safer Alternatives

Persistent, bioaccumulative and toxic chemicals (PBTs) are uniquely dangerous and should be phased out of commerce except for critical uses that lack viable alternatives. Exposure to other toxic chemicals, like formaldehyde, that have already been extensively studied should be reduced to the maximum extent feasible. Research into chemicals and chemical processes designed to reduce or eliminate negative environmental impacts of chemicals should be expanded, and safer chemicals favored over those with known health hazards.

Ensure Broad Access to Mandatory Safety Data on All Chemicals

Chemical manufacturers should bear the burden of proof of safety of their products, and should be required to provide full information on the health hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed. The public, workers, and businesses should have full access to such information.

Protect All People, and Vulnerable Groups, Using the Best Science

All chemicals should be assessed against a health standard that protects all people and the environment, especially the most vulnerable subpopulations, including children, low-income

people, racial and ethnic minorities, workers, and pregnant women. EPA should adopt the recommendations of the National Academy of Sciences for reforming risk assessment. Biomonitoring by the Centers for Disease Control and Prevention should be significantly expanded and used by EPA to assess the effects of pollution on people.

States Rights

State governments play a critical role in environmental regulation. For nearly all federal environmental statutes, there are provisions to extend the reach of the federal government by delegation of program authority and/or provision of federal grants to support state implementation of environmental requirements in lieu of or in addition to the federal requirements. Any reform of TSCA should preserve state rights to manage chemicals, and resources should be provided for state level implementation.

Toxics Release Inventory Reform

NCSL urges the EPA to continue to provide appropriate contextual materials to affected communities to accompany Toxics Release Inventory (TRI) reports to assure particularly that emergency response agencies will understand and be able to respond safely to chemical releases to protect the people who live in the vicinity of facilities required to file TRI reports.

The EPA and the reporting industries should continue working to ensure that the reported TRI data are communicated to the public in an understandable manner that includes a description of the risk of release specific chemicals posed to the public and emergency response teams, how these materials are managed to control release, and an assessment of the risk to public health and welfare in the event of regulated or accidental releases.



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Environmental Federalism Policy Directive

NCSL Natural Resources and Infrastructure Standing Committee

The National Conference of State Legislatures (NCSL) urges the federal government to renew its commitment to the state-federal partnership for environmental protection.

State governments, acting in partnership with the federal government, play an indispensable role in our mutual effort to protect natural resources and combat environmental degradation and pollution. State implementation of federal law is the cornerstone of our current system of environmental protection. States are particularly dependent upon federal pollution control laws to address the interstate migration and affects of pollutants. Given the increasing trend of delegating more authority to the states, it is essential that the federal government not abandon its commitment to uniform minimum federal standards, the state-federal partnership and the very laws and agencies that guarantee the success of our partnership.

In furtherance of the above, the following principles should guide NCSL's federal lobbying efforts with respect to the state-federal environmental partnership:

- NCSL supports the prevention of pollution at its source and believes that federal legislation and regulation, through delegated authority to the states, should encourage the implementation of activities designed to minimize the generation of hazardous pollution by regulated entities.

- NCSL further supports federal funding of pollution prevention research and development, training, technical assistance, and regulatory guidance for states.
- The present level of commitment and funding for natural resource and environmental protection efforts should be enhanced; specifically, the federal government should prevent efforts to further erode its commitment to provide technical support, research and financial assistance to states and avoid further cost shifts to the states.
- The federal government should provide funding to the states in the form of block grants that provide for maximum state flexibility to use federal monies in the manner which they deem proper and in a manner which is consistent with their intended purpose.
- Environmental protection should be based on a holistic comprehensive, flexible and integrated program that addresses environmental issues, the nation's broader economic prosperity, and policies that ensure long-term energy affordability & reliability.
- Uniform minimum federal standards for environmental protection should be preserved and strengthened.
- Statutory authority for states to enact state environmental standards that are more stringent than their minimum federal counterparts should be maintained and renewed.
- Within the framework of uniform minimum federal standards, states should have maximum flexibility in devising approaches and methods for obtaining compliance with such standards. The federal government should adopt performance-based standards which prescribe the end to be accomplished and leave the means of obtaining the end up to individual states. In return for this new level of autonomy, the federal government should adopt a system of performance audits and objectively quantifiable benchmarks that would allow the federal government to certify state performance results in meeting uniform minimum federal standards.
- Implementation schedules established under the framework of uniform minimal federal standards should ensure that the time to deploy emissions control technology reflects normal construction industry experience, technology availability and practices that maximize order and efficiency to avoid wasteful financial expenditures and any risks to energy reliability.

- Within this framework, states should have the flexibility to work with utilities to coordinate the closure and retrofitting of existing power generation stations in a manner that will ensure the continued supply of electricity and that will allow power generators to upgrade their facilities in a manner that provides reasonable cost while attaining environmental compliance. State flexibility should allow for regulatory options for units that are necessary for grid reliability, that commit to retire or repower and establishing interim progress standards that ensure generation units meet EPA regulations in an orderly, cost-effective manner.
- There should be consistent, uniform and vigorous federal enforcement of environmental laws to deter non-compliant behavior and to reward those who are acting in compliance with such laws. The federal government should continue its present role of overseeing the efficacy of state efforts to enforce uniform minimal federal environmental protection standards.
- In light of the Supreme Court rulings in *Seminole Tribe of Florida v. Florida* and *Alden v. Maine*, which suggest that citizens will no longer be able to sue states in federal court for violations of federal environmental protection laws, the federal government needs to allocate adequate resources to ensure compliance among the states.
- Cost-benefit analysis should be performed in environmental decision making. Sound public policy decision making demands that benefits should be proportionate to costs, after factoring in the totality of the circumstances. However, cost-benefit analysis should not be the only determinative factor in any environmental decision making process. Rather, such an analysis should be one of the many tools that inform decision makers in formulating sound public policy. In the face of uncertainty in devising analytical methods, any default assumptions that are employed should favor enhanced environmental protection.
- In order to finance environmental protection efforts, Congress should create funding mechanisms that consistently generate revenue solely for such uses. All monies from such funds should be fully appropriated for their intended uses.

- NCSL supports a citizen's right to access public information. NCSL supports "right-to-know" laws and other statutory and regulatory mechanisms that readily provide public access to public information while acknowledging the need to balance this right with security concerns relating to the distribution of sensitive material such as water security information regarding water infrastructure and sources of supply.
- NCSL supports the preservation of state authority to enforce chemical security standards that are more stringent than those established by the federal government; finally.
- NCSL opposes any attempt to preempt or circumvent the authority of state courts and local administrative bodies. Proposed federal legislation that would centralize decision-making in the Federal courts for compensation for land use and other regulatory actions represents a major threat to our Constitutional system of federalism. Improving the efficiency of the state and local judicial process is an issue for state legislatures, not Congress. Land use and regulatory policy must remain a primary responsibility of the states. The authority of state courts must be preserved.
- In acknowledgement of the unique needs and concerns of the arctic ecosystem that is undergoing rapid environmental change and extensive exploration for natural resources, the NCSL urges ratification of the United Nations (UN) Convention on the Law of the Sea, negotiated in 1982, and of the Treaty on Persistent Organic Pollutants, adopted by the U.S. in 2001 but never ratified.
- NCSL believes federal environmental health regulations require more and better data about the unique exposure patterns and sensitivities of children who are uniquely vulnerable to environmental exposures because they are in a dynamic state of growth, with many vital systems not fully developed upon birth.
- NCSL supports consideration of the sensitivity of children to environmental contamination in all federal environmental policy, legislation, and regulation.
- NCSL supports federal funding for health research on the effects of exposure of children to environmental toxicants, and consistent reporting and tracking of birth defects, cancer, and other relevant diseases in children.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

7700 East First Place Denver, CO 80230
 ph (303) 364-7700 fax (303) 364-7800
 www.ncsl.org

State Laws address Chemical Control and Commerce
 Total Number of Statutes Identified

72

State Statutes Regulating BPA			
# ST	11	# Statutes	12
ST		Citation	Summary
CA		Cal. Health & Safety Code §§ 108940-108941	Prohibits the manufacture, sale or distribution of bottles or cups which contain BPA at a detectable level above 0.1 parts per billion if the containers are designed to be used by children three years of age or younger. Requires manufactures to replace BPA in these products with the least toxic alternative and prohibits them from replacing BPA with certain carcinogens or reproductive toxicants. California's restrictions took effect July 1, 2013.
CT		Conn. Gen. Stat. § 21a-12b to 12c	Bans the manufacture, sale or distribution of reusable food or beverage containers—including baby bottles, spill-proof cups, sports bottles and thermoses—that contain BPA. The law also bans the manufacture, sale or distribution of baby food or infant formula sold in containers that contain BPA.
		Conn. Gen. Stat. §§ 21a-12e	Prohibits the manufacture, sale or distribution of thermal receipt paper or cash register receipt paper containing BPA. The restrictions took effect October 1, 2013, unless the U.S. Environmental Protection Agency does not identify a safe alternative to BPA in these products by that date
DE		6 Del. C. § 2509	Prohibits the sale of bottles or cups containing BPA if those containers are designed for use by children under four years of age.

IL		410 ILCS 44/10	Prohibits the sale of children's food or beverage containers that contains bisphenol A. Children's food or beverage containers means "an empty bottle or cup to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child" less than 3 years of age.
ME		Me. Rev. Stat. Ann. tit. 38, §§ 1691; Resolve No. 2011-25	Approves the designation of BPA as a priority chemical under the state's toxic chemicals in children's products law (38 MRSA §1691 et al.). This law establishes certain reporting requirements for manufacturers of products containing priority chemicals and authorizes sales prohibitions of these products.
MD		Md. Code Ann., Health-Gen. §§ 24-304	Prohibits the manufacture, sale, or distribution of children's bottles or cups that contain BPA after January 1, 2012. The law requires manufactures to replace BPA in these products with the least toxic alternative and prohibits them from replacing BPA with certain carcinogens or reproductive toxicants.
			Prohibit the manufacture, sale and distribution of containers of infant formula containing more than 0.5 parts per billion of BPA. The amended law also prohibits the state from purchasing infant formula in containers made with BPA.
MN		Minn. Stat. §§ 325F.173-175 (2009).	Prohibits the sale of any bottle or cup that is designed or intended for use by a child under three years of age and contains BPA. The ban applies to manufacturers and wholesalers beginning on January 1, 2010 and to retailers on January 1, 2011.
NY		N.Y. Envtl. Conserv. Law § 35-0501 (2010).	Prohibits the sale of pacifiers, baby bottles, sippy cups and other unfilled beverage containers for use by children under three years of age that contain BPA after December 1, 2010. The law also allows products to be labeled as BPA-free.

VT		18 V.S.A. §1512	Prohibits the manufacture, sale or distribution of reusable food or beverage containers such as baby bottles, spill-proof cups, sports bottles, and thermoses that contain BPA after July 1, 2012. The law also bans baby food and infant formula stored in BPA-containing plastic containers or jars after July 1, 2012, and in BPA-containing jars after July 1, 2014. The law requires manufactures to replace BPA in these products with the least toxic alternative and prohibits them from replacing BPA with certain carcinogens or reproductive toxicants.
WA		RCWA 70.280.010 to .060	Prohibits the manufacture, sale or distribution of empty bottles, cups or other food or beverage containers that contain BPA after July 1, 2011. Metal cans are exempted from this ban. The law also prohibits the manufacture, sale or distribution of empty sports bottles of 64 ounces or less that contain BPA after July 1, 2012. A provision of the law requires manufacturers to recall prohibited products and reimburse the retailer or any other purchaser for the product.
WI		Wis. Stat. § 100.335 (2010).	Prohibits the manufacture or sale at wholesale and retail of empty baby bottles and spill-proof cups for use by children 3 years of age or younger that contain BPA after June 15, 2010. Manufacturers of these products also must conspicuously label each product as not containing BPA.

Biomonitoring		# Statutes	
# ST		3	3
ST		Citation	Summary
CA	California Environmental Contaminant and Biomonitoring Program	Cal. Health & Safety Code §§ 105440-105459	Requires the California State Department of Health Services, in collaboration with the California Environmental Protection Agency, to establish the California Environmental Contaminant Biomonitoring Program to monitor the presence and concentration of designated chemicals in Californians. Requires the Department and the Agency to establish a Scientific Guidance Panel to assist the Department and the Agency. Requires the Department to provide public access to

			information and to report to the Legislature and the public.
IL	Biomonitoring Feasibility Study Act	110 ILCS 337/1; H.B. 680, 95th Gen. Assemb., Reg. Sess. (Ill. 2007)	Requires the University of Illinois at Chicago (UIC), Great Lakes Center for Occupational and Environmental Safety and Health to conduct an Environmental Contaminant Biomonitoring Feasibility Study that proposes the best way to establish an Illinois Environmental Contaminant Biomonitoring Program. Requires the Department of Public Health and the Environmental Protection Agency to establish a Scientific Guidance Panel that shall make recommendations regarding the design and implementation of the Program. Requires UIC to release a draft report, containing findings of the Feasibility Study, recommended activities, and costs of establishing the program, for public review and comment and for review by the Panel.
MD	Dept of Health and Mental Hygiene - Biomonitoring Program	Chap. 394, H.B. 181, 427th Gen. Assemb., Reg. Sess. (Md. 2010).	Requires the Department of Health and Mental Hygiene, in consultation with the Department of the Environment, to study the feasibility of establishing a biomonitoring program to monitor the presence and concentration of designated chemicals in residents of Maryland.

Green Chemistry			
# ST	6	# Statutes	12
ST		Citation	Summary
CA		Cal. Health & Safety Code §§ 25252, 25252.5, 25253, 25254, 25255, 25257	Establishes authority for the Department of Toxic Substances Control (DTSC) to develop regulations that create a process for identifying and prioritizing chemicals of concern and to create methods for analyzing alternatives to existing hazardous chemicals. Allows DTSC to take certain actions following an assessment that range from "no action" to "restrictions or bans." Establishes a Green Ribbon Science Panel made up of experts to provide advice on scientific matters, chemical policy recommendations and implementation strategies, as well as ensuring implementation efforts are based on a strong scientific foundation. Expands the role of the Environmental Policy Council, made up of the heads of all California Environmental Protection Agency boards and departments, to oversee critical activities related to the implementation of the green chemistry program. Agency, to establish the California Environmental Contaminant Biomonitoring Program to monitor the presence and concentration of designated chemicals in Californians. Requires the Department and the Agency to establish a Scientific Guidance Panel to assist the Department and the Agency. Requires the Department to provide public access to information and to report to the Legislature and the public.

CT	Chemical Innovations Institute within the University of Connecticut Health Center	2010 Conn. Acts 164 (Reg. Sess.).	Establishes a Chemical Innovations Institute within the University of Connecticut Health Center to foster green job growth and safe workplaces through clean technology innovation and green chemistry and provide assistance to businesses, state agencies, and nonprofit organizations that seek to utilize safe alternatives to chemicals that are harmful to public health and the environment. Requires the Institute to: research and identify chemicals that are important to the state economy; provide research and technical assistance concerning chemicals of concern to the environment and public health, as well as safe alternatives to such chemicals; coordinate and share information with institutes in other states and the interstate chemicals clearinghouse concerning safe alternative chemicals and the impact of such safe alternative chemicals on public health and the environment; and offer trainings for businesses regarding chemical regulations and safer chemical alternatives.
MD	Procurement of Green Product Cleaning Supplies	Md. Code Ann., Education §§ 5-112 (2012), Chapter No. 454; Amended 2012 (H.B. 1019)	Requires a county board, to the extent practicable and economically feasible, to procure green product cleaning supplies for use in its schools. Requires the county board to draft specifications that provide a clear and accurate description of the functional characteristics or nature of the green product cleaning supplies that are to be procured.
MI	Economic Development of the State	H.B. 4817, 95th Leg., Reg. Sess. (Mich. 2009)	Amends the Michigan Strategic Fund Act to include the definition of "green chemistry" and includes a firm that uses green chemistry as a design guidance under the definition of "research and development enterprise," making enterprises engaged in the development of "green chemistry" eligible for financial aid from the Research Center Fund.

	Promotion of Green Chemistry for Sustainable Economic Development and Protection of Public Health	Exec. Directive No. 2006-6 (Oct. 17, 2006).	Requires the Department of Environmental Quality to coordinate the efforts of state departments and agencies to promote pollution prevention and sustainable economic development through green chemistry by: encouraging the research, development, and implementation of innovative chemical technologies; promoting the use of chemical technologies that reduce or eliminate the use or generation of hazardous substances during the design, manufacture, and use of chemical products and processes; and encouraging the use of safer, less toxic, or non-toxic chemical alternatives to hazardous substances. Requires the Department to establish a Green Chemistry Support Program to promote and coordinate state green chemistry research, development, demonstration, education, and technology transfer activities. Requires the Department to convene a Green Chemistry Support Roundtable.
MN	Green Economy and Green Chemistry Law	S.F. 2510, 86th Leg., Reg. Sess. (Minn. 2010).	Amends the definition of "green economy" to include products, processes, methods, technologies, or services intended to increase the use of green chemistry.
	Toxic Free Kids Act	Minn. Stat. §§ 116.9401-116.9407 (2009).	Requires the Department of Health, in consultation with the Pollution Control Agency, to generate a list of chemicals of high concern. Permits the Department, in consultation with the Agency, to designate a chemical of high concern as a priority chemical if it has been identified as a high-production volume chemical and has been found to be present in any human bodily tissues or fluids, the home environment or the natural environment. Permits participation in an interstate chemicals clearinghouse. Requires the Agency to report with recommendations on: addressing priority chemicals in children's products, moving to safer alternatives, and incentives for product design that uses green chemistry.

NY	Detergents and Other Household Cleaning Products	N.Y. Env'tl. Conserv. Law § 35-0107 (2010).	Requires manufacturers of household cleaning products distributed, sold, or offered for sale, to furnish to the Commissioner of the Department of Environmental Conservation information about the products, including the nature and extent of investigations and research performed by the manufacturer concerning the effects of such products on human health and the environment. Permits the Commissioner to restrict or limit the use of ingredients in household cleaning products after finding that any ingredient of household cleaning products distributed, sold, offered or exposed for sale is likely to materially affect adversely human health or the environment and holding a public hearing.
	Directing State Agencies to Reduce the Environmental Impact of Cleaning of State Facilities	Exec. Order No. 134 (Jan. 5, 2005).	Requires all State Agencies to procure and use cleaning products that have properties that minimize potential impacts to human health and the environment. Requires all State Agencies to purchase environmentally preferred cleaning products. Encourages local governments and school districts to review their purchasing and use of cleaning products and select those having properties that minimize potential impacts to human health and the environment.
	Establishing a State Green Procurement and Agency Sustainability Program	Exec. Order No. 4 (Apr. 24, 2008).	Establishes an Interagency Committee on Sustainability and Green Procurement. Requires the Committee to select a "priority categories" and "priority commodities, services, and technologies" for which the Committee shall develop "green procurement lists" and "green procurement specifications." Requires the Committee to develop procurement lists and procurement specifications that consider pollution reduction and prevention, waste reduction, recyclability, compostability and other factors. Requires each State agency and authority to develop and implement a Sustainability and Environmental Stewardship Program. Establishes a Sustainability and Green Procurement Advisory Council.

	<p>Pollution Prevention</p>	<p>N.Y. Env'tl. Conserv. Law §§ 28-0101-28-0113 (2008).</p>	<p>Requires the Department of Environmental Conservation to develop, coordinate, implement and measure policies, planning and programs to promote pollution prevention. Establishes small business pollution prevention and environmental compliance assistance program. Establishes a pollution prevention and environmental compliance coordinating council. Establishes the New York state pollution prevention institute program whose mission is to promote the purposes of this article through research, development, technology demonstration, technology transfer, education, outreach, recognition, and training programs in a manner consistent with the principles of pollution prevention, including but not limited to green chemistry and reuse and remanufacturing.</p>
	<p>Procurement and Use of Environmentally-Sensitive Cleaning and Maintenance Products</p>	<p>N.Y. Edu. Law § 409-i (2008).</p>	<p>Requires the Commissioner of General Services to establish guidelines and specifications for environmentally-sensitive cleaning and maintenance products for use in elementary and secondary school facilities. Requires the Commissioner to disseminate to all elementary and secondary schools guidelines and specifications for the purchase and use of environmentally-sensitive cleaning and maintenance products.</p>

Chemical # ST	Policy	21 # Statutes	32
ST		Citation	Summary
CA		Cal. Health & Safety Code §§ 25252, 25252.5, 25253, 25254, 25255, 25257	Establishes authority for the Department of Toxic Substances Control (DTSC) to develop regulations that create a process for identifying and prioritizing chemicals of concern and to create methods for analyzing alternatives to existing hazardous chemicals. Allows DTSC to take certain actions following an assessment that range from "no action" to "restrictions or bans." Establishes a Green Ribbon Science Panel made up of experts to provide advice on scientific matters, chemical policy recommendations and implementation strategies, as well as ensuring implementation efforts are based on a strong scientific foundation. Expands the role of the Environmental Policy Council, made up of the heads of all California Environmental Protection Agency boards and departments, to oversee critical activities related to the implementation of the green chemistry program.
		Cal. Health & Safety Code §§ 108100-108515 (2008)	Permits the Department of Health Services to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article. Prohibits the distribution of any art or craft material containing toxic substances causing chronic illness without the appropriate label.
CO	Hazardous Substances Act of 1973	Colo. Rev. Stat. §§ 25-5-501-25-5-512 (2008).	Permits the Department of Public Health and Environment to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.

CT	An Act Concerning Child Product Safety	H.B. 5650, 2008 Gen. Assemb., Feb. Sess. (Conn. 2008).	Requires the Commissioners of Public Health and Environmental Protection to compile a list of toxic substances and the recommended maximum amount of such toxic substances that may exist in children's products. Requires the Commissioner of Consumer Protection to compile a list of safer alternatives to using said toxic substances. Requires certain consumer products determined by the Commissioner of Consumer Protection that bear lead-containing paint or that have lead in any part of the product and that a child may reasonably or foreseeably come into contact with, to carry a warning label. Permits the Commissioner of Consumer Protection to adopt a stricter standard than one hundred parts per million total lead content by weight for any part of a children's product if the Administrator determines that a stricter standard is feasible. Permits the Commissioner of Environmental Protection to participate in an interstate clearinghouse to (1) prioritize chemicals existing in commercial goods; (2) organize and manage available data on chemicals; (3) produce and inventory information on safer alternatives for specific uses of chemicals and model policies and programs related to such alternatives; and (4) provide technical assistance to businesses and consumers relating to safer chemicals.
	State Child Protection Act	Conn. Gen. Stat. §§ 21a-335-21a-376 (2008).	Permits the Commissioner of Consumer Protection, by regulation, to declare any substance or mixture of substances that meet the statutory requirements to be hazardous substances. Permits the Commissioner of Consumer Protection to promulgate regulations establishing safety requirements, safety standards, banned hazardous substances, labeling requirements, and testing procedures for articles intended for use by children. If the Commissioner of Consumer Products finds that labeling is inadequate to protect the public health and safety or the article presents an imminent danger to the public health and safety, he may by regulation declare such article to be a banned hazardous substance and require its

			removal from commerce.
IL	Uniform Hazardous Substances Act of Illinois	430 Ill. Comp. Stat. Ann. 35/1-35/16a (2008).	Permits the Department of Public Health to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.
IN	Sales of Consumer and Other Products	Ind. Code Ann. §§ 16-41-39.4-7 (2008).	Prohibits the sale or distribution of a consumer product, surface coating material, food product or food packaging that is a banned hazardous substance under the Federal Hazardous Substances Act or has a specified lead content. Permits the state Department to require labeling of an item or signage to reflect that the item contains lead.
ME	Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products	Me. Rev. Stat. Ann. tit. 38, §§ 1691-1699-B (2008).	Requires the Department of Environmental Protection to publish a list of chemicals of high concern. Permits the Commissioner of Environmental Protection to designate a chemical of high concern as a priority chemical if the chemical meets certain criteria. Requires the Commissioner to designate at least two priority chemicals by January 2011. Requires a manufacturer or distributor of a children's product for sale in Maine that contains a priority chemical to notify the Department of the identity of the children's product, the number of units sold or distributed for sale in the State or nationally, the priority chemical or chemicals contained in the children's product, the amount of such chemicals in each unit of children's product, and the intended purpose of the chemicals in the children's product. Permits the Department to request additional information from the manufacturer or distributor including: information on the likelihood that the chemical will be released from the children's product; information on the extent to which the chemical is present in the environment or human body; and an assessment of the availability, cost, feasibility, and performance of alternatives to the priority chemical and the reason the

			<p>priority chemical is used in the manufacture of the children's product in lieu of identified alternatives. Permits the Board of Environmental Protection to adopt rules prohibiting the manufacture, sale, or distribution in Maine of a children's product containing a priority chemical if the Board finds that distribution of the children's product directly or indirectly exposes children and vulnerable populations to the priority chemical and one or more safer alternatives to the priority chemical are available at a comparable cost. Authorizes the Department to participate in an interstate clearinghouse to promote safer chemicals in consumer products in cooperation with other states and governmental entities. Requires the Department to develop a program to educate and assist consumers and retailers in identifying children's products that may contain priority chemicals.</p>
	<p>Toxic Use and Hazardous Waste Reduction</p>	<p>M.R.S.A. tit. 38, §§ 2301-2313 (2008).</p>	<p>Encourages an integrated approach to toxics use reduction, toxics release reduction, and hazardous waste reduction. Requires owners and operators of certain facilities to prepare pollution prevention plans and biennial progress reports. Requires plans to include: a statement of facility-wide management policy regarding toxics use, toxics release, and hazardous waste reduction; specific information for each production unit; goals for reducing the aggregate amount of toxic substances released and the aggregate amount of hazardous waste generated; and an employee awareness and training program. Requires progress reports to include: the goals established in the plan; a statement of the facility's progress toward achieving goals; a description of the techniques used to achieve identified reductions; a description of employee notification and involvement in the planning process; and a description of the pollution prevention techniques the owner or operator intends to undertake in the future. Establishes the Toxics Use, Toxics Release and Hazardous Waste Reduction Program to assist toxics users, toxics releasers, and</p>

			hazardous waste generators to eliminate or reduce the amounts, toxicity, and adverse environmental and public health effects of toxics use, toxics released and hazardous wastes generated.
	Safer Chemicals in Consumer Products and Services	Exec. Order Promoting Safer Chemicals in Consumer Products and Services (February 22, 2006).	Requires the Department of Environmental Protection to incorporate readily available information on source reduction and safer alternatives to hazardous chemicals in consumer products into their public education efforts. Requires the Department to continue to virtually eliminate mercury from human caused sources, assess lead-free alternatives to the current use of lead in consumer products, and review emerging information related to the availability of alternatives to brominated flame retardants. Requires executive branch agencies to avoid products and services that contain, use, or release chemicals that are PBTs or carcinogens whenever safer alternatives are available, effective, and affordable. Creates the Governor's Task Force to Promote Safer Chemicals. Requires the Task Force to identify and promote the use and development of safer alternatives to hazardous chemicals in consumer goods and services made, provided, or sold in Maine.
MD	Hazardous Materials	Md. Code Ann., Health-Gen. §§ 22-501-22-508 (2008).	Permits the Secretary of the Department of Health and Mental Hygiene to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires the labeling of hazardous substances. Permits the Secretary to ban the sale of a hazardous substance. Permits the Secretary to summarily ban the sale or distribution of any hazardous substance or article.
	Child Care Products Containing Flame-Retardant Chemicals (TCEP) - Prohibition	Md. Code Ann., Health-Gen § 24-306 (2013)	Prohibiting a person from importing, selling, or offering for sale certain child care products containing certain flame-retardant chemicals (TCEP).

	Procurement of Green Product Cleaning Supplies	Md. Code Ann., Education §§ 5-112 (2012). Chapter No. 454; Amended 2012 (H.B. 1019)	Requires a county board, to the extent practicable and economically feasible, to procure green product cleaning supplies for use in its schools. Requires the county board to draft specifications that provide a clear and accurate description of the functional characteristics or nature of the green product cleaning supplies that are to be procured.
MA	Hazardous Substances Labeling Act	Mass. Gen. Laws, ch. 94B, §§ 1-10 (2008).	Prohibits any person from selling, delivering, giving away, or introducing into commerce any misbranded hazardous substance or banned hazardous substance. Permits the Commissioner of Public Health to declare any substance or mixture of substances, which meet certain requirements, to be a hazardous substance. Under this authority, the Commissioner has declared by regulation formaldehyde, urea-formaldehyde foamed in-place insulation, children's leaded jewelry (pre-empted), and baby bottles and sippy cups containing bisphenol A to be hazardous substances. The Commissioner has declared urea-formaldehyde foamed in-place insulation, children's leaded jewelry (pre-empted), and baby bottles and sippy cups containing bisphenol A to be banned hazardous substances. Requires urea-formaldehyde foamed in-place insulation, children's leaded jewelry (pre-empted), and baby bottles and sippy cups containing bisphenol A to be removed from commerce. (105 CMR 650).
MI	Hazardous Substances Act	Mich. Comp. Laws Serv. §§ 286.451-286.463 (2008).	Permits the Department of Agriculture to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.

MN	Toxic Free Kids Act	Minn. Stat. §§ 116.9401-116.9407 (2009).	Requires the Department of Health, in consultation with the Pollution Control Agency, to generate a list of chemicals of high concern. Permits the Department, in consultation with the Agency, to designate a chemical of high concern as a priority chemical if it has been identified as a high-production volume chemical and has been found to be present in any human bodily tissues or fluids, the home environment or the natural environment. Permits participation in an interstate chemicals clearinghouse. Requires the Agency to report with recommendations on: addressing priority chemicals in children's products, moving to safer alternatives, and incentives for product design that uses green chemistry.
MT	Montana Consumer Product Safety Act of 1975	Mont. Code Ann. §§ 50-30-101-50-30-307 (2008).	Permits the Department of Public Health and Human Services to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires the labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.
NH	Labeling of Hazardous Substances	N.H. Rev. Stat. Ann. §§ 339A:1-339A:11 (2008).	Permits the Department of Health and Human Services to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Prohibits the manufacture or sale of any misbranded hazardous substance. Prohibits the manufacture or sale of urea-formaldehyde foam insulation or a new home or new manufactured housing containing urea-formaldehyde foam insulation. Prohibits the sale of any particle board or fiber board or housing unit or manufactured housing constructed of particle board, fiber board, or any similar construction material, containing urea-formaldehyde resin without a written cautionary statement to the purchaser.
ND	Hazardous Substances Labeling Act	N.D. Cent. Code § 19-21-01-19-21-10 (2008).	Prohibits the sale of any misbranded hazardous substance or banned hazardous substance. Requires the labeling of hazardous substances.

OH	Labeling of Hazardous Substances	Ohio Rev. Code Ann. §§ 3716.01-3716.99 (2008).	Permits the Department of Health to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Prohibits the sale of any misbranded package of a hazardous substance.
OR	Elimination of Persistent, Bioaccumulative, and Toxic Pollutants	Exec. Order No. 99-13 (Sept. 24, 1999).	Directs the Department of Environmental Quality to lead a state-wide effort to eliminate the releases of PBTs into the environment. Establishes initial goals, including: outlining a range of approaches that might be undertaken in Oregon to identify, track, and eliminate the release of PBTs into the environment by the year 2020; evaluating state, national, and international efforts to eliminate PBTs; using available information to identify which PBTs are generated in Oregon, determine what activities generate PBTs, estimate the amounts being generated, and identify missing data; and identifying ways to utilize education, technical assistance, pollution prevention, economic incentives, government procurement policies, compliance, and permitting activities to eliminate PBT releases.
	Hazardous Substances	Or. Rev. Stat. §§ 453.001-453.185 (2008).	Permits the Department of Human Services to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Lists pentaBDE and octaBDE as hazardous substances (see also Oregon S.B. 962). Requires the Director of the Department to adopt standards for the labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.

	Relating to Water Quality; Appropriating Money; Limiting Expenditures; and Declaring an Emergency.	S.B. 737, 74th Leg. Assemb., Reg. Sess. (Or. 2007).	Requires the Department of Environmental Quality to conduct a study of persistent pollutants discharged in the State of Oregon and report the results of that study to the Legislature. Requires the Department's report to include: a priority listing of persistent pollutants that pose a threat to the waters of the state, identification of individual point, nonpoint and legacy sources of priority listed persistent pollutants, and an evaluation and assessment of source reduction and technological control measures that can reduce the discharge of persistent pollutants. Requires each permittee to submit a plan for reducing the permittee's discharges of persistent pollutants listed on the priority listing.
SC	Hazardous Substances Act	S.C. Code Ann. §§ 23-39-10-23-39-120 (2008).	Permits Department of Agriculture to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.
TN	Hazardous Substances Act	Tenn. Code Ann. §§ 68-131-101-68-131-113 (2008).	Permits the Department of Agriculture to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Department to ban the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article.
TX	Hazardous Substances Act	Tex. Health & Safety Code Ann. §§ 501.001-501.113 (2008).	Permits the Board of Health to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires labeling of hazardous substances. Permits the Board to ban the sale of a hazardous substance. Permits the Board to summarily ban the sale or distribution of any hazardous substance or article.

VT	Prohibiting Certain Flame Retardants	9 V.S.A. 80 §2971 et seq.	Prohibits the manufacture, distribution, or sale of plastic shipping pallets that contain the brominated flame retardant decaBDE. Prohibits the manufacture, distribution, or knowing sale of children's products and residential upholstered furniture that contain the chlorinated flame retardants TCEP or TDCPP. The act prohibits the replacement of the flame retardants covered under the act with other harmful chemicals.
WA	Development of Chemical Action Plans	2005 Wash. Sess. Laws 519.	Appropriates funds for rulemaking and the development of chemical action plans for persistent bioaccumulative toxins. More specifically, appropriates funds for the development of a chemical action plan for PBDEs and mercury; for rulemaking to develop specific criteria by which chemicals may be included on a persistent bioaccumulative toxins list, develop a specific list of persistent bioaccumulative toxins, and establish criteria for selecting chemicals for chemical action plans; for the development of a memorandum of understanding with the Washington state hospital association and the auto recyclers of Washington to ensure the safe removal and disposal of products containing mercury; and for ongoing fluorescent lamp recycling.
	Relating to the Use of Bisphenol A	70 R.C.W. 280	Prohibits the manufacture, sale, or distribution of any empty bottle, cup, or other container, except a metal can, that contains bisphenol A if that container is designed or intended to be filled with any liquid, food, or beverage primarily for use by children three years of age or younger.

	<p>Children's Safe Products Act</p>	<p>RCWA 70.240.010 to .060</p>	<p>Contains limits on lead, cadmium, or phthalates in children's products (preempted by the Federal Consumer Product Safety Improvement Act). Requires the Department of Ecology, in consultation with the Department of Health, to identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential of exposure to each chemical. Requires the Department to identify children's products or product categories that may contain chemicals of high concern. Requires the Department to submit a report on the chemicals of high concern to the legislature, which includes policy options for addressing children's products that contain chemicals of high concern for children. Requires a manufacturer to provide notice to the Department if the manufacturer's product contains a high priority chemical. Authorizes the Secretary to establish and maintain a product safety education campaign to promote greater awareness of children's products that contain chemicals of high concern. Requires manufacturers of products that are restricted to notify persons that sell the manufacturer's products and to recall the product. Requires the Department to develop and publish a web site that provides consumers with information on the chemicals used in children's products, the reason the chemical has been identified as a high priority chemical, and any safer alternatives to the chemical.</p>
	<p>Persistent Toxic Chemicals</p>	<p>Exec. Order No. 04-01 (Jan. 28, 2004).</p>	<p>Requires the Department of Ecology, in consultation with the Department of Health, to develop a chemical action plan that identifies actions the state may take to reduce threats posed by persistent, toxic chemicals found in flame retardants, known as polybrominated diphenyl ether (PBDEs). Requires the Department of Ecology to implement the mercury chemical action plan. Requires The Department of General Administration's Office of State Procurement to make available for purchase and use by all state agencies equipment, supplies, and</p>

			other products that do not contain persistent, toxic chemicals unless there is no feasible alternative.
WI	Hazardous Substances Act	Wis. Stat. § 100.37 (2008).	Permits the Department of Agriculture, Trade and Consumer Protection to declare any substance or mixture of substances that meets certain requirements to be a hazardous substance. Requires cautionary labeling of hazardous substances. Permits the Department to prohibit the sale of a hazardous substance. Permits the Department to summarily ban the sale or distribution of any hazardous substance or article. Prohibits the sale or distribution of certain hazardous substances, including: propyl nitrate; isopropyl nitrate; nitrous acid esters of all alcohols having the formula of 5 carbon atoms, 12 hydrogen atoms, and one oxygen atom; ethyl chloride; ethyl nitrite; and any toy containing elemental mercury.

State Statutes Regulating PBDEs			
# ST	12	# Statutes	13
ST		Citation	Summary
CA		West's Ann.Cal.Health & Safety Code § 108920 to 108923	Prohibits a person from manufacturing, processing or distributing a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE, except for products containing small quantities of PBDEs that are produced or used for scientific research on the health or environmental effects of PBDEs.
HI		HRS § 332D-1 to 332D-3	Prohibits a person from manufacturing, processing or distributing a product, or a flame-retarded part of a product, containing more than one-tenth of one per cent, by mass, of pentaBDE, octaBDE, or any other chemical formulation that is part of these classifications. This prohibition does not apply to the processing of metallic recyclables containing pentaBDE or octaBDE.

IL		410 ILCS 48/1 to 48/99	Prohibits a person from manufacturing, processing or distributing a product, or a flame- retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE. Exempts used products and the processing of recyclable material containing pentaBDE or octaBDE. Authorizes a study of the health and environmental effects of decaBDE.
ME		38 M.R.S.A. § 1609	Prohibits a person from selling or distributing a product containing more than 0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers. Prohibits a person from manufacturing, selling or distributing certain products containing the "deca" mixture of polybrominated diphenyl ethers. These products include mattresses, mattress pads, upholstered furniture, shipping pallets, televisions, and computers. Exempts transportation vehicles and parts, parts and equipment used in industrial manufacturing, and electronic cable and wiring used in power transmission. Requires manufacturers of products containing PBDE to notify retailers of prohibitions.
MD		MD Code, Environment, § 6-1201 to -1205	Prohibits a person from manufacturing, processing or distributing a product, or a flame- retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE. Prohibits the manufacture, lease, sale or distribution of certain products containing decaBDE. Makes certain exemptions.
MI		M.C.L.A. 324.14721 to .14725	Prohibits the manufacturing, processing or distribution of products or materials containing than 1/10 of 1% of penta-BDE or octa-BDE. Authorizes PBDE advisory committee to study human health and environmental risks of PBDEs.
MN		M.S.A. § 325E.385 and .386	Prohibits a person from manufacturing, processing or distributing a product or flame-retardant part of a product containing more than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether by mass. Makes certain exemptions.

		M.S.A. § 325E.387	Requires state to review the commercial use and health and environmental risks of decaBDE.
NY		N.Y. Env'tl. Conserv. Law § 37-0111	Prohibits a person from manufacturing, processing or distributing a product, or a flame-retardant part of a product, containing more than one-tenth of one per centum of pentabrominated diphenyl ether or octabrominated diphenyl ether, by mass. Makes certain exemptions.
OR		O.R.S. § 453.005	Lists pentaBDE, octaBDE and decaBDE as hazardous substances and therefore subject to labeling and product restrictions under O.R.S. §§ 453.005 to 435.185.
RI		Gen.Laws 1956, § 23-13.4-1	Codifies legislative finding that the state should develop a precautionary approach regarding the production, use, storage, and disposal of products containing brominated fire retardants. Prohibits a person from manufacturing, processing or distributing a product or a flame-retardant part of a product containing more than one-tenth (1/10 %) of one percent (1%) of pentaBDE or octaBDE. Makes certain exemptions. Authorizes a study of the health and environmental effects of decaBDE.
VT		9 V.S.A. § 2971	Prohibits a person from manufacturing, processing or distributing a product, or a flame-retarded part of a product, containing greater than 0.1 percent of pentaBDE or octaBDE by weight. Prohibits a person from manufacturing, selling or distributing certain products containing the deca BDE. These products include mattresses, mattress pads, upholstered furniture, televisions, and computers. Exempts motor vehicles and parts, and the sale or resale of used products. Requires manufacturers of products containing decaBDE to notify retailers of prohibitions. Requires decaBDE be replaced with safer alternatives.

WA		RCWA 70.76.005 to .110	Prohibits a person from manufacturing, selling or distributing noncombustible products containing pentaBDE and octaBDE. Makes certain exemptions. Prohibits a person from manufacturing, selling or distributing mattresses containing the deca BDE. This prohibition extends to upholstered furniture, televisions, and computers if the state, in consultation with a fire safety committee, finds that a safer and technically feasible alternative to decaBDE is available. Requires manufacturers of products containing PBDEs to notify retailers of the prohibitions.
----	--	------------------------	--

Other State Statutes Addressing PBDEs			
ST		Citation	Summary
IL		415 ILCS 150/30	Requires certain electronic manufacturers to submit registration to the state that discloses whether any covered electronic device exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEEs) under the European Union standards.
IN		IC 13-20.5-1-1	Requires video display device manufacturers to submit registration to the state that discloses whether any covered video display device exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEEs) under the European Union standards.
MN		M.S.A. § 115A.1312	Requires video display device manufacturers to submit registration to the state that discloses whether any covered video display device exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEEs) under the European Union standards.

		M.S.A. § 325E.387	Requires that the commissioner of administration make available for purchase and use by all state agencies equipment, supplies, and other products that do not contain polybrominated diphenyl ethers.
NY		N.Y. Environmental Conserv. Law § 27-2605	Requires certain electronic manufacturers to submit registration to the state that discloses whether any covered electronic device exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEEs) under the European Union standards.
RI		Gen. Laws 1956, § 23-24.10-9	Requires video display device manufacturers to submit registration to the state that discloses whether any covered video display device exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEEs) under the European Union standards.

Mr. SHIMKUS. Thank you. And now, I would like to recognize Mr. Igrejas for 5 minutes.

STATEMENT OF ANDY IGREJAS

Mr. IGREJAS. Thank you very much, Mr. Chairman. Safer Chemicals, Healthy Families is a nonpartisan coalition of health, environmental labor organizations and businesses. We came together to do TSCA reform in a meaningful way, and we remain committed to that. I appreciate the opportunity to testify. And I especially appreciate the process you followed of having discussion drafts before going forward with a formal bill. And I want to use the opportunity to encourage a different course before you do that.

We took this very seriously. We had a team of experts review the new draft. And we did note improvements. So I want to point them out so you don't have to do it for me. The testing authority is an improvement. The getting rid of the best available science definitions, the definitions of adequate information, et cetera. But we were still unanimous in our analysis that the improvements don't alter the bottom line, which is that when you take the ambitious preemption in the bill—the sweeping preemption, with the things that have rolled back pieces of Federal law, and then the fact that the things that I believe you intend as improvements in the bill, are still not there in our analysis. The net effect is to go backward. That is what we—that is our analysis of the bill still.

The first question we asked our self, will the EPA be able to impose restrictions on unsafe chemicals under the bill? And we came to the same conclusion that Jim did, that even though you have separated the assessment from the decision on risk management, the bottom line there is still that EPA has to prove something, too much like what it has to prove now, which has been shown to be unworkable, in order to impose the restrictions needed to ensure safety. And I hope you will agree that is a threshold issue that we have to solve, and I think we want people outside of the chemical industry concurring that it has been solved before we go forward.

The second questions is does the bill establish a clear idea of safety that we can all be sure will protect pregnant women and children? And I think our answer again was no. I did want to credit that the assessment is now clearly health-based, and there is a foothold for some key concepts like vulnerable populations, aggregate exposure, et cetera. But they are not lined up in a way that assures the protection for pregnant women and children. And this term significant risk, which may turn out to be an improvement or something that we can work with, it is still unclear what that means. And we want to make sure it is clear.

The third question was does it improve or diminish the oversight of new chemicals? And this is where we are still perplexed over all that—our position, and I think most people's sense, is that new chemicals should be made to be safe—shown to be safe before they get on the market. That is the administration's principles. It is how a lot of people when they first get into this issue, they think chemicals work like drugs, and they are surprised that it doesn't work that way, and they think it should work that way. But we were—and the chemical industry has always said the new chemicals pro-

gram, as it is, works fine. But we do see some rollbacks in that authority here.

They have limited authority to—and criteria whereby they can order development information and pose some risk management. And the new draft restores one of those, but still takes back a couple of those pieces of authority. We would like to see that removed.

We also asked will this increase the transparency and public confidence, which is a goal that has been even unstated, the industry is has enunciated. And our answer was no, again. I think the draft adds a layer of murkiness. And this has come up. For the first time, you explicitly allow the delinking—or require really the delinking of a chemical from the health and safety study—the chemical identity from a health and safety study that might implicate it as having health concerns. And that really does mean you could have a secret carcinogen on the inventory. That would be very hard for the public to track, is this being managed well? And I think the idea of public confidence is that when chemicals do have problems, we can see how they are being managed. And so that is going to be something that will undermine transparency.

The low priority designation, if it worked the way it was reference by one of the members, I forget if it was Mr. Latta, that it was just in ordering, what EPA is going to get to later. But because of the remaining links preemption here that it is not just EPA saying we are not going to look at this now, but we are going to prohibit States from looking at it in the future. All on the basis of this likely to be safe, as opposed to that they found it to be safe, I think that that would be interpreted by many in the industry as basically a hall pass that people will want that. This is sort of a promise this chemical will never get looked at. And the first time something bad ends up somewhere that we don't want it, we are going to have a scandal. And the credibility of the whole program I think, and what the safety means, will come down. The preemption has been discussed in some detail. We agree with the comments that it is sweeping and overly ambitious. And so we would urge a different approach in the bill.

I have engaged in a lot of dialog with people in industry on a lot of these issues. Part of our reaction is that we don't see a lot of what I had seen as ideas that have come out with—for more common ground approaches reflected in these drafts. And perhaps it is time to focus in on some key issues. And I think those would be is there a definition of safety that we can all understand and get behind, and not just my coalition but the folks in the medical community, the pediatricians, others that have weighed in on that subject. Is there clear authority that everyone agrees the EPA would have to impose conditions needed to ensure safety? Is there a schedule and resources that we know are making meaningful progress at the Federal level? And maybe that would be, you know, good for government work right there. Some real progress, but nothing that goes backwards. That is what we would be looking for.

So I would encourage that approach, Mr. Chairman. And thank you very much.

[The prepared statement of Mr. Igrejas follows:]

Testimony of Andy Igrejas

**Director
Safer Chemicals, Healthy Families**

on the

**April 22nd Discussion Draft of the
Chemicals in Commerce Act**

before the

**Environment and Economy Subcommittee
Energy and Commerce Committee
U.S. House of Representatives**

**Tuesday, April 29th, 2014
Rayburn House Office Building
Washington, D.C.**

Summary of Testimony

I direct Safer Chemicals, Healthy Families, a non-partisan coalition of 450 public health, labor, and environmental organizations and businesses. The coalition was formed to promote meaningful reform of the Toxic Substances Control Act (TSCA).

I appreciate the opportunity to testify on the revised discussion draft of the Chemicals in Commerce Act and hope the testimony can inform the committee in taking a different approach before it pursues formal legislation.

Though the revised draft has some improvements over the previous draft, they do not, in our analysis, alter the bottom line. The Chemicals in Commerce Act, as drafted, would represent a significant step backwards from the status quo of chemical regulation in the United States, something I did not think was even possible a year ago.

The reason is that the rollbacks of existing federal authorities in the draft, combined with the rollback of state authorities, outweigh the limited improvements made to this draft over the previous version. The result remains a bill that is unbalanced in the direction of regulatory relief for the chemical industry against improvements to public health protection.

The concerns include:

- EPA will still be unable to impose risk management measures.
- The standard for risk evaluations is unclear, and the safety of pregnant women and children is not assured.
- EPA authority over new chemicals is reduced, rather than improved.
- States rights to implement their own protections are unduly violated.
- Chemicals will be set aside without a full safety review.
- The public's Right to Know about toxic chemicals is undermined.

I encourage the committee to either take a more balanced approach to comprehensive reform or to focus on a less ambitious approach that would at least assure credible progress in protecting the public from existing chemicals. The current draft is overly ambitious in its regulatory relief and fails to provide public health improvements.

Introduction and Overview

Thank you, Chairman Shimkus and Ranking Member Tonko for the opportunity to testify on the April 22nd revised discussion draft of the Chemicals in Commerce Act.

Safer Chemicals, Healthy Families is a coalition of 450 public health, environmental, and labor organizations and businesses¹ that was formed to promote meaningful reform of the Toxic Substances Control Act. We believe such reform is vital to enhancing the protection of public health and the environment and that, if done correctly, will also benefit American business by promoting innovation and restoring consumer confidence in American manufacturers.

We recognize and appreciate that some changes have been made to the revised draft that address concerns raised by the public health community. Regrettably, our analysis is that these changes do not alter the bottom line. As proposed, the ***draft still represents a significant step backward*** from the status quo of chemical oversight in the United States, which itself falls short of the minimum safeguards that the public deserves. Neither public health nor the environment will be protected by the proposed draft and consumer confidence in the chemical marketplace will not be restored. The simplest explanation is that the provisions in the draft that roll back current EPA authority, combined with the rollbacks of current state authority, substantially outweigh the improvements in the draft. The result is a bill that is unbalanced in the direction of regulatory relief for the chemical industry over public health protection.

The positive changes to the draft include removing the problematic definitions of Best Available Science and Publicly Available Information as well as allowing EPA to require testing for purposes of prioritization.

However, the most problematic provisions in the CICA remain. I would like to highlight several of these and then suggest a possible path forward.

1) EPA will still be unable to impose common-sense restrictions on unsafe chemicals.

The new draft clearly separates the assessment of the chemical – now called a risk evaluation- from the rulemaking EPA must undertake to impose any restrictions. The assessment is now appropriately risk-based. The rulemaking, however, is not. It uses the term “unreasonable risk” from the current law, which requires EPA to demonstrate that the benefits of addressing the risk outweigh the costs. Furthermore, without using the phrase “least burdensome” the draft effectively recreates its meaning with the provisions that require EPA to choose the most cost-effective remedy and demonstrate the availability of alternatives for particular uses before it can restrict them.

The combined effect is to reinforce the unworkable status quo of TSCA. The bottom line is that EPA will still be unable to impose the restrictions that are needed to ensure that a chemical is used safely.

EPA should instead be required to impose the restrictions needed to ensure the safe use of the chemical in question. If particular uses of the chemical are essential and the manufacturer can demonstrate that technically and economically feasible, safer alternatives are not available, then EPA should have the ability to grant limited, renewable exemptions from its rule.

The analytical and legal burdens placed on EPA by cost-benefit and “least burdensome” provisions are at the heart of TSCA’s failure.ⁱⁱ To be successful, any legislation must decisively break with that history.

2) “Safety Determinations” have been changed to “Risk Evaluations” and the standard for evaluation is unclear.

The draft drops the term “safety determination” in favor of “risk evaluation” in Section 6. While at first this appears to be a cosmetic change, when combined with other provisions the effect may be to significantly undercut the idea of safety in the bill, which should be central. The draft also introduces the phrase “significant risk” for the first time as the standard for EPA to evaluate risks. (Though not, as noted above, as the standard for EPA to act on those risks.) While “significant risk” may be preferable to “unreasonable risk” its precise meaning is unclear. The draft needs substantial work to clarify what “safety” means and to place it at the core of the bill.

As Dr. Landrigan’s earlier testimony noted, chemical reform is fundamentally about identifying which chemicals are contributing to chronic disease and disability (or environmental damage) and then devising appropriate policy interventions so that they don’t. It is therefore vital that the safety assessments accurately capture the way people experience chemicals in the real world, in the same way it is vital that your doctor knows your prescriptions and pre-existing conditions before devising a course of treatment.

In their detailed recommendations for how EPA should assess chemical risks, both the National Academy of Sciencesⁱⁱⁱ and the American Academy of Pediatrics^{iv} said EPA should identify any vulnerable populations (usually pregnant women and children), identify the circumstances under which they are exposed to the chemical (both the amount and timing) and compare that against what the evidence suggests may cause harm. The EPA should then be empowered to prevent the scenario that causes harm with appropriate restrictions.

Pesticide law has incorporated these principles since 1996 under the Food Quality Protection Act. Manufacturers have to produce data sufficient to demonstrate to the EPA that pesticide residues and household exposures when taken together (“aggregate exposure”) don’t cause harm to pregnant women and children. The EPA

must ensure safety for these groups with appropriate restrictions such as those it placed on organophosphate pesticides. (Reduced organophosphate exposure quickly resulted in measurable public health improvements.^v) It is because of that track record that our coalition has advocated that TSCA adopt the standard from that law, “reasonable certainty of no harm.” It incorporates these principles and it implies a level of safety that the EPA is required to enforce.

It may be possible to assess and assure safety without using that standard, but the current draft does not achieve that goal. The concepts of “aggregate exposure” and vulnerable populations are in the draft, for example, but it does not require EPA to assess whether the populations are safe after taking aggregate exposures into account. Furthermore, “significant risk” must be better understood or further defined if it is to become a new standard. The phrase is used in the law governing OSHA permissible exposure limits and in that context has been interpreted as tolerating a thousand times more risk than what is tolerated for the general public in other statutes. Most Americans would not tolerate such a standard for chemicals used in the products they bring into their homes.

The draft effectively requires EPA to evaluate the risks of a chemical against an uncertain standard, and then authorizes EPA to impose restrictions only where it can prove the costs outweigh the benefits against the current TSCA standard. The bill should instead require EPA to evaluate whether a chemical is safe against a clear health-protective safety standard, and require EPA to impose the conditions needed to ensure that standard is met.

3) The draft continues to weaken EPA authority over new chemicals.

The chemical industry has long argued that TSCA’s current new chemicals program works, while public health and environmental advocates have argued that it is inadequate. It is perplexing, therefore, that the draft continues to weaken the new chemicals program as opposed to improving it.

First, the draft eliminates current TSCA authority to require testing or impose requirements on the basis that the new chemical may be produced in substantial quantities and result in significant or substantial human exposure or environmental release.

Secondly, it eliminates the authority to impose workplace safety requirements on manufacture and processing of the new chemical, an important aspect of EPA’s new chemicals program that has added to public health protection.

The new draft restores one element of the existing law that was removed in the previous draft, which is welcome, but the net effect of the discussion draft is still to undermine EPA’s authority over new chemicals.

Most Americans are surprised when they learn that chemicals can enter the marketplace without having to demonstrate that they are safe. It is unthinkable that, in the name of reform, Congress would undermine the limited oversight authority that currently exists.

4) The “Low Priority” designation still treats chemicals as safe even though they have not undergone a thorough safety determination.

The “Low Priority” category in the new draft continues to be a misnomer. It is not a decision by EPA to postpone or place a “low priority” on reviewing the chemical. It is effectively a decision to treat the chemical as safe for any and all uses and put it beyond the reach of federal or state regulators. The removal of the provision “effects of low priority designation” in the new draft may make the consequences of low priority listing less obvious but it does not change them.

There is no requirement that EPA have sufficient information for an informed evaluation of the chemical. Also, the designation is based on a finding that the chemical is not “likely to” pose a significant risk, rather than a finding that it does not. Thus, without a thorough risk evaluation and in the absence of sufficient information, a chemical could be put off-limits for further testing or restriction and states would be prohibited from regulating it AT ALL from that point forward.

At the time of this designation the chemical may be known to be used in only one or two highly specialized ways (like refining or bomb-making) that have substantial workplace safeguards suggesting a low “likelihood” of significant risk. But after the designation anyone is free to use the chemical however they wish, including in toys or children’s pajamas. The EPA is not required to enforce the scenario under which it determined the chemical was low priority.

The first time a low priority chemical that is actually toxic ends up in a cereal box or a teething ring the credibility of the entire program will go out the window overnight, along with the brand equity of any company using it. This is not the way to restore consumer confidence.

The current low-priority category in the bill should be either removed, reformed so that it actually means assessed later, rather than never, or replaced with one of two options. If the goal of the provision is to identify chemicals that are so inherently low in hazard that it doesn’t matter how they are used in the future the bill could instead add a “low hazard” category with appropriately tight scientific criteria. If the goal is to create an alternative path for a chemical to be effectively declared as safe, the new provision in the draft- “alternative risk evaluation” could be beefed up to serve this purpose. As it stands, the low priority category muddles the concept of safety and is an invitation to mischief.

5) The draft undermines the public Right-to-Know about toxic chemicals.

The new draft contains the same sweeping and unnecessary restrictions on disclosure as the earlier draft and goes a step further. For the first time, the draft would explicitly preclude treating chemical identity as health and safety information that EPA is authorized to disclose. This would effectively require EPA to hide the identity of a chemical in the context of a health and safety study if the manufacturer has claimed it as confidential. Thus, the public would be able to see that there is a chemical on the inventory that causes cancer, birth defects, infertility, or brain damage, but they would not be allowed to know the name of that chemical. While confidential business information is a sensitive subject, and chemical identity especially so, this is an unbalanced approach. Will consumer confidence really be restored when the American public is told "There is a carcinogen in your home, I just can't tell you what it's called?"

Transparency and forthrightness are more likely to restore public confidence than secrecy. Part of the promise of reform is that even those chemicals that have risks may be able to be adequately controlled. Being straight with the public and having an open process over how that protection is achieved in the context of safety determinations is the way to restore public confidence. Hiding the identity of chemicals with known toxic effects will undermine it.

6) The draft violates states' rights to protect their citizens.

With a few minor adjustments, the draft continues the broad, sweeping and unprecedented preemption of states' authority to protect their citizens from toxic chemicals. Dozens of state laws and programs that have made and continue to make progress in protecting public health and safety will be blocked from addressing chemicals based on even narrow and limited action (or inaction) at the federal level.

The new draft adds the marginal improvement that a low priority designation pre-empts future, but not current, state regulations. As discussed above, the low priority designation is so far removed from a real safety determination that the remaining preemption is wholly unjustified.

Similarly, under the draft, the completion of pre-manufacture review will block states from taking action on new chemicals, a restriction that over time could encompass thousands of substances. Given the lack of data for most new chemicals and the limited scrutiny EPA provides, the decision to let a new chemical on the market is not a safety determination in any meaningful sense and it does not justify putting the chemical beyond the reach of state regulators.

Finally, the pre-emptive effects of a high priority designation in the draft are also unjustified on several grounds. First, because of the afore-mentioned flaws in the risk assessment and risk management process, the states would be pre-empted from acting, even if the EPA has declined to impose the restrictions necessary to

ensure safety due to the difficulty of the required cost-benefit analysis. In other words, the states would be prohibited from ensuring a chemical is used safely, even if EPA identifies unsafe uses that it then declines to address.

Furthermore, the pre-emption is very broad and can include restrictions on environmental releases, warnings, information collection, chemical exposure reduction plans and other measures that are often local and have little bearing on the ability of finished products to move across state lines.

TSCA's current preemption applies only after the EPA has acted to restrict a chemical, but even then it allows states to ban a chemical use outright and to seek a waiver where it wants to provide a higher level of protection for its residents. Since EPA has not restricted many chemicals, states have been largely free to act and many have made important progress in protecting public health. In the context of a program where EPA is making real progress in protecting public health, TSCA's pre-emption provision could be clarified, but states' authority to protect their residents must be preserved.

7) The draft does not establish a minimum number of chemicals that will be assessed.

While there are now deadlines for evaluating high-priority chemicals and completing rulemakings, these deadlines will do no good if few or no chemicals are ever listed as high-priority in the first place. Because the draft bill does not incorporate the priority list EPA has already developed, the Agency would need to start over again and re-justify each chemical on that list.

The bill should specify a number of chemicals that would be prioritized, establish an enforceable schedule for updating the priority list, and require a minimum number of chemicals in each update. Adding minimum requirements for prioritization and assuring that EPA has the resources to tackle a larger number of chemicals would be a positive addition to the current law.

Conclusion: An Alternative Path Forward is Needed

Previous TSCA reform efforts in Congress were criticized by many in industry and some members of Congress for being too ambitious in their desire to protect public health and the environment and to make up for lost time. This discussion draft is overly ambitious in the other direction. It represents a swing-for-the-fences program of regulatory relief^{vi} for a variety of trade associations. It abandons many of the principles enunciated by the chemical industry itself.^{vii} It is simply not credible as a program that protects public health and the environment from the risks of toxic chemicals.

We encourage the committee to take a different path. If you continue to pursue comprehensive reform of many aspects of TSCA, we encourage the committee to

look at the results of the Meridian Institute dialogue undertaken by our coalition and member companies of the American Chemistry Council in 2011. After the request by Ranking Member Waxman at an earlier hearing, the summary of the dialogue was provided to Chairman Shimkus, Ranking Member Tonko, Chairman Upton, and Ranking Member Waxman.

Alternatively, the committee could substantially scale back this effort and focus on a less ambitious but more credible proposal. That proposal would focus on fixing TSCA's existing chemical program and four core elements:

- Safety determinations that everyone agrees mean something, and which more closely reflect the medical and scientific mainstream;
- Unambiguous authority for EPA to impose the restrictions needed to ensure safety;
- A schedule for these determinations that requires modest, but real progress, combined with adequate resources for EPA;
- Authority for EPA to order the collection or the development of information as needed.

Mr. Chairman and Mr. Tonko, I believe it is time to stop swinging for the fences and to focus on a more achievable program that we can actually get done.

Thank you for the opportunity to testify before the subcommittee.

ⁱ [Saferchemicals.org/about/who.html](http://saferchemicals.org/about/who.html)

ⁱⁱ *Corrosion Proof Fittings vs EPA*, 947 F.2d 1201 –Court of Appeals, 5th Circuit

ⁱⁱⁱ National Academy of Sciences, *Science and Decisions: Advancing Risk Assessment*, August 2009

^{iv} <http://pediatrics.aapublications.org/content/early/2011/04/25/peds.2011-0523>

^v <http://www.ncbi.nlm.nih.gov/pubmed/15967215>

^{vi} Additional rollbacks identified by my colleague, Mike Belliveau, in earlier testimony and not discussed here, remain.

^{vii} American Chemistry Council, *10 Principles for Modernizing TSCA*, August 2009.

Mr. SHIMKUS. Appreciate your testimony. And, again, we welcome all our panelists. And I recognize myself for the first 5 minutes for questions.

I guess I would like to start with this cost-benefit analysis that Mr. Jones had testified briefly on, and that whole discussion near the end of the first panel, and offer anyone a chance to make a comment on it.

Mr. Greenwood, you look like you are ready to do that.

Mr. GREENWOOD. Well, one of the things actually I mentioned in my testimony was when you talk about cost-benefit analysis and this unreasonable risk standard and what it means, I think it is useful to consider the fact that just a month ago, EPA proposed a new rule. This is under the FIFRA Statute for pesticides, but it is under an unreasonable adverse effects in the environment standard, very similar to unreasonable risk standard—proposed a set of very protective new standards for farmworkers, and explicitly indicated that this is to deal with some very serious effects on farmworkers, their families, on—to address the issues in environmental justice, and articulated this as part of the unreasonable risk standard. These are legitimate qualitative factors to consider. There was a cost-benefit analysis done.

Interestingly enough, the cost-benefit analysis showed that if you purely look at the monetized costs and benefits, actually the regulation—the cost exceeded the monetized benefits. However, the government decided that because of the qualitative benefits, which can be considered in cost-benefit analysis, this was a justified rule, and it was a rule that met the unreasonable risk standard. So I think we have to be very careful, assuming that the mere existence of a cost-benefit analysis or unreasonable risk necessary leads to a less protective set of standards.

Mr. SHIMKUS. Mr. Dooley?

Mr. DOOLEY. If I can just add on to that? And that is—I use the example of the mercury in the light bulb. You know, if you didn't have a cost-benefit analysis that considered, you know, the societal benefits, the environmental benefits, you could well have this product never brought to market. And I, you know, find it a little bit frustrating with Mr. Jones' testimony is that when he cited the EPA's principles, and even in his written testimony, he makes a very clear statement that they—for when chemicals do not meet the safety standard, they need to have the flexibility to consider children's health, economic costs, social benefits and equity concerns. They are saying that you need a cost-benefit analysis. That is consistent with President Clinton's Executive Order. It is consistent with President Obama's Executive Order. And it is consistent with the language in your discussion draft on page 45, which states "determine whether technically and economically feasible alternatives that benefit human health or the environment, compared to the use proposed to be prohibited or substantially prevented, will be reasonably available."

This comment that Mr. Jones had that you have to weigh one alternative to another is not embodied in the draft legislation that you have presented to this committee.

Mr. SHIMKUS. Thank you. Let me move on. I will never get through all the questions. But for the Senator, does this bill—and

CERCLA is our Superfund Federal legislation, CERCLA and Superfund are two Federal pieces of legislation—does this bill exempt any of CERCLA and Superfund from regulation? Because—why I say that is, in your comments about spills, that is all under CERCLA. And that is all under Superfund and remediation and the like. So my point is, those things aren't going to be exempted under this piece of legislation. And it is an apples and oranges comparison. And I just wanted to—

Mr. MOORE. That comparison may be—I would have to go back and research whether the Superfund and CERCLA is. But, actually, as my panelists—fellow panelist up here just presented the fluorescent light. Massachusetts actually just passed a recent mercury ban. So the question is in Massachusetts, would this—

Mr. SHIMKUS. Yes. So no fluorescent light bulbs in Massachusetts?

Mr. MOORE. Oh, no. We have fluorescent light bulbs.

Mr. SHIMKUS. But there is mercury in there?

Mr. MOORE. Right. But there is a mercury ban that has been in place. And the Massachusetts law regarding the mercury ban would actually be preempted. So that is a law that Massachusetts actually passed that you preempted.

Mr. SHIMKUS. OK. Well, thanks. Now, I have lost all control over the direction I was going to go. Let me move to Mr. Greenwood. Some of the people involved in this debate have strong feelings about Federal preemption. We just started talking about that. Why is it important to address preemption, and do you think the discussion draft takes the right task?

Mr. GREENWOOD. Well, I think it is very important to address preemption. And I—but I would say it in the following way. It is important because that I think it is an increasingly important issue that needs to be teed up, actually for international purposes. And here is the context. Obviously, the United States, we get nervous about anything that goes to preemption, because it goes to key principles of the history of our country. But in the world of chemical management across the world today, we are facing a series of different kinds of controls from other parts of the world. There is a—we want to have at some point some kind of consistency of standards across borders. Obviously, within the country. But more and more the threat of making that very hard to do is the fact that we have countries around the world with their own chemical programs.

In the case of Europe, we have got a set of standards in reach that cover a continent. And if you are going to try to advance the interest of the United States and engage with the other parts of the world as your trading partners, you have to have a consistent position. The ticket for entry in that discussion is one country, one voice. You have to be able to say we are here as the United States with our position in dealing with other countries and with European community. And our trading partners don't not want to negotiate with the individual States in the United States. They are expecting the Federal Government to speak for the country.

So at some point, one of the things that needs to be considered here is how preemption or other mechanisms that try to get people, the State regulators and the Federal regulators, on the same page

for purposes of these discussions will factor into how TSCA is designed.

Mr. SHIMKUS. Yes. And I appreciate. My time is far expired. And I would like to now turn to Mr. Tonko, the ranking member, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Earlier, EPA told us that the discussion draft fails to address some key elements of meaningful chemical safety reform, and in some way weakens current—in some ways, weakens current Federal law. That alone should give us pause. But the bill also includes sweeping preemption of State and local laws.

Essentially, the bill completely ties the hands of State and local regulators to protect human health and the environment from toxic chemicals in commerce.

Senator Moore, I would like to explore the potential impacts of this preemption language with you. In your testimony, you mentioned that the State of Massachusetts—the Commonwealth of Massachusetts has passed several toxics use reduction laws, including a comprehensive chemicals management program requiring companies to develop a plan for pollution prevention. Why did Massachusetts develop this program, and were the Federal programs inadequate?

Mr. MOORE. Well, obviously in Massachusetts, we are looking at the needs of our—we determine to be the needs of our commonwealth, and what we determined are going to protect the welfare and the safety of our citizens, and protect the environment. So we are looking at our State and how we think we should move forward in a comprehensive process of addressing chemical use.

Mr. TONKO. So does that suggest the Federal programs were inadequate?

Mr. MOORE. I don't want to say inadequate, but I think everyone can admit that the EPA is—with the amount of work that they have to do, they are overtasked. There is a lot of responsibility put upon them. And from previous testimony, what, there is 80—84,000 chemicals that right now have not been analyzed or looked at by the EPA.

Mr. TONKO. Has this program helped reduce toxic chemical use in your home State?

Mr. MOORE. Yes. Yes, I don't have the exact figures. But I can tell you it has reduced toxic chemical use.

Mr. TONKO. And Section 17 of the discussion draft contains extremely broad language that preempts States from implementing laws and regulations that require the collection of information about chemical substances, or that restrict or prohibit the use and manufacture of those chemical substances. Senator Moore, how could this language affect your ability as a State legislator to serve your constituents?

Mr. MOORE. Well, I think if we are going to be looking at State laws to protect the welfare of our citizens and the environment, and looking for our State regulatory agencies, Department of Environment Protection, I think having access to information is going to help up develop policies or State laws and regulations that are going to adequately support that need.

Mr. TONKO. In addition to preempting existing State law, Section 17 of the discussion draft preempts State and local governments from passing new laws in the future to protect human health and the environment from toxic chemicals in commerce. That is putting a lot of faith in success of our Federal program. Senator Moore, are you confident that the Federal program envisioned by this bill would be sufficient to protect human health and the environment from toxic chemicals?

Mr. MOORE. From what I know of the legislation, at this point, I wouldn't not say so. Again, I—the concerns I have is that there are a lot of responsibilities put upon the Environmental Protection Agency from reviewing new chemicals to reviewing existing chemicals. I don't know what the resources that they would have to actually adequately perform this function.

Mr. TONKO. So then how do you see this as best working? What role should the State play, and what role should the Federal Government play?

Mr. MOORE. I think they should work hand in hand. As discussed, I think government and business should work hand in hand in the promoting of interstate commerce, the promoting of business. I think the Federal Government and State government should work hand in hand, working off each other's best practices and moving those initiatives forward. I don't think any one entity can do it alone. This is—I know the panel has said that, you know, when you are dealing on international trade issues that they want to know what the policies of the Federal Government. Well, State government also has—when we go abroad on trade issues, they want to know what State issues are being put forth. And we—in conjunction, we have to work with our Federal partners. But we are not always putting—States are not always putting forward the initiatives being sought by the Federal Government. So there is different initiatives that each State are going to be looking at.

Mr. TONKO. Well, I appreciate your testimony and that of the panelists. I agree that the best model is one that sets a strong Federal minimum standards, but allows our States to enact standards that respond to local needs and go above and beyond Federal law to protect human health and the environment.

And with that, Mr. Chair, I yield back.

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

Mr. Latta. Thank you very much, Mr. Chairman. And thanks very much to our panelists for being here today. We really appreciate your time and your presentations.

Dr. Sauers, if I could start with a question to you. With TSCA regulating chemicals and of course, in the U.S. commerce, many of which become ingredients in consumer products, are there other departments and agencies out there that have authority over the safety of those packaged consumer products that are used in the home? And if so, would you explain the role of those other U.S. departments and agencies, and how that regulatory jurisdiction compares to what we are discussing for the EPA under TSCA?

Mr. SAUERS. Um-hum. Yes, Congressman, thank you. The Proctor & Gamble Company makes a whole host of consumer products. We make drugs, food products, beauty care products, laundry de-

tergents, things like that. And different agencies regulate different products. So if I think of our food products, beauty care products, cosmetics, drugs, those are regulated by the FDA. So chemicals that go into those products that are solely used in those products would not be regulated by TSCA. They are regulated by the FDA.

Now, for those chemicals that go into say laundry detergents where the EPA would have a jurisdiction and would regulate those chemicals, the use of the chemical in the finished product is regulated by the Consumer Products Safety Commission. And they are the ones that regulate the use of hazardous chemicals in those products. So if something were to be declared say toxic, you know, by EPA, it would probably fall within the definition of hazardous within the Federal Hazardous Substances Act, which the CPSC administers. And then the CPSC would then have a jurisdiction for labeling on the product, banning the use of the material. You know, if the felt that labeling could not ensure safe use of it for a consumer, they could ban the use of it there.

So there is a whole host of regulatory agencies overseeing these things.

Mr. LATTI. Well, let me follow-up. Suppose if the EPA determines a chemical as a low priority. And as set aside under TSCA based on the EPA's knowledge of the chemical's limited use in the industrial environment, and that chemical may have significant hazardous properties, but the EPA understands there is a limited exposure to the chemical and the exposure is well managed by occupational controls, would prevent a consumer product manager, like yours, from using that low priority chemical in an everyday product used by families in the home?

Mr. SAUERS. Um-hum. If it was a chemical that was regulated by TSCA, then the Consumer Products Safety Commission would come into effect with its use in a finished product. And if it indeed was say a low priority chemical for which there was toxicity associated with—you know, a toxic—a potential—it would then be declared as hazardous by CPSC, and then there is a whole host of criteria on how hazardous materials are then handled in finished consumer products. There is a whole host of labeling requirements that would be on something like that. And the Agency could also ban the use of a product if they felt that the labeling would not protect the consumer.

Mr. LATTI. Mr. Goldberg, some people have been arguing that the United States needs a TSCA that mirrors REACH. Your company's a global company. So would you argue that having the same system would be in your interest?

Mr. GOLDBERG. Since we deal with so many different regions, I think we realize that we have to live in and adapt to regional differences in the context of chemical management programs that fit the levels of both of protection, which hopefully from the BASF standpoint are consistent along all those regions, but also the individual regional differences that exist. And so while certainly from some degree we would all love, in the abstract world, harmonization that made it easier to live with. The fact of the matter is there are differences. And the schemes among these various regions can be very different. REACH is a very, very different scheme, even down to its basic nature, than TSCA is. And so while

there are learnings—and as Mr. Jones said, there are some benefits that we can take moving from region to region, for example sharing of data, at the end of the day, we realize the need to adapt and be responsive to individual chemical management regimes.

Mr. LATTA. So you agree that it would be important for the U.S. to have a system that is unique just to the United States?

Mr. GOLDBERG. Yes. I mean, in the context of the European system, for example, it is not a chemical management system the way we think of it here. It is really largely an—at least it started information gathering system that is registrant- or company-based, as opposed to a substance-based system that we have here. Changing that would require a rather dramatic overhaul. And as I have discussed with some of my colleagues, even in the environmental community, it is not a system I think that adapts itself well necessarily here.

Mr. LATTA. OK. So you think the lessons of REACH that the United States should avoid in TSCA would be this adapting well?

Mr. GOLDBERG. Well, I think there are a number of lessons we have learned about REACH, including the bureaucracy that has revolved around it, the costs—ongoing costs involved, which have not necessarily established themselves with measured levels of protection, because to date it has been about information gathering and not about risk management. And the goals of modernizing TSCA, as I said as one of my principles, is to provide EPA with additional authority to adequately manage risks.

Mr. SHIMKUS. Gentleman's time has well expired.

Mr. LATTA. Thank you very much, Mr. Chairman. My time has expired, and I yield back. Thank you for your indulgence.

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

Mr. MCNERNEY. I thank the chairman. I also want to make sure the chairman understands that we appreciate your bipartisan effort. I don't think we are there yet, Mr. Chairman. But if we keep working together, we will get there.

One of the things—I mean, there is a lot of reasons to want to change and improve TSCA. One of them I think is that there is a lack of confidence in the public in chemical safety in this country. And I think that is a problem that the companies, the businesses would want to address firmly. And it is one of my concerns with the Chemicals in Commerce Act is that it may actually go in the wrong direction, reducing public's confidence in our chemical safety in this country.

Mr. Igrejas, would you respond to that?

Mr. IGREJAS. I think that is the concern. And it is why we counseled that we really focus in on the idea of safety—a definition of it, and the standards that the public health community, and not just the ones I represent but other folks, the American Public Health Association, the pediatricians, others all agree it is something that would protect people. Legal authority to then implement what is needed to protect people after review against that safety standard, and funding and direction for EPA to make progress in making those decisions. And that is what we still don't see in this bill because of the issues that have—that came up in Mr. Jones' testimony. And so we are concerned about that.

And then there is also—there are areas where some of the tools that EPA uses right now to provide protection for people are rolled back. We have highlighted the new chemicals program. And these tools are not ones that we think do the jobs to protect people from new chemicals, but they are at least there. EPA has sort of stitched together the ability to order testing and impose restrictions at different times. But some of that is rolled back.

And then you have the increase in secrecy on chemicals in the bill with the explicit requirement that identity is hidden, even when it is linked to a health and safety study. And so I think that those things—well, we need to beef up the first thing and pull back on the other things I mentioned where the existing program is pulled back.

Mr. MCNERNEY. Thank you. Mr. Moore—or, Senator Moore, the right to know laws are often used by States to protect their citizens. If this provision is stripped, how do you think it will affect the NCSL's work in ensuring public safety?

Mr. MOORE. We would have to look at the implications of the State involved. I guess we couldn't look at it on a State by State basis, because this would then preempt the States having a right to implement the Right to Know law. So it is not even an issue that you could go back to each State legislator or administrator and—how do we get around this? If this preemption applies to the Right to Know law, there is nothing that the States could actually do to protect the public safety employees or workers who are being exposed to these types of chemicals.

Mr. MCNERNEY. OK. Thank you. Mr. Sauers, my understanding is that Proctor & Gamble is working to reduce animal use in testings. Do you—how do you feel that fits in with chemicals and safety—Chemicals in Commerce Act?

Mr. SAUERS. Um-hum. Yes. Thank you, Congressman. Yes, we are very sensitive about the use of animals in safety testing. As a company, we invest about \$350 million on the development of alternatives. We appreciate very much the provisions that are stated in here that promote the use of animal alternatives, using structure activity relationship and things like that. So it is well represented and appreciated.

Mr. MCNERNEY. OK. Thank you—

Mr. SHIMKUS. Would the gentleman yield for a preemption question?

Mr. MCNERNEY. Sure.

Mr. SHIMKUS. Because I think this—there is a lot of confusion. And so for Mr. Greenwood, how does—how do you think the preemption works? Does it, as we have heard, completely tie the hands or does it just preempt as the EPA acts on individual chemical—on an individual chemical?

Mr. GREENWOOD. That has been my—the latter point is what I—my understanding. When EPA acts, then there is the indication of the preemption. But it has to be the action of the Agency, which then accomplishes—

Mr. SHIMKUS. So if there is no action, there is no preemption?

Mr. GREENWOOD. No. That is my understanding. That is how I have read the bill.

Mr. SHIMKUS. OK. And thank you. Thank you, Mike. And—

Mr. MCNERNEY. I am going to yield back.

Mr. SHIMKUS. The gentleman yields back. The Chair now recognizes the gentelady from California, Ms. Capps, for 5 minutes.

Mrs. CAPPS. Thank you, Mr. Chairman. And I thank this panel here for being here today with us. And I particularly want to welcome a former colleague, Cal Dooley, with whom I was privileged to serve in the House of Representatives in representing a lovely district not very far from my own home. And it is a pleasure to have you be a part of this panel.

As we heard from the first panel, the bill before us fails to require protection of vulnerable populations in managing identified risks of existing chemicals. This fundamental flaw, in my opinion, could put women, children, the elderly, the disabled, workers and residents of hotspot communities at serious risk. Any TSCA reform bill this committee considers should really ensure the protection of vulnerable populations.

And I would like to begin by discussing the specifics of how we could ensure that protection. I have asked some questions of our EPA witness about specific requirements. I want to follow-up on that with you, Mr. Igrejas. Mr. Igrejas, do you think that a chemical that is dangerous to a vulnerable population should be able to pass the safety standard under a reformed TSCA?

Mr. IGREJAS. No.

Mrs. CAPPS. Can you explain whether the current draft offers that protection?

Mr. IGREJAS. We think it doesn't provide the protection.

Mrs. CAPPS. Does your coalition, Mr. Igrejas, believe that risk management decisions must ensure that significant risks to vulnerable populations are addressed?

Mr. IGREJAS. Yes, we do.

Mrs. CAPPS. And does the current draft ensure that vulnerable populations are protected from the risks identified when evaluating existing chemicals?

Mr. IGREJAS. We believe that it does not. I could get into the details, but it does not.

Mrs. CAPPS. Well, I will give you a chance to do that. Are there some specific changes that you would recommend that we need to include in such legislation as reforming TSCA to ensure strong protections for vulnerable populations?

Mr. IGREJAS. Well, one of the key ones is the—right now, the assessment does specify that they look at vulnerable populations, but against the standard that we still don't know exactly what it means in the bill. And I think we have identified that. It doesn't require that you aggregate the exposure to the vulnerable populations. And that is the key issue, because there might be multiple vulnerable populations for the same chemical. If you look at flame retardants, you have firefighters who now have a cancer prevention project that is about their disproportionate exposure to these chemicals when they go into fires. That is higher exposure for an adult. Then you might have children where there is the smaller amount of exposure could cause harm when the chemicals are used as directed in the home. And you want to make sure that the EPA is mapping the exposures—all the exposures that either of those groups has against them, and then devising the restrictions to

make sure that they can only be used in a safe way and that the harm isn't occurring. And I think the absence of aggregate exposure in the assessment—and then the key thing that was talked about a lot in the discussion by Mr. Jones is if EPA ultimately can't impose the restrictions needed to ensure the safety, then a lot of that is academic. You don't want to have all this risk identified and then not be able to actually go ahead and impose the restrictions.

Mrs. CAPPS. Um-hum.

Mr. IGREJAS. So for those reasons, we think that it does not. Even though vulnerable populations and a decent definition of it are in the bill, they are not actually protected by all the provisions.

Mrs. CAPPS. So it looks like there is some technology or a capability of identifying the risks and of actually, at least better than we are now, mitigating them. Would that be your assessment? Is that—

Mr. IGREJAS. That definitely is. I think the—I cite the model of the pesticide program. And we can't import all the details of it here. But the basic idea of that you look at vulnerable populations. You add up the exposures. You impose the needed restrictions. That is the model that we have had in effect. There have been measurable public health improvements from it. So we know it can be done. It is just that is there the will to do it?

Mrs. CAPPS. Right. But there is a pathway, or there is some precedent for doing this. Finally, could you speak to the public's opinion, because you work a lot with the public opinion on this topic as well? I would think that properly protecting children and seniors and the other vulnerable populations would—from the effects of dangerous chemicals should be fairly widespread, the enthusiasm for it might be a popular topic. What is your idea here?

Mr. IGREJAS. Yes. It is—the support for protecting pregnant women and children from toxic chemicals in the sense of that there is a concern about chemicals now that they could be having an effect on a lot of the chronic disease that we see in the country. It is widespread. And so you would be on solid ground in taking action to do all those things with public opinion. And I can provide the details on that.

Mrs. CAPPS. I appreciate that. So in order to effectively reform TSCA, the bill before us needs significant revisions regarding the protection of vulnerable populations. And there is a will in the country to do—or there is a desire to do this. So I urge my colleagues and the stakeholders on this panel to refuse to support any—at least that is my opinion—that we shouldn't support any TSCA reform bill that creates the illusion of progress while still leaving these vulnerable populations unprotected.

Thank you, Mr. Chairman. And I yield back my time.

Mr. SHIMKUS. The gentlelady yields back her time. We want to—seeing no other members, I have a unanimous consent request to place some letters into the record, a letter from 3M Corporation, a letter from 13 attorneys general, the American Association for Justice, Texas Campaign for the Environment, Moms Clean Air Force, National Hispanic Medical Association and National Medical Association, the American Public Health Association, a number of healthcare organizations, a letter from 72 health professional, pub-

lic health and environment and public interest groups. And that is it. Not this letter. OK.

Mr. VOICE. Oh, yes. Sorry.

Mr. SHIMKUS. Yes. I am sorry. See, I was right. Staff was wrong. We will note that down for the first time. And also a letter I received from Ranking Member Waxman and Ranking Member Tonko on this legislation and hydraulic fracturing.

Without objection, so ordered.

[The information is available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=102160>.]

We want to thank you. This is a tough issue. You guys are all the experts. We do want to continue open discussions and comments, language, anything. You can come in and see me. An important piece of legislation, and we learned a lot today, and we appreciate your participation.

With that, I will adjourn the hearing.

[Whereupon, at 1:12 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
Majority (202) 225-7927
Minority (202) 225-3641

July 15, 2014

The Honorable Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator Jones:

Thank you for appearing before the Subcommittee on Environment and the Economy on Tuesday, April 29, 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.

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

175



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 25 2014

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to the questions for the record following the April 29, 2014, hearing on the discussion draft entitled the "Chemicals in Commerce Act." Enclosed are the EPA's responses to the questions.

If you have any further questions, please contact me or your staff may contact Sven-Erik Kaiser in my office at kaiser.sven-erik@epa.gov or (202) 566-2753.

Sincerely,



Nichole Distefano
Deputy Associate Administrator
Office of Congressional Affairs

Enclosure

House Committee on Energy and Commerce
Subcommittee on Environment and Economy
Hearing on "Chemicals in Commerce Act"
April 29, 2014
Questions for the Record

The Honorable Henry A. Waxman

Waxman 1. Despite testimony over the past seven hearings on TSCA that the new chemicals program under current law has largely been a success, the revised draft implements a number of substantial changes to this program. These include new exemptions for articles and byproducts, as well as a new analytical standard under which EPA must determine whether or not regulation "is warranted." The purpose and effects of these changes are not clear.

Do other laws implemented by EPA require determinations of whether regulation "is warranted?" If so, has that standard been interpreted in the past as requiring a cost-benefit analysis? Has the "is warranted" standard posed any difficulties for implementation?

Response: As noted below, the EPA identified the phrase "is warranted" (or a close variant) in several statutes it administers. Setting aside a statutory provision concerning motor vehicle warranties under Clean Air Act section 207 (using "warrant" in a different sense), the identified references are as follows:

- The Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g)(2)(C) discusses revisions to certain previously issued regulations or orders that are "found to be warranted" after reviewing the arguments of the parties in a proceeding under FFDCA section 408(g)(2). There is also language in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 4(g)(2)(E)(v) relating to such follow-up proceedings under FIFRA or the FFDCA as "are warranted," in light of a reregistration decision. In both cases, the EPA interprets "warranted" as a direction to act in a manner that is appropriate and consistent with the underlying statutory standards that are being administered under FIFRA or the FFDCA. The EPA has not interpreted this phrase as altering or impeding the implementation of the underlying statutory standards of FIFRA or the FFDCA.
- The use of "warranted" in the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313(b)(2) relates to the application of reporting requirements to additional facilities where such action "is warranted." The EPA has never used this authority and thus has never formally interpreted "is warranted" for the purposes of this provision.
- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 116(b) authorizes the EPA to evaluate contaminated sites on a

database “if such evaluation is warranted” for possible listing on the National Priorities List (NPL). The EPA has not stated how it interprets the phrase “if such evaluation is warranted.” The EPA has not interpreted it to provide for any cost-benefit analysis. CERCLA section 104(k)(3)(A)(ii) provides for the EPA to establish a program to provide cleanup grants to “eligible entities or nonprofit organizations, *where warranted*, as determined by [EPA] based on considerations [set forth in] subparagraph (C).” (emphasis added). Section 104(k)(3)(B) provides that eligible entities who receive a grant may in turn give cleanup sub-grants to other eligible entities or nonprofit organizations, “where warranted.” Subparagraph (C) further provides a number of considerations for the EPA to consider in determining whether a grant “is warranted.” The EPA does consider certain benefits as required by the considerations listed in section 104(k)(3)(C) (e.g., extent to which a grant will facilitate the creation or preservation of parks). Pursuant to these provisions, the EPA has developed proposal guidelines for grants which contains ranking criteria. Applicants respond to the ranking criteria in their proposals, and proposals that pass threshold criteria review are then evaluated and scored by national panels. Proposals are selected for awards based on these scores, the availability of funds, and other factors. The EPA has not interpreted this provision to require any cost-benefit analysis.

- This phrase appears in the Safe Drinking Water Act (SDWA) section 1458(c), as part of a requirement for the EPA to complete certain studies to support development of rules that have since been completed. Those studies were to include toxicological investigation, as well as “if warranted” epidemiological studies, related to disinfectants and disinfectant byproducts.

Waxman 2. In your written testimony, you suggested that these new changes would have an adverse effect on the new chemicals program, weakening current law.

For instance, you state that EPA’s risk management authorities for new chemicals under the discussion draft would be weaker than those in current TSCA.

Please explain this concern in detail.

Response: Under the current Toxic Substances Control Act (TSCA) section 5(c), when the EPA has insufficient information on a new chemical substance, the EPA may issue a proposed order to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a new chemical substance, either where such substance “may present an unreasonable risk,” [TSCA section 5(e)(1)(A)(ii)(I)], or where the substance will be produced in substantial quantities and there is sufficient potential for environmental release or human exposure [TSCA section 5(e)(1)(A)(ii)(II)].

The draft of the Chemicals in Commerce Act (CICA) section 5(c)(5) appears to limit risk management actions for new chemicals to those circumstances where the EPA could establish (within the applicable review period allowed for reviewing a pre-manufacturing notice) that a particular action is “necessary to protect adequately against an unreasonable risk.” This is a more demanding standard than either of the current risk management standards for new chemicals in TSCA section 5(e).

Waxman 3. The draft also weakens current law with respect to EPA's ability to respond where there is insufficient information. Under current law, when EPA receives a PMN for a new chemical and finds that there is insufficient information to evaluate the chemical's risks, EPA has a number of options, including requiring the development and submission of test data pursuant to section 4. The draft would curtail some of these authorities.

What steps would EPA have to take under the revised draft to obtain the information needed for new chemical reviews?

Response: With respect to circumstances where the Administrator finds that additional information is necessary in order to review a pre-manufacture notice, CICA section 5(c)(2)(B)(i) appears to specify that the EPA must first provide an opportunity for the submitter of the notice to voluntarily submit the additional information and/or voluntarily extend the review period. Where this is unsuccessful, under CICA section 5(c)(5) it appears that the EPA would next need to determine (within the remainder of the applicable review period) that the development of additional information was "necessary to protect adequately against an unreasonable risk."

Waxman 4. Would these steps take additional time and/or resources, compared to the current process, and if so, what effects could that have?

Response: The EPA has not undertaken an exercise to estimate the time or resources that would be needed to implement CICA, compared to the current process.

Waxman 5. There has been consensus among a broad group of stakeholders that chemicals should be held to a risk-based safety standard under a reformed TSCA. This has been part of EPA's principles for TSCA reform since 2009. You testified that the standard in the discussion draft is a "risk/cost balancing" standard similar to what exists under current law and that it "does not align with the approach delineated in [EPA's] principles."

At the same time, you testified that EPA needs to have the flexibility to consider costs in risk management.

In EPA's view, should costs of risk management options play a role in determining whether or not a chemical meets a risk-based standard?

Response: As stated in Principle 1 of the "Essential Principles for Reform of Chemicals Management Legislation" (<http://www.epa.gov/oppt/existingchemicals/pubs/principles.html>), the EPA should have clear authority to assess chemicals against a risk-based safety standard based on sound science and risk-based criteria protective of human health and the environment, which would not include a consideration of costs.

Waxman 6. In EPA's view, should the Agency have discretion to consider costs in choosing among available risk management options that would be adequate to bring a chemical into compliance with a risk-based standard?

Response: As stated in Principle 3 of the "Essential Principles for Reform of Chemicals Management Legislation", when addressing chemicals that do not meet the safety standard, the EPA should have the flexibility to make risk management decisions that take into account a range of considerations, including children's health, economic costs and availability of substitutes, social benefits, and equity concerns.

The Honorable John D. Dingell

Dingell 1. In 1976, I submitted report language in regard to weaknesses that existing in the current Toxic Substances Control Act. I stated it was essential for the protection of public health and environment that EPA have a firm mandate for a comprehensive approach to protection from hazards due to chemical substances. And, that such a success could only be achieved through legislative directions and adequate support funding. Mr. Jones, you state in your testimony that, in order to be successful, EPA must have the resources it needs to protect the American people from exposure to harmful chemicals.

Dingell 1a. Under CICA, does EPA have the appropriate resources to quickly and efficiently implement the various framework, process, criteria, and guidance provisions which must be in place prior to EPA beginning action on specific chemicals?

Response: CICA does not include provisions to collect fees. As outlined in the Administration's TSCA Reform Principles, 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 the 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.

Dingell 1b. Under CICA, once EPA is able to take action on a specific chemical, does EPA have the resources needed to quickly and efficiently determine prioritizations, assessments, determinations, and risk managements?

Response: The EPA has not yet assessed the resources that would be required to take action under CICA.

Dingell 2. EPA has over 84,000 chemicals listed on its TSCA inventory, and little over 200 have been acted on in 37 years. EPA has identified an initial work plan of chemicals for assessment which includes 83 substances, in addition to identifying several hundred chemicals on the Safer Chemicals Ingredients List.

Dingell 2a. Under current TSCA, does EPA have the appropriate resources to complete more than 20 risk assessments per year on existing chemicals? Please answer yes or no.

Response: No.

Dingell 2b. What kind of resources would EPA need in order to perform 10 to 20 more additional risk assessments per year?

Response: With current resources, the EPA is able to produce about ten assessments a year.

Dingell 3. As you know, I have the privilege to live in the Great Lakes region, home to 20 percent of the world's fresh water supply as well as tremendous hunting and fishing areas. Many of my constituents have voiced concerns that CICA does not ensure adequate public health and safety standards needed for highly toxic chemical contamination found in this region.

Dingell 3a. Would EPA be better able to regulate new and existing chemicals if they were granted the authority to set priorities for conducting safety reviews based on relevant risk and exposure conditions?

Response: As outlined in Principle 4 of the "Essential Principles for Reform of Chemicals Management Legislation," the EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations.

Dingell 3b. If both chemical manufacturers and EPA had the ability to assess and act on priority chemicals like those potentially found in the Great Lakes, would EPA be better able to regulate those chemicals in a timely manner?

Response: As outlined in the Administration Principles, the EPA should have the ability to assess and act on priority chemicals in a timely manner.

