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S. 1009, THE CHEMICAL SAFETY IMPROVEMENT ACT

WEDNESDAY, NOVEMBER 13, 2013

House of Representatives,

Subcommittee on Environment and the Economy

Committee on Energy and Commerce

Washington, D.C.

The Subcommittee met, pursuant to call, at 10:19 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, Murphy, Latta, Cassidy, McKinley, Bilirakis, Johnson, Tonko, Pallone, Green, DeGette, Capps, McNerney, Dingell, Barrow and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Charlotte Baker, Press Secretary; Jerry Couri, Senior Environmental Policy Advisor; Brad Grantz, Policy Coordinator, O&I; David McCarthy, Chief Counsel, Environment/Economy; Brandon Mooney, Professional Staff Member; Andrew Powaleny, Deputy Press Secretary; Chris Sarley, Policy Coordinator, Environment and Economy; Jacqueline Cohen, Democratic Senior Counsel; Greg Dotson, Democratic Staff Director, Energy and Environment; and Caitlin Haberman, Democratic Policy Analyst.

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Mr. {Shimkus.} I would like to call the hearing to order.

We want to welcome our two Senators. First, I will do--we will do our opening statements, and then we will give you yours and then--and we will begin. I recognize myself for 5 minutes.

Today we hold our fourth hearing of 2013 on the Toxic Substance Control Act. We welcome our witnesses, including a couple of former House guys; Senator Vitter and Senator Udall, as well as Jim Jones, Assistant Administrator of the EPA, and some of the important stakeholders in this discussion.

Until more recently, TSCA was one of the least understood federal environmental laws, but it is one of the most important environmental protections laws that we have. It governs chemical substances, mixtures and articles from the time they are invented, all the way through the stream of commerce.

Our hearings have been very instructive. They have given us a chance to dig into the nuts and bolts of this complex body of law. Among other aspects of the law, we studied approval of new chemicals, regulation of existing chemicals, protection of confidential business information,

and the value of a seamless integrated U.S. market for chemicals and products that contain them. We have gotten the perspective of learned experts in the practice of TSCA law, former EP officials experienced in what works and what doesn't work in the law's administration, state environmental control officials, downstream product manufacturers, and citizen activists.

As we will hear firsthand in just a few minutes, a lot of thought and hard work has also gone into TSCA on the other side of the Capitol. Earlier this year, Senator Vitter and the late Senator Frank Lautenberg, with strong bipartisan support, introduced Senate Bill 1009, the Chemical Safety Improvement Act. Its reform, if enacted, will represent the most sweeping set of changes to TSCA since the Ford Administration.

We are eager to learn what aspects of this proposal brought such a diverse set of supporters together. We hope this Administration and our panel will tell us what they see as the best attributes of the legislation. We also hope to entertain suggestions on how to make it better.

Writing legislation as complex and as important as modernizing TSCA is not easy, but implementing it may be even tougher. Congress can give EPA both the authority and direction to carry out everything in a new TSCA, but we just

can't assume that the Agency has the resources to accomplish all of it, nor that they will get it done in a short period of time of enactment. That is why we need some guidance from Jim Jones, who manages the chemical regulation for the EPA. Mr. Jones, we hope your help won't end with today's hearing. The same goes for stakeholders, and not only the ones we will hear from today. We need your help in understanding the real world implications of any legislation we might consider. No one, whether on this side of the dais or on the witness table, has all the answers, but that doesn't mean we don't need you to give us all of your input.

And, finally, thanks to all the members of the subcommittee for your thoughtful work this year on TSCA. Have you noticed that our hearings have not been debates across the aisle, but rather nonpartisan efforts to understand the current law? At times, I have learned as much from questions from Mr. Tonko or Ms. DeGette, and the answers witnesses give them, as I have from my own brilliant questions that I have offered.

Let us continue to embrace that same spirit as we begin to explore whether we can make federal chemical management policy better, and allow the United States to lead the global--the globe in manufacturing smarter public health protection and innovation.

[The prepared statement of Mr. Shimkus follows:]

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Mr. {Shimkus.} With that, I yield back the balance of my time, and I yield 5 minutes to Mr. Tonko, the ranking member of the subcommittee.

Mr. {Tonko.} Thank you, Mr. Chair, and good morning. I am pleased to be here today for this important hearing on the Chemical Safety Improvement Act. It is a pleasure to welcome Senator Vitter and Senator Udall here to discuss their perspectives on TSCA, TSCA reform, and report on their ongoing efforts to reconcile the interests of the many constituencies who have a deep stake in chemical issues. It is not an easy task.

This is our subcommittee's fourth hearing on TSCA. There seems to be general agreement by all parties that the current law simply is not working. Current law does not give the Environmental Protection Agency the tools or the resources the agency needs to implement an effective toxic chemical program, but general agreement on these observations is no guarantee of agreement on the best way to address these problems. And it appears we still have some disagreement about which aspects of TSCA are in need of revision.

The public does not have confidence in this law or EPA's implementation of it. Industry's assertion that its products are safe is simply not good enough. Because the federal law

is ineffective, states have stepped in to address specific chemical risks. State action provides an essential backstop to federal law, but individual state actions do not provide a uniform safety guarantee to all of our citizens, and they do not provide national standards and regulatory certainty to industry.

So where do we go from here?

The bipartisan initiative represented by S. 1009 offers us an opportunity for broad participation in the effort to reform TSCA, and that is what we need; broad participation in this effort. Because chemicals are such a part of our daily lives, we all have a stake in this effort. This bill does not yet address many of the current law's shortcomings. In some respects, it takes us backward by preempting states' ability to act, for example.

There is no need for a state preemption. If this proposal provides EPA with the tools to protect all of our citizens, including those who are the most vulnerable; children and our elderly, there will be far less call for individual state action, but states should retain their rights to act in the best interests of their citizens, and to address specific state concerns when, indeed, it is necessary.

I am concerned about retaining the unreasonable risk

standard from current law when it has not proven to be a sufficient basis for Agency action over the past 37 years.

EPA cannot evaluate the potential risk or relative safety of chemicals without sufficient information. The fact is we still have many chemicals circulating in commerce for which we have little health and safety information, and even less about their behavior in the environment. This problem stems from several weaknesses in the current law, which this legislation only partially addresses. We need a federal chemical law that provides adequate protection of public health and the environment, and that promotes continued innovation in our chemical industry.

The Chemical Safety Improvement Act does not yet achieve the right balance between these important goals, but with additional work it could. We have a very knowledgeable and experienced group of individuals here today who will offer constructive suggestions to this subcommittee about how to proceed.

Thank you for being with us this morning. I look forward to hearing your views on the Chemical Safety Improvement Act, and your recommendations for creating what needs to be an effective chemical safety law.

Thank you, and I yield back.

[The prepared statement of Mr. Tonko follows:]

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Mr. {Shimkus.} Gentleman yields back his time. The Chair now seeks anyone need time on the majority side. Seeing none, the Chair now recognizes the chairman emeritus, Mr. Dingell, for 5 minutes.

Mr. {Dingell.} I thank you for holding this hearing. This is a valuable Act and I am much appreciative to you.

We need to know what is going on with regard to TSCA, the Toxic Substances Control Act. It is long past time to reform this law. EPA has not been able to tackle even the most dangerous of chemicals and substances, and we may need to find a way to fix this problem.

There has been only a few successes of TSCA since it was signed into law by my good friend from Michigan, former member of this body, our good friend, President Gerald Ford. During the House floor debate on TSCA, I was successful in proposing an amendment to phase out the use of PCBs. That, I think, and six other substances are about all that TSCA has been able to remove from the trade.

We are finding out today what kind of negative effects PCBs have on the food chain, human health, wildlife and water quality. Frankly, it is very bad, and they remain a part of the chain even though they have been long removed. My amendment was supported by industry and by the

environmentalists, and was adopted by a voice vote. Those kinds of things are possible to do, and I would note that we think that industry and the others who are concerned with these matters can work together, and I hope that this committee will give them the chance so to do.

The most recent change to TSCA happened only a few years ago when I was Chairman of the Committee, and when we passed the Mercury Export Ban Act. I have here a letter from 2007 penned by the National Mining Association and Natural Resources Defense Council, the American Chemistry Council, the Environmental Council of State, and McLaren Institute in support of that legislation, and I ask unanimous consent that it be inserted in the record.

Mr. {Shimkus.} Without objection, so ordered.

[The information follows:]

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Mr. {Dingell.} And I thank you for that.

The reason I suggest this is it shows that we can work together where there is the will, and your leadership, I hope will provide us that necessary requirement.

My point here is that any overhaul of TSCA must include broad support from industry, environmental and conserver groups. From the time that we passed the Clean Air Act amendments of 1977, this committee has held frequent hearings over the next 13 years until we ultimately passed the Clean Air Act amendments of 1990. An interesting story about that was, somebody said, Dingell, what a great thing you did in getting this bill through the House in 13 hours. I said, yeah, it only took me 13 years to do it. But the harsh fact of the matter is these things take a lot of hard work, and a lot of time and a lot of cooperation.

I think industry and others who have concerns on this, consumers and environmentalists, are willing to work together, and your leadership, I think, will be of enormous value in achieving that great goal.

There has been much debate on the--in the Senate about the legislation before us, and I am pleased to see that we have two of our former colleagues from the Senate over here to discuss these matters with us. Before supporting any

legislation, however, I would hope that the broad support that we saw from the Mercury Export Ban in 2007, and for TSCA in 1976, will be available.

I do look forward to today's hearings, and I commend you, and I hope that we can find compromises that will gain not just the 218 votes on the House floor, but will come closer to the unanimity that we have seen on other legislation that has come out of this committee, including the Clean Air Act, which we passed by an overwhelming majority with, I think, less than 10 votes against it. So I hope that we can work together. The task will be difficult. The problem is very complex, and I think the challenge is great, but I am hopeful that the members of the committee can pull together on this, your leadership will be successful, and that we will accomplish the great goal of cleaning up the mess that we have on TSCA, and seeing to it that it works with the other problems that we have in connection with Clean Air, Superfund and all the other difficulties that we confront.

I thank you for your courtesy to me, Mr. Chairman.

[The prepared statement of Mr. Dingell follows:]

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Mr. {Shimkus.} Gentleman yields back his time. Now the Chair would like--again, wants to welcome our former colleagues from the House, now U.S. Senators, back to the House side and to the Energy and Commerce Committee room. This has been an issue that has been going on for many years, and Senator Vitter and I sat down 3 years ago, and--when he started working with Senator Lautenberg on this. So we are glad to have you present, and I would recognize each of you 5 minutes. That is not a hard time. And then we will dismiss you and we won't put you up to questions from your former colleagues. Who knows what they would ask.

So with that, we would like to recognize Senator David Vitter from Louisiana for 5 minutes.

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^STATEMENT OF HON. DAVID VITTER, A UNITED STATES SENATOR FROM THE STATE OF LOUISIANA; AND HON. TOM UDALL, A UNITED STATES SENATOR FROM THE STATE OF COLORADO

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^STATEMENT OF DAVID VITTER

} Senator {Vitter.} Thank you very much, Chairman Shimkus, and Ranking Member Tonko, and all the members for this invitation. Senator Udall and I are really excited to be here to talk about our work, particularly over the last few months, to ensure that S. 1009, the Chemical Safety Improvement Act, which I had the real honor and pleasure of introducing with Frank Lautenberg, continues to improve, and ultimately gets us to where we need to be so that finally, after 37 long years, we modernize and repair the badly-outdated Toxic Substances Control Act.

Today's hearing is a huge step in the right direction, and I know it is continuing your work, the fourth hearing that you have had on this important topic, and I am really excited to see your work and see it dovetail with our work.

The Lautenberg-Vitter Bill, which is currently co-sponsored by a very bipartisan and politically-diverse quarter of the U.S. Senate, was the product of extensive

negotiations, and I believe it exemplifies solid positive bipartisan compromise and good policy. But while we were putting together the bill initially, certainly, Frank Lautenberg and I never thought we had perfect legislation. And so that is why I have been honored to partner with Senator Udall since Frank's passing, to strengthen S. 1009, and we have committed ourselves to meeting with anyone interested in achieving significant bipartisan TSCA reform.

After a long hearing, for instance, in July in our Senate Committee, and countless hours of meetings, we fully recognize the issues that have been raised, some legitimate, some not, with the Lautenberg-Vitter Bill. And I think it has made--been made abundantly clear, but I will certainly say it again, and I know Senator Udall agrees, anyone interested in achieving meaningful bipartisan compromise to ensure TSCA reform protects all Americans in all 50 states, not just a small segment of the population, or the financial interests of some particular constituency, anyone who has those interests has a welcome seat at the table. And I am confident that by working with Senator Udall and interested stakeholders, the EPA, all of you, other members, co-sponsors of S. 1009 and others, will achieve a final version that not only enhances business certainty and creates a strong federal chemicals management system, but also sets meaningful

deadlines and protects the most vulnerable among us, effectively screens all active chemicals in commerce, and guarantees Americans access to private rights of action and legal remedies, and makes certain that EPA has the tools necessary to ensure the chemicals that we are all exposed to are indeed safe.

Now, as I said, anyone interested in a meaningful, substantive result and bipartisan compromise is welcome to a seat at the table, but I do want to urge that the Lautenberg-Vitter Bill, which was the product of a lot of hard work and real compromise itself, is the core and the foundation that we build from. Frank himself called that compromise an historic step that would ``fix the flaws with current law.'' Vice President Biden referred to our efforts as a ``bipartisan breakthrough.'' In a statement from Senator Lautenberg's widow, Bonnie, she remembered, ``Frank told me that this bill would be bigger and could save more lives than his law to ban smoking on airplanes.'' And in her words, ``passage of this bill would be a wonderful cap to his career and testament to his legacy.''

So S. 1009 is Senator Lautenberg's legacy bill, and I hope we work hard to improve it, take up any significant legitimate issue. We have been doing that through my work with Senator Udall, but in doing that, I hope we do not go

back, quite frankly, to failed previous efforts that were completely stuck-in-the-mud on partisan lines. And so, again, I want to urge us to stick to this core as we improve it and pass it into law.

I would be remiss not to mention the work that went into achieving this compromise with Frank, because it didn't happen overnight, didn't happen without a lot of work and a lot of give-and-take from both of us. He was a very talented legislator committed to making the world a better place. I enjoyed arguing and negotiating and working with him. Frank's wife, Bonnie, was there to take pictures the day Frank and I shook hands on the core pivotal agreement, and again, I am really pleased and honored that Senator Udall and I have partnered carrying on that work and that legacy to get it across the finish line.

Again, I want to thank each and every one of you for all of your work on TSCA, I know it has been ongoing, and specifically for this hearing as part of that continuing conversation.

Thank you for the invitation.

[The prepared statement of Senator Vitter follows:]

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Mr. {Shimkus.} Thank you. And the Chair now recognizes Senator Udall. And, sir, you are recognized for 5 minutes.

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^STATEMENT TOM UDALL

} Senator {Udall.} Okay. Thank you very much for the invitation to be here today, and I really in particular want to thank Chairman Shimkus and also Ranking Member Tonko.

We--Senator Vitter and I both appreciate this opportunity. And let me just, at the beginning, just say what a pleasure it has been working with Senator Vinner--Vitter and all of the stakeholders to try to center-in on something that we think can get through the Senate, and also I hope will be received over here with some kudos and applause.

S. 1009, the Chemical Safety Improvement Act, has been the center of a lot of debate and discussion in the Senate since its introduction. When I first cosponsored the legislation, I did so for two reasons; one, I believed the bill addressed some of the key flaws in TSCA, and that has been noted here. There have been a number of flaws there. And I was very moved by the spirit of bipartisan compromise led by Senator Frank Lautenberg and Senator Vitter in an area where the two parties are often very far apart.

My staff and I and Senator Vitter's staff have spent many months since the introduction, working on this

legislation and working with the various stakeholders. S. 1009 is not perfect, and, as introduced, has some key problems that need to be addressed. As Senator Lautenberg's successor, as Chairman of the Senate Subcommittee on Superfund, Toxics and Environmental Health, I respect the criticism the bill is receiving, and I strongly believe several key areas must be addressed for this legislation to be successful.

Chairwoman Boxer held a hearing on this issue earlier this year which delved into these issues. I applaud this committee for taking similar action.

I think many of these problems are unintentional, but many in the environment and health community believe these issues mean this legislation should not move forward as-is, and given the fact that we are talking about one of the most ineffective laws on the books, that is worth noting. I agree that we should not pass S. 1009 as introduced, but I am, and will continue to be, optimistic about the incredible bipartisan spirit around finding reform and protecting our families from dangerous chemicals.

As the Subcommittee Chair, I want to develop and pass legislation that safeguards our citizens. S. 1009 has a number of strong elements of needed reform, as well as problems. We can, building off of that, and that is why I

have committed so much time to working with Senators of both parties to improve this bill so that it could move forward and be something we can all be proud of.

Through the--through that process, I have come to appreciate how big a challenge this is. After all, TSCA's own fatal flaws have not been fixed in decades. Nevertheless, I believe we are up to the challenge.

Here are the big three issues with the current Senate bill that we are working on. Number one, ensuring that the EPA will have the tools it needs to protect citizens from dangerous chemicals, and to ensure that EPA will be able to review the known 84,000 chemicals. This means getting the prioritization and deadlines right, along with specifically protecting vulnerable populations. Second, we must make sure to protect private rights of action, to hold companies responsible, and ensure they don't cut corners. As a Subcommittee Chair and supporter of justice for victims, it is not my intent to preempt private claims. That has been stated publicly by myself and by Senator Vitter. Further changes are absolutely necessary to make this intent clear throughout the bill. And finally, we must make sure to protect the right of states to safeguard our citizens.

On that last point, let me take a moment to say to Ranking Member Waxman and members of the California

delegation that the Chair of our committee, Barbara Boxer, has been a tireless advocate for the State of California and our country. I appreciate the leadership she has shown to protect citizens from dangerous chemicals, and I believe that California and other states play a critical role in lifting up health and safety standards for our country.

As this committee proceeds on its own deliberations of how to reform TSCA, I would word--urge you to work together as we are working together, and I am sure you will. I think it would benefit us all to work together on a bipartisan and bicameral basis. TSCA has been a failed environmental law for decades. We have a historic opportunity before us. Success is far from certain, but it would be a shame to waste it.

And thank you again, Chairman Shimkus. Pleasure to be over here with my former colleagues, and we look forward, Senator Vitter and I do, on working with you on this piece of legislation.

[The prepared statement of Senator Udall follows:]

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Mr. {Shimkus.} I want to thank you both for coming over. We appreciate the efforts you have made so far, and really the bipartisan approach is going to be critical in moving anything, and we look forward to working with you as we move through this process. So thank you again. You are dismissed, and we will then seat our second panel.

So as stated in my opening statement, we would like now to welcome and thank you for coming, the Honorable Jim Jones. You are--he was the Assistant Administrator, Office of Chemical Safety and Pollution Prevention, with the United States Environmental Protection Agency.

Sir, you have 5 minutes. We are not hardcore on the time. This is a very important issue, and we look forward to your opening statement.

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^STATEMENT OF THE HONORABLE JIM JONES, ASSISTANT ADMINISTRATOR, OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION, U.S. ENVIRONMENTAL PROTECTION AGENCY

} Mr. {Jones.} Good morning, Chairman Shimkus, Ranking Member Tonko and other members of the subcommittee.

Thank you for inviting me to--for the opportunity to discuss reform of the chemicals management laws of the United States.

I think we all agree on the importance of ensuring that the chemicals manufactured and used in this country are safe. With each passing year, the need for TSCA reform grows, and this Administration believes it is crucial to modernize and strengthen the Toxic Substances Control Act to provide EPA with the necessary tools to achieve these goals.

EPA is encouraged by the interest in TSCA reform, indicated by the introduction of several bills in recent years, the bipartisan discussions underway, and today's hearing which marks the fourth in a series of hearings on TSCA reform before this subcommittee.

Many stakeholders share common principles on how best to improve our chemicals management programs. EPA is committed to working with each of you and other members of Congress,

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

As you know, chemicals are found in almost everything we use and consume. While they are essential for our health, wellbeing and prosperity, it should be equally essential that they are safe. Compared to 37 years ago when TSCA was passed, we have a much better understanding of the environmental impacts, paths of exposure and health effects that some chemicals can have, especially on children and other sensitive populations.

TSCA gives EPA jurisdiction over chemicals manufactured, processed or distributed in the United States; however, unlike laws applicable to drugs and pesticides, TSCA does not have a mandatory program that gives EPA the authority to conduct a review to determine the safety of existing chemicals. In addition, TSCA places challenging legal and procedural requirements on EPA before we can require the generation and submission of data on the health and environmental effects of existing chemicals.

While TSCA was an important step forward when it passed in 1976, it has not only fallen behind the industry it was intended to regulate, it has also proven an inadequate tool for providing the American public with the protection they rightfully expect from exposure to harmful chemicals. When

TSCA was enacted, it grandfathered-in, without any evaluation, about 60,000 chemical in commerce at the time.

It has also proven challenging to take action to limit or ban chemicals that have been determined to pose significant health concern. For example, in 1989, after years of study, EPA issued a rule phasing out most uses of asbestos in products. Yet, in spite of near-unanimous scientific opinion, a federal court overturned most of this action because it found the rules had failed to comply with the requirements of TSCA. In the past 37 years, the EPA has regulated only 5 chemicals under the--under Section 6 of TSCA, which gives the EPA the authority to ban harmful chemicals.

While EPA is committed to using the tools available under TSCA, we believe it should be updated and strengthened to ensure that EPA has the appropriate tools to protect the American public from exposure to harmful chemicals. It is crucial that any updates to TSCA include certain components.

In September of 2009, the Administration announced a set of principles to help guide the discussion to update and strengthen TSCA. These include providing 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 standard.

On April 15, Senators Lautenberg, Vitter and others introduced S. 1009, the Chemical Safety Improvement Act. While EPA has not yet developed a formal position on the bill, we offer the following observations in light of the Agency and the Administration principles. As stated in the principles, legislation should provide EPA with authority to establish risk-based safety standards that are protective of human health and the environment. The EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into a range of consideration, including children's health, economic costs, social benefits and equity concerns. The principles further indicate that clear, enforceable and practicable deadlines should be set for the Agency to review and make decisions on chemicals, in particular, those that might impact sensitive populations, and provide a sustained source of funding for implementation. Administrative requirements should add demonstrable value to the process beyond existing law and requirements. Legislation should provide the EPA with tools to ensure the protections put in place are carried out, and provide a level playing field for companies that

comply.

We understand the concerns raised by many stakeholders regarding the appropriate role for states in addressing the risks of chemical--are exposed, and EPA stands ready to provide technical assistance on this important issue.

Mr. Chairman, thank you again for your leadership on TSCA reform, and I will be happy to answer questions that you or members of the committee have. Thank you.

[The prepared statement of Mr. Jones follows:]

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Mr. {Shimkus.} Thank you. Now I will recognize myself for the first 5 minutes for the starting of questions.

So, again, welcome.

Does Senate Bill 1009, in your opinion, strengthen EPA's ability to prevent dangerous new chemicals or those with inadequate information from entering the market?

Mr. {Jones.} Yes, Congressman. The--to clarify, the existing statute does not require EPA to make an affirmative finding of safety to--for a new chemical, as 1009 requires an affirmative finding on the part of the EPA before a new chemical can enter the market. As it relates to data generation, interestingly, my attorneys have read the bill to provide EPA with the ability to require the generation of data if necessary to make a finding.

There are other stakeholders who are not reading that provision the same way, which to me is an indication that there may be a need for clarification around that.

Mr. {Shimkus.} Thank you. Do you consider Senate 1009 an improvement over current law for EPA to address hazards and risk of chemical substances in American commerce?

Mr. {Jones.} So, you know, as we heard from the--Senator Udall, the--TSCA is perhaps one of the more poorly implemented environmental statutes, and so the way in which

we look at the bill is--in is it better, is it--does it allow us to achieve our standard objectives of safe chemicals in the United States. And in that respect, under that standard, which is the way I am attempting to look at it, I think that there are some shortcomings, as we heard from Senator Vitter, that I would be happy to talk about as well.

Mr. {Shimkus.} Many witnesses have testified before our committee on the strengths and successes of existing TSCA, Section 5, provisions for new chemicals, and new uses of existing chemicals. Notwithstanding Senate 1009 makes changes to Section 5, do you consider these changes appropriate?

Mr. {Jones.} I--you know, I think it is surprising to most people that we do not need to affirmatively determine safety before a chemical enters the market, so I think that that change is an important one, that the Agency affirmatively say, yes, this chemical is safe before it enters the market.

Mr. {Shimkus.} Could these changes negatively impact innovation in the United States?

Mr. {Jones.} So I don't--you know, when people talk about innovation, which we are very sensitive to at EPA and try to facilitate it, I don't think they think of it as innovation of unsafe things. So I don't view a requirement

that the Agency affirmatively determines something meets a safety standard as impacting innovation in a negative way. I actually think it will facilitate innovation, because innovation should be around safe things.

Mr. {Shimkus.} Right. I appreciate that. Further, some witnesses have talked about EPA needing more information on chemicals. Section 4 of Senate 1009 provides the EPA authority to order development of data and information on chemicals. Is this a tool the Agency currently has under Section 4 of TSCA today?

Mr. {Jones.} Thanks, Mr. Chairman. That is actually one of the real highlights of the introduced bill. Right now, the Agency, if we wanted to generate health and safety--a company to generate health and safety data for a chemical, we need to go through a rather complex rule-making process, which also requires us to make certain findings that creates somewhat of a catch 22. We have to have a sense that there is a problem before we require the generation of this data, and the rule-making themselves can take up to 5 years, if not longer.

So order authority, the ability to, without going through that elaborate process, is a huge improvement, and it is an authority that we have in our pesticides program right now.

Mr. {Shimkus.} And you answered it in the last question--the prepared questions I have is, order authority would be helpful in this venue, as you just testified.

Mr. {Jones.} Very much so.

Mr. {Shimkus.} Let me ask two other questions based upon your opening statement.

When you say equity concerns, what do you mean?

Mr. {Jones.} So sometime, well, actually, whenever you are protecting in a regulatory decision, or otherwise, it is important to understand where the protections occur. It is also important to understand where the costs falls. Are the costs being borne by a broad segment of society, a narrow segment of society, are the benefits being enjoyed by a very narrow segment of society, or a broad segment of society. And so it is understanding where the costs and the benefits of a decision may fall. Understanding what they are.

Mr. {Shimkus.} We kind of need a little more work on that because I think, for me, the basic premise is are we producing chemicals that are safe. So that--I--anyway, I would think a safe chemical would be good for everybody in the production process and for the consumers, but I will get more briefings on that.

When you define sensitive populations, what do you mean by that?

Mr. {Jones.} Well, so that can be an equity concern. So that by looking at--if you are--we expect that we are going to be looking at highly-exposed individuals, wherever they may be--

Mr. {Shimkus.} In the workplace or--

Mr. {Jones.} In the workplace--

Mr. {Shimkus.} --outside the fence of the facility, is that what we are talking about?

Mr. {Jones.} Whoever is highly exposed to the chemical that we are looking at, or--and the use that we are looking at. And we also mean it to include are there certain parts of the population that may be biologically more sensitive. So a child or an infant may have different sensitivities than an adult, an elderly individual may have different sensitivities than a teenager. And so we look at both the highly exposed, who is getting more exposure than the average, and are there individuals or groups that may have greater sensitivity than the average.

Mr. {Shimkus.} Great. Thank you very much. My time has expired. The Chair now recognizes Mr. Tonko for 5 minutes.

Mr. {Tonko.} Thank you, Mr. Chair, and thank you, Administrator Jones, for your guidance.

Now, the American people have relied on EPA and the

Toxic Substances Control Act to protect them against the dangers of toxic chemicals, but EPA has faced significant challenges in banning or restricting toxic chemicals under TSCA, even in cases where the risks are widely recognized and understood, such as is the case of asbestos. So EPA's first principle of TSCA reform from 2009 reads, and I quote, ``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.''

Some have suggested that EPA should consider the cost to the chemical industry and others when setting a safety standard. That would mean that somehow EPA would have to factor in the cost of reducing the public's exposure to harmful chemicals when determining whether exposure to a chemical is safe.

Would an approach that requires consideration of cost and determination of the safety standard comport with EPA's principle?

Mr. {Jones.} Thank you, Representative Tonko. The Administration principles speak both to science-based safety standards, and then in risk management, the Agency having the flexibility to consider other factors such as costs, so that when we are looking at how to mitigate a risk, those cost considerations can play into the ultimate decision making.

And those are--concepts are both captured in the Administration principles.

Mr. {Tonko.} So based on science and cost?

Mr. {Jones.} That is right.

Mr. {Tonko.} We are looking at both. Historically, TSCA has applied an unreasonable risk standard. This standard has been interpreted to require cost consideration in setting standards, and it was one of the key problems that led to the tragic failure to phase-out use of asbestos. Is that correct?

Mr. {Jones.} I think that the--not just the unreasonable-risk standard itself, but many of the other requirements within Section 6, including the least burdensome requirement. Those two phrases, and a lot of other language around it, required an--what I would consider to be analysis--paralysis by analysis. So much analysis, you could never actually finish the work. And those conspired to get in the way of EPA in the asbestos context, and I would argue since then of being effective with Section 6.

Mr. {Tonko.} So the bill we are considering today continues to use the legal standard of unreasonable risk. I am concerned that continuing to use this standard invites the use of the traditional interpretation which leaves EPA, as you made mention, paralyzed. Is this a fair concern?

Mr. {Jones.} It is interesting, Congressman. The--there are a number of people in the stakeholder community, and they--in my conversations, they don't fall out in terms of, you know, one group versus another, but there are some parties who believe unreasonable risk can only be read to mean a cost benefit balancing. There are others who believe that it is all of the language around it that will matter ultimately. And so I think it is important to have that dialog to come to consensus so everyone agrees, whatever words are being used, there is a common understanding.

That being said, I do believe that 1009 also has other language in it, beyond unreasonable risk, that has a similar effect as the least burdensome requirement which requires a seemingly endless amount of analysis on the part of the Agency before we can ever move forward. So I think that that is important to address as well.

Mr. {Tonko.} And so in your view, we could end up with an adequate standard if we make it clear that EPA should abandon the historical interpretation of unreasonable risk?

Mr. {Jones.} You know, I--interesting--I fall within the camp, thinking that the statute can clearly define unreasonable risk, but you need to use enough words that you counter the case law that exists out there right now, and the way in which the--this--that term is used in--within existing

TSCA, but it is very important that whatever is done, that people agree about what the interpretation is, and not be in a position where people look at the same two words and think it means two different things.

Mr. {Tonko.} So would it be easier to simply use a new standard that doesn't have the baggage associated with the phrase unreasonable risk?

Mr. {Jones.} Well, that would be one way to do that.

Mr. {Tonko.} Okay. Given the history of litigation under TSCA, statutory language on cost consideration and the safety standard must be completely clear. I commend the Administration for its clear principle on this matter, and look forward to ensuring that any bill we produce is consistent with the Administration's position, otherwise we will have a lot of explaining to do to the victims of asbestos and other toxic chemical exposure.

There is also a lot of talk about resources, as you talked about putting more and more into the standards that need to be met and reviewed. In your opinion, where are we at with the resource issue in order for the Agency to comply with the implementation?

Mr. {Jones.} So one of the Administration's principles is that there be a sustained source of funding for the EPA. Under existing funding, we would be limited in how much

progress we could make in any period of time. We would think that a sustained source of funding would involve something above and beyond what currently exists for EPA. I think there are some models out there we could talk to.

Mr. {Tonko.} Thank you very much, Administrator Jones.

Mr. {Jones.} Thank you.

Mr. {Shimkus.} Gentleman's time has expired. Chair will now recognize the gentleman from Georgia, Mr. Gingrey, for 5 minutes.

Dr. {Gingrey.} Mr. Chairman, thank you.

Administrator Jones, I have got--actually I have got four questions for you, and I will start.

Were Senate Bill 1009 enacted tomorrow, what would be the status of the regulations or guidance under current law? Would EPA need to reissue new regulations for regulatory matters that are already settled under current law?

Mr. {Jones.} Thank you, Congressman.

So I believe that existing regulations would carry on as they are. I think guidance, we would need to look case-by-case to the--to each guidance to see whether or not a new law, such as 1009, would require us to make any modifications to conform with a new statute. But regulations would be--would carry on as they are currently drafted.

Dr. {Gingrey.} Great. Thank you. And the second

question, how could activities currently underway at EPA, as an example, identification of work plan chemicals and progress in conducting risk assessments of them, be integrated into S. 1009 in a manner that does not disrupt or delay current TSCA work?

Mr. {Jones.} I believe that the existing--introduced Bill 1009 allows the agency to designate the compounds that we are already working on--chemicals and other chemicals for which we have prioritized, which are about 80-plus, as high priority right from the get go. So right from the beginning, they would become high priority chemicals under the current draft.

Dr. {Gingrey.} In your view, does the knowhow, experience and capability of the United States in regulating chemicals compare to other nations?

Mr. {Jones.} Yeah, well, just so you understand, my experience includes about 20 years working in the pesticides program and then in this capacity as well. Pesticides are chemicals and, in the pesticide context, we have a very strong statute that requires us to evaluate every chemical and have been able to effectively do that, so I think we have some of the best knowhow, experience and knowledge in the world as it relates to chemicals. I think what we are struggling with in this context is a statute that makes it

difficult to apply that experience to the chemicals under TSCA.

Dr. {Gingrey.} And my last question, and I have got, gosh, 2-1/2 minutes, I may be able to yield back some time.

The United States is currently exploring a free trade agreement, as you know, with the European Union. Do you see any potential impact of those trade talks on domestic chemicals regulation?

Mr. {Jones.} That is a very good question. I could-- what I would say about that is that, and my organization and myself will participate with USTR, largely through USTR, on those kinds of discussions. What we try to do at EPA is to identify areas where there may be unnecessary barriers to trade, while ensuring that existing health and safety standards in the United States are maintained.

And so sometimes you may identify a barrier, but it is not going to get changed because we have domestic laws that would prevent it, but there are times when you can identify a problem that can be harmonized without changing the domestic safety standards in the United States.

And so that is the sweet spot that we are looking for. Whether we will find any in that context is, I think, too early to determine, but that is how we will approach the issue.

Dr. {Gingrey.} Could this free trade negotiation influence chemical risk assessment policy in the United States and should it? I mean that is really the meat of the question. They do things differently, obviously.

Mr. {Jones.} Yeah, and so the--that is a very good question. The Obama Administration has been very clear that we are taking a risk-based approach to chemicals management in the United States. That is what we do under existing law, it is what we are advocating in a reform to TSCA. I don't see any scenario where we would move away from that. It is a pretty core principle of the Administration. It is also--it is been the principle of the U.S. Government for many Administrations.

Dr. {Gingrey.} Well, that is--

Mr. {Jones.} I think it would be kind of unusual for us to move away from that.

Dr. {Gingrey.} That is very reassuring, Administrator Jones.

Thank you very much, and I yield back 30 seconds.

Mr. {Shimkus.} Gentleman yields back the time. The Chair now recognizes the Ranking Member Full Committee Mr. Waxman, for 5 minutes.

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

Mr. Jones, thank you for testifying today. I would like

to explore two issues with you about this bill. One is the issue of deadlines associated with effective Agency action, and the other is preemption of state requirements.

Let us start with the deadlines issue.

You testified that in the last 37 years, EPA has only been able to require testing on a little more than 200 of the more than 84,000 chemicals listed on the TSCA inventory. That means that not even 1 percent of chemicals have been tested for safety in nearly 4 decades.

I think the American people would see this as disappointing. They are counting on the Agency to ensure chemicals are adequately tested, but this history demonstrates the law is not working the way it needs to. That is why, in my view, it is critical that legislation to reform TSCA include meaningful deadlines to ensure that chemical reviews are completed on a timely basis.

Does the bill, Mr. Jones, examine--that we are examining today, adequately address this issue? Will it ensure that there are meaningful deadlines to address this huge backlog?

Mr. {Jones.} Thank you, Congressman Waxman.

I don't believe that it does. The bill does require EPA to set deadlines, but it gives us unlimited ability to change those deadlines. So, in effect, I don't believe as a matter of law there are meaningful deadlines in the statute. I will

say, as you well know from the Food Quality Protection Act which you had a big hand in, there were very clear deadlines about what EPA had to do. We had to look at all pesticides used on food within 10 years, and during a 10-year period we evaluated them all, actually, 99 percent, met the deadline--

Mr. {Waxman.} Yeah. I am interested in that--

Mr. {Jones.} --had--

Mr. {Waxman.} --because this committee passed that bill. In fact, I worked with Chairman Bliley and Chairman Dingell. It was a strong bipartisan-supported bill. And it required pesticide residues on food to be safe for infants and children. It included deadlines for hundreds of chemicals to be reviewed. And you are in charge of both.

Mr. {Jones.} That is right.

Mr. {Waxman.} The TSCA issue and the 1996 law. So you have had the experience with deadlines that were very concrete. Did it affect the Agency's implementation of the law?

Mr. {Jones.} I think it is why we met the deadline. From 1996 to 2006, we met that deadline for 99 percent of the 10,000 food use tolerances in the United States, from 1996 to 2006 in--under TSCA, which has currently no deadlines. We--

Mr. {Waxman.} Yeah.

Mr. {Jones.} --didn't evaluate a single existing

chemical during that--

Mr. {Waxman.} Yeah.

Mr. {Jones.} --period of time.

Mr. {Waxman.} Well, 400 pesticide chemicals under the Food Quality Protection Act over 10 years have been reviewed, which complies with all the law's deadlines, and I congratulate for--congratulate you for that, and at the same time, EPA completed no reviews under TSCA because there were no deadlines. I think that speaks very favorably for putting deadlines in the legislation.

Now, let me turn to the question of preemption. Over the years, many states have acted to protect the public from the dangers of toxic chemicals. They have removed toxic chemicals from consumer products, they have banned developmental toxins from toys, and they have even worked to regulate chemicals that act as powerful greenhouse gases. Under this bill, Mr. Jones, EPA is required to determine whether a chemical is a high priority or a low priority for review. And once this determination is made, state rules are preempted. Isn't that correct?

Mr. {Jones.} New state requirements would be preempted after EPA makes a determination a chemical is a high priority or a low priority.

Mr. {Waxman.} Okay. Now, in fact, the California EPA

has identified dozens of state laws and regulations that may be preempted under this approach, but determining something is a high priority for review is only the beginning of the process. It could take many years for EPA to adequately address a high priority chemical, and without meaningful deadlines, we could have important state public health protections preempted while federal action language is indefinitely. Isn't that the case?

Mr. {Jones.} That is correct.

Mr. {Waxman.} The preemption as you see it is only prospectively, so existing laws would not be preempted?

Mr. {Jones.} There is--I am sorry. There is actually a--there are two provisions; one is for existing requirements. Existing state requirements are preempted when EPA makes a safety determination. A safety determination is just our view of the risks of the compound; it is not the regulation of the compound. So you could have an existing state requirement be preempted once EPA has made a safety determination, but before EPA ultimately regulated it.

Mr. {Waxman.} And that could be years.

Mr. {Jones.} Well, there are no deadlines, so--

Mr. {Waxman.} Yes.

Mr. {Jones.} Yes, years.

Mr. {Waxman.} Well, thank you very much for your

testimony and your answering these questions. I think it drives us to look at this need for a bill with strong deadlines, and get this job done.

Thank you, Mr. Chairman.

Mr. {Shimkus.} Gentleman yields back his time. Chair now recognizes the gentleman from Pennsylvania, Mr. Murphy, for 5 minutes.

Mr. {Murphy.} Thank you, Mr. Chairman. Sir, thank you for being here.

First of all, I want to say I am pleased we are having this hearing and moving forward with much-needed debate. There are some important provisions in the Senate bill to protect public health, while allowing companies to continue to innovate, and I am supportive of the federal standard rather than the complexity in the 50-state statute. And one issue I want to raise is language in here related to articles. The bill says imported or exported articles will need to say whether they contain high-priority chemicals. This could require an extensive review--applied outside of the U.S. for articles we import, and this could be an extensive burden so it is something we need to look at in the future.

Mr. Jones, a couple of things in your testimony. On page 5, you refer to social benefits. What does that mean?

Mr. {Jones.} So the--how the benefits of the action are captured, and the--as a general matter, they relate to the health benefits that are generated.

Mr. {Murphy.} And you mention health too. I just wondered how--is social different from health?

Mr. {Jones.} As a general matter, I don't think that it would be.

Mr. {Murphy.} Okay, I wanted to be clear because that means different things to us. So, all right. Also, you referred on page 6 to sound science. Certainly, that is something this committee advocates a great deal. How do you define sound science, however? Is that something that is based upon referee journals from scientists--respected scientists, is that something that the EPA puts out, is it something that its committees are appointed with political appointees--

Mr. {Jones.} Right.

Mr. {Murphy.} --how do you determine sound science?

Mr. {Jones.} You know, the Agency has actually got a fair amount of guidance that it has that describes the characteristics of what we want our science to include, which I can--I would be happy to provide to the committee. As a general matter though, it includes that--we are looking at all the available information, and that we are relying on

peer review to help make sure that our assessment of that science holds up.

Mr. {Murphy.} I see. Appreciate it, and I hope we can make sure there is wording in the bill that defines that too. Let me ask this then, how long would the EPA take to accomplishing the following tasks in a Senate bill, assuming adequate staffing and funding. This is in S. 1009. First of all, sorting chemicals at the high and low priorities.

Mr. {Jones.} So the initial cut around that, actually the Agency did before this bill became--was introduced, and that took several months to identify perhaps the 250 highest priority chemicals. So the sorting activity of finding what we think are the highest priorities does not take that long.

Now, that being said, we were looking at about--a subset of about 1,200 chemicals for which there was a meaningful data set. At the end of the day, we would be required to sort a much larger universe than that, but that being said, the sorting activity itself is one that is not particularly--does not particularly take a long time.

Mr. {Murphy.} Okay. How long would it take you to complete the first safety assessment?

Mr. {Jones.} So we think as a general matter, it is about a 2 or 3-year process to be doing a chemical safety assessment, depending on the complexity of the chemical.

Mr. {Murphy.} And how about completion of most safety assessments?

Mr. {Jones.} Well, the--it is--the numbers we are dealing with here in--under TSCA are so extraordinarily large, which is why I think that efforts to reform TSCA really focus in on set some priorities so that you are focusing on those things that have the potential to have the greatest risk.

And so, you know, depending on how you want to define most of the chemicals, it would certainly inform how one would try to answer that.

Mr. {Murphy.} So then this begs this question, because it is so important that the manufacturers have some important data on this too, but how long would it take you to publish the first regulations imposing restrictions on a chemical?

Mr. {Jones.} So after having a safety assessment and safety determination, which we think can happen contemporaneously, it would be about 3 years for a final regulation for a chemical that had been assessed.

Mr. {Murphy.} And how about deciding restrictions for the most risky chemicals?

Mr. {Jones.} Well, it is about--the--3 years.

Mr. {Murphy.} Three years for--then either way?

Mr. {Jones.} Yes.

Mr. {Murphy.} Can you elaborate a little bit what would go into that, making these determinations about your regulations of the most risky chemicals?

Mr. {Jones.} In--with respect to what is the assessment like, or how do we ultimately determine how--whether risk management is necessary?

Mr. {Murphy.} Maybe what the assessment is like.

Mr. {Jones.} So the assessment is basically we are going to look at all of the data that is available around hazard, whether the chemical elicits some kind of an adverse effect in animals. Humans being who we are trying to protect, but it is usually the laboratory animals that...

Mr. {Murphy.} Would you have ongoing communication with the manufacturers with this? And I think it is very--it is extremely helpful if you have an open communication, not surprising them, but open discussions, honest discussions as to what the scientific base--

Mr. {Jones.} We have--without--in the last year and a half or so, we have begun to do some safety assessments, and we try to make it open and available to everyone. I will say manufacturers tend to participate more than others, but it is open to everyone. And so if they have data that is of--useful to the safety assessment, they are encouraged to bring it to us--

Mr. {Murphy.} Okay.

Mr. {Jones.} --make sure that we have it.

Mr. {Murphy.} Thank you.

Mr. {Jones.} So we will--

Mr. {Murphy.} I yield back.

Mr. {Shimkus.} Gentleman's time expired. Chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. {Green.} Thank you, Mr. Chairman, for holding this hearing. It is our fourth on TSCA reform before our subcommittee this year, and I am optimistic our committee can find a bipartisan path to reauthorization, and we address the concerns of most, if not all, of the stakeholders, and I look forward to the process.

I would like to also thank Senators Udall and Vitter for joining us this morning earlier, as well as Assistant Administrator Jones, for the work they have done to move this issue forward.

Mr. Jones, in your professional opinion, does the safety standard in Lautenberg-Vitter strengthen the EPA's ability to regulate chemicals over the present safety standard?

Ms. {Jones.} Thanks, Congressman Green. I think that there are some issues with the way in which the safety standard in 1009 is drafted, but the principle one that I see

is that it requires a degree of analysis of the alternatives to the chemical that you are focusing on that could find EPA in a potentially an endless analytical loop. So that meeting those procedural requirements of evaluating all of the alternatives, the risks and the benefits of all of the alternatives, may find us in a situation where we can't finish on the chemical that we are focusing on, and that is actually built into the safety standards, so I think that that is the principle problem that we see.

Mr. {Green.} Well, and I know there are a number of other questions. I would hope that we could sit down and work that out because, obviously, the EPA is the enforcement agency, but we want to make sure the law is both easily dealt with, both for everyone involved in it. So I look forward to using our resources together to deal with it.

Are some of the challenging and legal procedure requirements encountered under TSCA, in quoting your testimony, fixed in the Lautenberg-Vitter Bill? If so, were these challenges addressed in 1009?

Mr. {Jones.} I think that the issue that was most effectively addressed in the Lautenberg-Vitter bill is the inability the agencies had to easily require the generation of health and safety data. I think that that has been the aspect of the bill that has most moved the ball forward. As

I had mentioned earlier, I think that the removal of the least burdensome requirement that many focus on under TSCA has instead been replaced by a different kind of burdensome requirement, and I think that the deadlines--the lack of deadlines will meaningfully impair the Agency's ability to succeed in the way that I think that the drafters intended.

Mr. {Green.} Okay. Do you believe the infants, children and pregnant women, and other vulnerable populations, would be protected more under Lautenberg-Vitter than current law?

Mr. {Jones.} The Lautenberg-Vitter Bill does require that EPA consider sensitive populations in our safety assessments, which is not required under existing TSCA. It doesn't require we to--us to consider them in our safety determinations or risk management, so there is a movement towards that direction in Lautenberg-Vitter.

Mr. {Green.} Under current law, can you explain what happens when a new chemical comes on the market? Does the manufacturer need EPA okay first?

Mr. {Jones.} They need us to not say no. So they don't need us to affirmatively say yes, they need us to not say no. And the Lautenberg-Vitter Bill--or--rectifies that by requiring EPA to affirmatively say yes.

Mr. {Green.} Okay. And you find--if--do you have to

find that a chemical is safe before allowing it on the market?

Mr. {Jones.} We are not required to make that finding.

Mr. {Green.} Okay. Would the Lautenberg-Vitter Bill address that issue?

Mr. {Jones.} Yes, that is--

Mr. {Green.} Okay. How would S. 1009 change current law that protects confidential business information, and I know we have dealt with this on our committee a lot of times. Is it--would it require companies to refresh their requests for information protection?

Mr. {Jones.} The principle change is that it would allow EPA to share confidential business information with state, local, emergency response officials, which is currently prohibited.

Mr. {Green.} Okay. How does it meet--make sure that the government officials, including states, get access to the needed information while still protecting those business secrets from competitors?

Mr. {Jones.} So--

Mr. {Green.} Is that protected in 1009?

Mr. {Jones.} That is right. It would require the recipient, the state or local responder, to agree to maintain the confidentiality before receiving the information.

Mr. {Green.} Some of the witnesses that will follow you suggest EPA cannot get information to prioritize chemicals, yet I noticed new Section 43(b) allows EPA to ask the public for information that is reasonably ascertainable. Does that section allow EPA to collect information that is reasonably ascertainable to make prioritized--prioritization decisions?

Mr. {Jones.} It--that does, but there is also a provision that allows us to require the manufacturers to generate the data without going through a rule-making activity.

Mr. {Green.} Okay. And again, Mr. Chairman, I am out of time but I look forward to us working with EPA and the drafting, and to make sure we know we are all on the same page, literally.

Thank you for your time.

Mr. {Shimkus.} Gentleman's time expired. Chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. {Latta.} Well, thank you very much, Mr. Chairman. Thanks for holding this hearing this morning, and thank you very much for being here. We really appreciate your testimony, and the discussion that we are having today.

Just again to kind of--where I am coming from. I represent a district that has 60,000 manufacturing jobs, and it is also unique in that I also represent the largest number

of farmers in the State of Ohio. So I have parallel things going on out there. And so when I am out at home and this issue comes up, people really want to know what is happening in Washington, and especially where EPA would be going.

And if I could ask you just a couple of questions real quickly. One is, do you believe that the categories that this bill creates for new chemicals will or could negatively impact specialty chemical manufacturers?

Mr. {Jones.} The new chemical provisions, Congressman, is that what you are---

Mr. {Latta.} Right.

Mr. {Jones.} I don't believe so. I believe that we will be able to make decisions in a timely manner under the Lautenberg-Vitter bill on new chemicals.

Mr. {Latta.} And again, could you define that timely manner?

Mr. {Jones.} So the current requirement is that we evaluate compounds within 90 days. If we see a problem, we need to inform the submitter. Under the Lautenberg-Vitter bill, that 90 days remains. We have the ability to extend it by one 90 day--or two periods of time, but it shouldn't exceed another 90 days. So we are still talking about very short periods of time for our review of new chemicals.

Mr. {Latta.} Okay. And can you also discuss EPA's

confidential business information improvements, and are--and how are those working?

Mr. {Jones.} So we are working very hard to do what I think of as the government's role as it relates to confidential business information, which is to ensure that we are asking the question, is this claim eligible for confidential business information treatment. Historically, we have been somewhat passive which, if someone had asserted it, we basically would just accept that. We are now doing our part, which is to make sure that an assertive claim actually meets the statutory criteria around that. And over the last several years, we have successfully removed over 1,000 claims that have been made just because they were not warranted by the statute, or the manufacturer, when they went back and looked at their files, they didn't think the claim was necessary anymore. So some of it has been us doing more work, some of it has been us working with the manufacturers to ensure that they were keeping their files accurate related to their CBI claims.

Mr. {Latta.} And also when you reviewed the bill, would those improvements be consistent with the bill?

Mr. {Jones.} The--generally they would be. There is a grandfathering-in of CBI claims that--one that was made before the bill would pass would be considered to be CBI that

would potentially impact some of this cleanup effort that I am referring to.

Mr. {Latta.} Okay. And also, how do you believe the coordination has been between the EPA and the TSCA Interagency Testing Committee?

Mr. {Jones.} So historically, it has not been particularly active, in that other agencies are not big users of that committee, whereby they are able to ask us to generate health and safety data for their purposes. It is--the bill allows that activity to continue in the future. It would be interesting--I really can't predict how much other agencies would be feeling more empowered to ask EPA to use its authorities to require companies to generate health and safety data for their purposes, but it is definitely an authority in the Lautenberg-Vitter Bill.

Mr. {Latta.} Okay. And finally, if I could, I know there have been some questions that other members have asked about how you have defined certain words that have--that were in your testimony. On page 4, you talk about that, as stated in the principles, legislation provides the EPA with authority to establish risk-based safety standards. How would you define that risk-based safety standards? Would you see the stakeholders being involved, how would you see--come to that definition?

Mr. {Jones.} So we would definitely involve stakeholders in that--I will give a few examples based on implementation of other statutes. The EPA would consider, for a chemical that was a quantified carcinogen, that the calculated risk of that compound not creating more than a 1 in a million chance of increasing cancer risk to be a health-based safety standard, where we have identified in a quantifiable way in that case the level at which we believe is protective, based exclusively on a health and safety consideration. So that would be an example of one. It doesn't mean under this bill we would say that the number, but we would include dialog with stakeholders to say, here is an example, would--do you think this is the appropriate health-based safety standard? Should it be 1 in a million, 1 in 100,000, 1 in 10 million, before we ultimately came down on what we thought was the appropriate health-based safety standard.

Mr. {Latta.} Well, thank you very much. And, Mr. Chairman, I see my time has expired, and I yield back.

Mr. {Shimkus.} Gentleman yields back his time. Chair now recognizes my colleague from Colorado, Ms. DeGette, for 5 minutes.

Ms. {DeGette.} Thank you very much, Mr. Chairman. Mr. Jones, we appreciate you coming today. And, Mr. Chairman, I

really appreciate you holding this hearing. We have been hammering away at this for some number of years, and I actually think, with the Senate bill and with this committee's efforts, we may be productive. So, yeah, let's keep our fingers crossed.

Mr. Jones, one thing we have been talking about is one of the problems with the current Act is that roughly 60,000 existing chemicals were grandfathered-in in 1976, and as you testified, there is no criteria to trigger an independent EPA review of an existing chemical. So under the Senate bill, all the existing chemicals in commerce would be identified and prioritized for further evaluation. I want to talk to you about--a little bit about that this morning.

I think given the number of chemicals that are out there, and the subset of chemicals that are actually used in commerce, we all support prioritizing EPA action that might pose a serious risk, but in order for prioritization to work, EPA needs to have the information to make the informed decisions on how to prioritize it.

So as I understood your answers to Mr. Green's questions, for existing chemicals, if the EPA wants to trigger some kind of a review, they have got to promulgate a rule before they do that, is that right?

Mr. {Jones.} Under current law, that is correct.

Ms. {DeGette.} Yeah, and then under--as what--1009 what would happen would be, as a threshold, the EPA would be directed to review the safety of all existing chemicals in commerce, is that correct?

Mr. {Jones.} That is correct.

Ms. {DeGette.} And so that sounds good, but if the EPA is going to review all of those chemicals, they are going to need to get a lot of data that they don't currently have. Is that right?

Mr. {Jones.} That is correct.

Ms. {DeGette.} And so I guess what I want to ask you is, under the current drafting of S. 1009, is there a minimum set of information the EPA will have for each chemical so they can decide how to review and prioritize it for action?

Mr. {Jones.} We think that we will very likely tailor the data that we are interested in having for a safety assessment based on some of the characteristics of the chemical. So, for example, chemicals that are persistent bioaccumulative and have some toxicity, we would require a lot more data for, health and safety data, than for a chemical which our--the evidence that we have based on models that we used, predicted it as likely to be of lower toxicity. So we would probably tailor the data we would like to see for our assessments based on characteristics that we know.

Ms. {DeGette.} Now, in the bill itself, is there actually any standard set for the data that you would use or obtain, or is--would--are you just left to decide that for yourselves?

Mr. {Jones.} The bill as drafted gives the Agency quite a bit of discretion as to what data it would want to compel generation of.

Ms. {DeGette.} And does it lay out what criteria the Agency would use to decide which--or--you see what I am saying? It is like there are so many chemicals out there--

Mr. {Jones.} Yes. It gives the criteria for the order in which we prioritize things as high.

Ms. {DeGette.} Okay. Now, S. 1009 also changes the requirements for entry into commerce of new chemicals. It is my understanding that maybe as 80 or 90 percent of new chemical applications currently contain no data on potential impacts to human health. Is that correct?

Mr. {Jones.} That is correct.

Ms. {DeGette.} So under current law, the EPA wouldn't be making an affirmative decision about a new chemical's safety before it enters the market, is that correct?

Mr. {Jones.} That is correct.

Ms. {DeGette.} Under S. 1009, the EPA must make a decision about the likely safety of a new chemical, is that

right?

Mr. {Jones.} That is correct.

Ms. {DeGette.} But will the EPA have data about the new chemicals to accurately make the safety determination?

Mr. {Jones.} So we expect that there will be, for many situations, the models that we use to predict hazard will allow us to make such determinate--likely to meet the safety standard determination for many chemicals. There will be some chemicals which, when we use predictive models, they are going to raise enough concerns that we are going to want to see health and safety data generated.

Ms. {DeGette.} Okay. Well, I appreciate you--I appreciate that answer, but I am a little concerned because it seems a little bit vague, and I think that is one of the areas of this bill we can really work on, is setting clearly what data the EPA needs to be given for certain classes of chemicals. So I look forward to working with you and also with the committee on those issues.

Thanks.

Mr. {Shimkus.} Gentlelady's time has expired. The chair now recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. {McKinley.} Thank you, Mr. Chairman, and again, thank you for the--once again continuing this discussion.

Mr. Jones, two questions for you. The first is, will, in your analysis of the Vitter bill, did--will it require an expansion, will it need more FTEs, anything along that line to be able to carry out the new mission?

Mr. {Jones.} In the absence of additional resources, the number of chemicals we would be able to move through the process will definitely be meaningfully constrained.

Mr. {McKinley.} Will be what?

Mr. {Jones.} Meaningfully constrained. The number will be smaller than I think most people would hope.

Mr. {McKinley.} So the answer to the question, are we going to have--are you going to need more FTEs?

Mr. {Jones.} It is likely that additional FTE would be necessary to achieve the kind of numbers, I think, that generally people would expect from the Agency.

Mr. {McKinley.} Okay. Secondly, is the--some of the criticism of the existing bill and the Vitter language is about the burden placed on EPA to express the need before they make the request to the companies to fulfill that assessment. Can you share with us the value of why the EPA should make the first step in determining the need?

Mr. {Jones.} The need for health and safety data?

Mr. {McKinley.} Yes. Right.

Mr. {Jones.} So the Agency is pretty well equipped, and

we are also coming at it with a--the simple desire to understand health and safety. So we have got both the--well, largely, we have the scientific expertise to be able to judge whether or not health and safety data is necessary, and what kind to make a safety determination.

Mr. {McKinley.} So if--again, I--that--be more specific with that. So I am just trying to understand that. So--because some are saying they don't think you should make the first step, the company should provide that chemical and their product data. Do you think it best for you to first make the--make your own analysis to determine that there is still a need--

Mr. {Jones.} The--

Mr. {McKinley.} --before you ask them to produce it?

Mr. {Jones.} Yeah, I think that the--we have got a pretty sophisticated way of understanding where we need information and where we don't. And as I was answering the question to Congresswoman DeGette, we are able to do it in a way that is tailored to the chemical and the issues that the particular chemical expresses. And so I think in many ways, it can be the most efficient way for the Agency to identify we need this data but not that data.

Mr. {McKinley.} Okay. And maybe to add one last in the little time I have left. I think I heard it--the question

but I wasn't sure I heard the answer again, and that is, with the passage of this, this--you really think that this is an improvement for health safety and for children, pregnant women, we--on and on and on. This is going to be an improvement over what we have now?

Mr. {Jones.} Well, as I said in answer to the first time that question was asked, that the way in which we are trying to think about it is does this give us the tools to ensure safe chemicals in the United States, and as I pointed out, I think that there are a number of areas which are meaningful deficiencies that would need to be addressed before we could say that this bill will give us the tools we need to ensure safe chemicals in the United States.

Mr. {McKinley.} So--and the bottom line here, you think this really is an improvement?

Mr. {Jones.} I think it needs some improvement.

Mr. {McKinley.} Okay, it still needs to be worked. Okay, and I am okay with that, but I just wanted--are we--if it is moving in the right direction to make sure that it is an improvement over what we have now.

Mr. {Jones.} There are aspects that are moving in the right direction, and there are aspects that are not.

Mr. {McKinley.} Okay. Thank you very much.

Mr. {Shimkus.} Will the gentleman yield? Will the

gentleman yield?

Mr. {McKinley.} Yes.

Mr. {Shimkus.} Let me follow up on just two quick questions.

Part of the 85,000 list of chemicals, there are some that are no longer in commerce or in manufacturing processes, and those--you could be--probably easily drop them off, isn't that true?

Mr. {Jones.} Well, interestingly, we would have to go through a process to drop them off, and as a general matter, manufacturers, even if they are not making the chemicals, like them on the list because at some point in the future, they want to bring that into their production, for whatever marketing reasons they have, they can do that if it is not on the list.

Mr. {Shimkus.} But under the new law, if passed as-is, they are still going to be looked at then. The whole idea is to get through this list in some time.

Mr. {Jones.} Under--okay, under 1009, it actually creates two lists. One is an active list, things that are actively in commerce, and one is an inactive list, things that are no longer in commerce.

Mr. {Shimkus.} Right.

Mr. {Jones.} Manufacturers can go from inactive to

active by noticing EPA.

Mr. {Shimkus.} Let me ask another question. Is there a difference between chemicals that go actually into consumer consumption or handling, versus chemicals that are involved just in the manufacturing process that stays within the laws of the--of a facility?

Mr. {Jones.} The way in which we evaluate them is very different, but we have jurisdiction over both. We have--we evaluate them very differently. One is, we are looking at the exposures that a consumer would get, and the other, we are going to look at what happens in the workplace to the worker if the worker is exposed.

Mr. {Shimkus.} Great, thank you. And the Chair now recognizes the gentlelady from California, Mrs. Capps, for 5 minutes.

Mrs. {Capps.} Thank you, Mr. Chairman, and thank you, Mr. Jones, for your testimony here and your statement here, and your position at EPA.

Many stakeholders have raised concerns about the need to protect vulnerable populations. That is my concern in talking with you during my 5 minutes. Any system needs modernization. TSCA, I am sure, can use it too, but it is--an essential component is to really address how vulnerable populations are--will be affected.

Any reform, for example, of this statute that fails to adequately protect children or pregnant women would be a terrible failure. Vulnerable populations do include infants and children, the elderly, the disabled and anyone living in a close proximity to a chemical facility. The National Academies of Science, in their 2009 report called Science and Decision--Decisions, recommended that vulnerable populations should receive special attention at every stage of the risk-assessment process. S. 1009 makes only two references to subpopulations. Vulnerable populations are not addressed in the safety standard, and are not required to be considered in the safety determination. This strikes me as a glaring oversight. Even using the problematic terminology of this bill, a chemical should not be deemed to meet the safety standard if it poses an unreasonable risk to a vulnerable subpopulation.

So I have a couple of yes/no questions of you--to ask you, because I hope you agree with this. Do you think a chemical that poses an unreasonable risk to a subpopulation should be able to pass the safety standard under a reformed TSCA?

Mr. {Jones.} No.

Mrs. {Capps.} And to follow up, that, as a general matter, should a chemical that poses a serious or substantial

risk to a vulnerable subpopulation be considered acceptable under a reformed TSCA safety standard?

Mr. {Jones.} No.

Mrs. {Capps.} Well, I thank you for that. That puts you on the record there. Turning now to the risk-management decisions that will be taken when a chemical does not meet the safety standard under a reformed TSCA.

Mr. Jones, should risk-management actions under a reformed TSCA ensure that unreasonable risks, including those to vulnerable populations, are addressed?

Mr. {Jones.} Yes.

Mrs. {Capps.} And should risk-management actions under a reformed TSCA ensure that a serious or substantial risk to a vulnerable population should be addressed?

Mr. {Jones.} Yes.

Mrs. {Capps.} Well--and partly in answer to a previous question, do you want--what are--well, let us put it this way. The Senate made some progress in their legislation. Are there some areas that we could improve upon that that you would like to highlight in less than two minutes?

Mr. {Jones.} Sure. Thank you for that. And I am only in this position because of the fine education I got at the University of California, Santa Barbara. And thank you for--

Mrs. {Capps.} Thank you very much. That doesn't hurt

your standing in my eyes.

Mr. {Jones.} So we think that the kinds of improvements that are necessary to get this bill to the place where we think it gives us the tools we need to ensure safe chemicals in the United States are along the following. That the--that there need to be meaningful deadlines on the Agency, that the safety standard should be clear and understood by all parties as to being a risk-based safety standard. The kind of analysis that we have gotten bogged down because of the least burdensome requirements under existing TSCA shouldn't be replaced with additional analysis that does not add a lot of value to the ultimate decision making. And I also think that there needs to be a balanced approach to preemption, which I currently don't think the bill achieves.

Mrs. {Capps.} Thank you. Thank you very much for that summary.

Mr. Chairman, I am a strong supporter of reforming TSCA, in addition to wanting us to pay special attention to this particular witness, just because where he received his education.

I do have some serious concerns about the bill before us today. The Senate language does not require the protection of vulnerable populations in the safety standard or in the risk-management decisions, and I think that is a fundamental

flaw that would affect each of us in our congressional districts. Any TSCA reform bill this committee considers should ensure that the most vulnerable among us are protected, and this protection is real and effective. So I look forward to having this committee continue to work on this particular issue.

Thank you.

Mr. {Shimkus.} I thank my colleague. I--just to note that right now, there is no--in current law, there is no vulnerable population comment, but in the Senate bill I think it is listed at least twice. So there is some movement in the--in that direction.

The Chair now recognizes the gentleman from--I am trying to find here, gentleman from Florida, Mr. Bilirakis, for 5 minutes.

Mr. {Bilirakis.} Thank you, Mr. Chairman. I appreciate it very much. Thank you for holding this hearing as well.

I would like to ask a question. Should Congress require a minimum number of chemicals to be acted on each year?

Mr. {Jones.} That is a great question, Congressman. The benefits of having a minimum number of chemicals is that you can feel that there is a forward progress being made all of the time. The downside to it is that, in the absence of meaningful research, you can find the Agency in a situation

where it can't meet the statutory requirements, or the way in which it does so is to by work--is by working on easier chemicals, which is not really, I think, what the objective is of setting priorities, that we would be working on the more complicated, difficult compounds first. So there are definitely some pros and cons to including a minimum number of chemicals.

Mr. {Bilirakis.} Okay, thank you. Some question that Senate Bill 1009 does not require adequate data to prioritize chemicals. Does Senate Bill 1009 give the EPA authority to seek additional data and info? How do you read Senate Bill 1009?

Mr. {Jones.} So the--it is a good question as well. There is a--I think that there is a disagreement amongst some of the people reading the bill as to whether or not we have the ability to require the generation of health and safety data if it is not already a high priority chemical. We read the bill to allow us to be able to do that. I think the fact that there are people reading the same words and coming to a different answer to that question is another example where it might be useful to seek clarity on that point.

Mr. {Bilirakis.} All right, thank you very much. Next question, would Senate Bill 1009 allow the EPA to assess the safety of chemicals that are persistent bioaccumulative and

toxic, and require risk management for those that fail to meet the safety standard?

Mr. {Jones.} The bill allows the Agency to do that, but--not create the explicit requirements to give any priority to persistence or bioaccumulation, but it certainly allows the Agency to do--to evaluate them and take risk management if warranted.

Mr. {Bilirakis.} Thank you. Thank you for your response.

And I yield back.

Mr. {Shimkus.} Gentleman yield to me--

Mr. {Bilirakis.} Yes.

Mr. {Shimkus.} --for a quick--so risk is defined as hazard plus exposure. Is that how you define it?

Mr. {Jones.} Hazard times exposure. Yeah, hazard times exposure.

Mr. {Shimkus.} So define for me the difference between substantial and unreasonable. So if you have substantial risk, okay, we know what risk is, we know what unreasonable risk, so what are--I guess that is two adjectives, but I mean what is the difference between those two?

Mr. {Jones.} I--you know, I actually--I think it really depends on all of the other words that are used in the statute to describe what the Agency is required to find.

The--I don't believe unreasonable risk, those two words by themselves, mean that the Agency has to conduct a cost benefit analysis. I do believe the courts have said those words used in conjunction with a lot of other words create the requirement of a risk benefit balancing, but the words themselves I don't think mean, to the layperson or anybody who can read the dictionary, means cost benefit. But it is those--it is a lot of the words that are used in conjunction with the actual standard that, I think, gives it its full meaning.

Mr. {Shimkus.} Great, thank you. The Chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes, who has been waiting very patiently.

Mr. {McNerney.} Waiting and listening, Mr. Chairman. Thank you.

Mr. Jones, in your testimony, I believe you stated that S. 1009 requires affirmative standards. Would you please elaborate that, especially with regarding enforcement, how those affirmative standards would be enforced in the new law?

Mr. {Jones.} Thank you. So it is--that comment reflects specifically to the new chemicals provision in 1009. Under existing law, the Agency, when a new chemical is submitted, we have 90 days to evaluate it, and only if we identify a problem are we able to work with the manufacturer

to prevent it from being introduced into commerce. Under S. 1009, it requires the Agency to make an affirmative finding of meeting the safety standard before the manufacturer can move that chemical into commerce.

Mr. {McNerney.} Okay. That is a good thing, I think.

Mr. {Jones.} I would think so, yeah.

Mr. {McNerney.} You also stated that in S. 1009, the language would make it as difficult as the unreasonable risk or least burdensome language in TSCA to enforce rules as it has been for TSCA with asbestos. Can those--can that language be modified in your opinion to remove some of those barriers, and make it reasonable to enforce?

Mr. {Jones.} You know, any of the issues that we have identified, you know, the devil is always in the details, but I think that the--there--changes could be made in a way that would not send us into an endless amount of analysis before we could ultimately make protective decisions.

Mr. {McNerney.} Well, who would you recommend that the committee consult with on that language?

Mr. {Jones.} I think it is important to have all stakeholders. I mean obviously you can't have literally all stakeholders, to be brining all people to the table, as I think you get the best outcome and you can get a common understanding of what--the words you are using are the words

everybody believes that they mean.

Mr. {McNerney.} Okay. Well, to change the subject a little bit. The European Union has made significant progress on some of the 60,000 chemicals that have been grandfathered. Is that correct?

Mr. {Jones.} The European Union, which has a very different model, has definitely made some progress in the universe of chemicals sold in Europe.

Mr. {McNerney.} Would that--would the S. 1009 allow you to--the EPA to collaborate with the European Union on identifying some of those, and classifying some of those chemicals?

Mr. {Jones.} We definitely would be able to collaborate. I think the fundamental problem we and the Europeans are dealing with as it relates to that collaboration is they have required manufacturers to generate a lot of health and safety data, and the European Union under their rules cannot share that information with us. They have to have the company's permission. The companies find themselves in a situation where they negotiated agreements across multiple companies, and unless everybody agrees, they can't give us the information. And so I am hard-pressed to know what U.S. domestic law could do to actually break that log jam. I think we have we have to--

Mr. {McNerney.} Okay.

Mr. {Jones.} --work something out, not under law, but with manufacturers to figure out how to get access to that treasure-trove of health and safety data.

Mr. {McNerney.} Okay. That is a good answer. Regarding resources, if S. 1009 becomes law, would the Agency need greater resources to carry out the various rule makings laid out in the bill?

Mr. {Jones.} I think the--where we would run into issues with expectations, expectations of, I assume, the Congress and certainly I think of the American public, is that the number of assessments we would be able to do under existing resources would probably, for most people, be considered to be adequate. So to change that, we would need resources. I do think there are models out there that involve the industry financing that are used in the FDA and our pesticides program that are worth looking at.

Mr. {McNerney.} So in S. 1009, there aren't any dedicated funding sources?

Mr. {Jones.} No, there are not.

Mr. {McNerney.} So that could be interpreted as a--one of the weaknesses in that law--in that proposed law?

Mr. {Jones.} The--one of the Administration principles is there be a sustained source of funding, and that is not

addressed in the bill.

Mr. {McNerney.} Okay, thank you.

Mr. Chairman, I yield back.

Mr. {Shimkus.} Gentleman yields back his time. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

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

Mr. Jones, in our first hearing, witnesses stated that EPA needed specific statutory authority for chemical prioritization. Is that important?

Mr. {Jones.} Thank you, Congressman. I think it is important because there are so many chemicals in commerce that it is important to direct the Agency to focus on those that may be--may present risks earlier in the process rather than later. And in the absence of that, you could see wily bureaucrats, of which I am one, working on easy things because we can do a lot of easy things. So I think being directed to work on those things that are the highest priority is a very important thing when you have a universe that big.

Mr. {Pitts.} Does S. 1009 require that chemicals be prioritized?

Mr. {Jones.} Yes, it does.

Mr. {Pitts.} Does S. 1009 allow EPA to consider

potentially vulnerable subpopulations in making decisions to prioritize chemicals for review, and in subsequent safety assessments and determination?

Mr. {Jones.} In safety assessments, we are required to consider vulnerable populations. That is not required of safety determinations or--in the priority setting. We are not prohibited, but it is not required for the other two.

Mr. {Pitts.} S. 1009 lays out framework requirements for prioritizing existing chemicals, gathering, testing data and information, conducting safety assessments and making safety determinations. Does a reformed TSCA need to set these requirements out as four separate steps?

Mr. {Jones.} The bill has a lot of what we were referring to as framework requirements, we think--counted a total of about 17. I think it is possible to collapse a number of the frameworks down, and not lose some of what the drafters intended. Most were drafted--making it more streamlined and straightforward.

Mr. {Pitts.} S. 1009 has provisions requiring that EPA sort chemicals for review as either a high or low priority. Should there be more categories than just high or low priority?

Mr. {Jones.} I don't see a huge amount of value in adding another category other than high or low.

Mr. {Pitts.} Are you concerned that you cannot seek judicial review of the prioritization screening decisions?

Mr. {Jones.} That is a very good question. I think it is--runs counter to generally to how we run the government, that an Agency action that ends all other downstream consequences is unable to be challenged. So a high priority decision, when we do that, there are down things--downstream things have to happen. And so it doesn't bother me that that is not subject to judicial review, because the downstream thing ultimately will. A low priority under 1009 actually stops all action. EPA at that point is done. No more work. Stop. That to me is a final Agency action, and although I would like to think all of our final Agency actions shouldn't be--no one should be bothering us about them, I--as a matter of good government, I think that it is important to allow people who disagree with a final Agency action to seek review of that in a--in an appropriate judicial proceeding. And so I think that having a low not be subject to judicial review is a--not a good place for the government to be in.

Mr. {Pitts.} And managing the many chemicals that you need to review, how long do you expect this process to take, both to prioritize and schedule for assessment?

Mr. {Jones.} The prioritization process I think will happen, the initial one, very quickly. The--and the initial

assessments will happen within a couple of years. I think it will be many years before we have evaluated all the high priority chemicals.

Mr. {Pitts.} Okay, thank you, Mr. Chairman.

Mr. {Shimkus.} Gentleman yields back his time.

Chair now recognizes the gentleman from Louisiana, Mr. Cassidy, for 5 minutes.

Dr. {Cassidy.} Mr. Jones, I apologize if someone else has asked. I had to step out.

To prove safety by the first--to prove that something is not at risk, you have to prove a negative. It is very difficult to prove a negative. How do you prove a negative?

Mr. {Jones.} So we rely on analytical tools that often include data, often include models. So if something does not express hazard, it is impossible for it to have risk, if something doesn't--

Dr. {Cassidy.} Now, that is--now, let me ask, because we had a hearing about the risk of something for breast cancer. It is a big concern of mine. My wife is a breast cancer surgeon, and I am a physician, so we were on a vacation so we pulled down the literature, and there is a body of literature for this particular chemical, that it could cause breast cancer, but--and somebody did a regression analysis and goes, you have got to be kidding me. There is

obesity, alcohol, cigarette use, family history, and here is a very marginal effect that may or may not. But the witness was passionately and quite emotionally declaring that this particular chemical had an impact upon breast cancer.

So I guess I would come back to no risk at all may be in the eye of the beholder, right, or of the interest group or whatever. In that situation, what does this law allow you to do?

Mr. {Jones.} Well, it would require us to assess the risk of that chemical, and make a determination as to whether or not we met a--that that risk met a safety--met the safety standard.

Dr. {Cassidy.} I guess what I am after, the safety standard seems a nebulous thing to me.

Mr. {Jones.} So--yeah.

Dr. {Cassidy.} And so, again, this advocacy was just so passionate in their emotion, even though the retrogression analysis showed that the effect was nonexistent or minimal, if it existed. It just couldn't be teased out. So would that--would this nebulous standard say, listen, best science shows that it is obesity, family history, alcohol and cigarettes. This marginal effect we can't prove so we move on, or we just say, no, we have to say this is not safe?

Mr. {Jones.} We have a pretty long record of how we

calculate risk, and what we view to be risks that are not--that are beyond negligible. They involve using standards such as the increased lifetime cancer risk of a substance, they include calculations that we use for other kinds of effects that we--where we look for a certain margin of exposure between the exposure level and when adversity occurs, and there is a general understanding about how we--

Dr. {Cassidy.} So I think, I gather, that industry would be able to look at a basically kind of common-law standard, if you will, something that this--it isn't nebulous, you are telling me, but there is something they could look at and say, below this threshold, we know we are okay?

Mr. {Jones.} That is correct.

Dr. {Cassidy.} Then let me also ask, I was struck once in some hearings we had that the EPA's current method of analysis does not take into account a threshold effect, that they extrapolate all the way down, if we know this level really causes damage, but we know at this level it is in the environment, and common exposure doesn't cause damage. I am a doc, aflatoxin is a great example of something we are all exposed to, but it is only above the threshold has a problem, EPA, as I gather, does not take that into account.

Mr. {Jones.} The vast majority of the chemical

assessments we do are based on the threshold model that you are describing. A relatively small number, in particular, those that are carcinogens, that--where there has not been demonstrated the threshold that you are describing, we use the model that you are describing. That is a relatively small number of chemicals.

That being said, we have gotten some advice from the NAS to begin to think about how to use models other than the threshold model that I just described. But right now, that is--the vast majority of chemical assessments that we do rely on the threshold model that you are describing.

Dr. {Cassidy.} Okay, I had a little bit of a different impression, so I am reassured regarding that.

The subpopulation groups also seem to be something which is, you know, going to be difficult to define. I know that there are always two or three standard deviations out, somebody with a genetic predisposition to, fill in the blank. And it may be an environmental exposure will fill in the blank. You with me? Take type 1 diabetes.

Mr. {Jones.} Um-hum.

Dr. {Cassidy.} There seems to be a genetic component, but some interaction with the environment. How would you ever--it almost seems like if you really chase that out, you are always going to find some subpopulation with a genetic

exposure which, combined with the environmental, is problematic.

I know you have thought about this. What are your thoughts?

Mr. {Jones.} So there are either a couple of things that we have--I like to give the example of what we have done in our pesticide program, which is a similar requirement around significant, highly exposed and vulnerable populations. We have literally identified the populations that we look at in terms of age, and we look at children every--at six-month intervals when they are very young, and then we go to one-year intervals, and then we go to, you know, women of childbearing age and those over 50. And we also do it by race and ethnicity. And so we have defined them, we have taken comment on that, and it is then widely understood here are the populations below the general population that we are going to look at for every assessment that we do.

I would expect that we would do something similar here. They may not be the exact same subgroups that we would look at, but we would go through a process of identifying them and saying--asking the public to give us feedback on it. The other thing is that our--we, as a general matter, use a--an uncertainty factor to capture the general variability within

the population as it relates to intraspecies sensitivity.

So that tenfold factor we use to try to broadly capture that phenomenon. When there is information that leads us to believe that for a specific effect, something beyond that 10 is necessary, then we use that to inform our assessment.

Dr. {Cassidy.} I will finish by saying your testimony is very reassuring, but I remember reading the National Academy of Science's report on your formaldehyde report, and they really felt like the conclusions of the report were not based--were not supported by the data which had been amalgamated, thinking specifically of tumors in the nasal laryngeal area in rats, and yet EPA kind of swore by it.

So thank you for your testimony, and I yield back.

Mr. {Shimkus.} Don't you hate these real smart members of Congress who ask these--make us all look bad?

So last but not least, my colleague from the great State of Georgia, Mr. Barrow, for 5 minutes.

Mr. {Barrow.} Thank you, Mr. Chairman. Thank you, Mr. Jones, for being here today.

I know that the EPA hasn't yet taken a position on S. 1009 all together--in its all together, but I want to see if we can't draw some comparisons between current law and the proposal, and just get some idea where we can find some--for example, are there any areas of the bill that, in the opinion

of the EPA, are better than current law?

Mr. {Jones.} Yeah. That is definitely the--mandating the Agency evaluating existing chemicals is a non-trivial improvement over the existing law. That is not something we are required to do right now. The ability--giving the EPA the ability to require manufacturers to generate health and safety findings, using order authority, is dramatically more efficient than the process that we have under the existing law. And then the requirement that EPA make an affirmative finding for a new chemical before it enters commerce, I think is also a pretty significant improvement.

Mr. {Barrow.} Flipside, any areas of the proposed legislation that in your opinion are worse than current law?

Mr. {Jones.} Yeah, I will say that the preemption provision is dramatically less--I think at the end of the day would be less protective than the current preemption under TSCA.

Mr. {Barrow.} I am kind of reminded of Lincoln's comment about liberty, you know, the sheep praises the shepherd for driving the wolf away from his neck, and the wolf condemns him for the same act. Clearly, we need a new word of liberty, you know, new agreement on what it means. So I want to talk about protection in this context, the interplay between federal and state regulations that is a

real major policy issue we have to deal with.

One concern that I have is if funding for the big regulator, the national regulator, the EPA, is either chronically inadequate so that the regulator is malnourished, or is highly sporadic as a result of politics, ranksmanship and shutdown or what have you. The concern I have is whether or not we will have effective regulation if we preempt state, and the only regulator who is left on the scene is unable to do his job. I have a concern about that, but I also have a concern about, you know, the regulator wanting to do its job. You know, a regulator that doesn't want to do its job is like going bird hunting and having to tote the dog. But a regulator that can't do its job is like going bird hunting without the dog. I am not sure which is better. Each is equally ineffective as far as the customer and the taxpayer is concerned.

So help me understand, in your experience, what has been the benefit of the current regime of dual state and federal regulations on the one hand, and what has been the cost of the current regime, and how would you suggest we go forward?

Mr. {Jones.} It is--I think the benefit is a good part of why we are here; that there--this--because the federal law is ineffective, states have stepped into the breach and have been doing the work necessary to protect the people in their

states, which has created an incentive on the part of the industry, in my view, to want a--to raise the bar of the federal law so that states don't feel compelled to step into the breach, because the federal government is ensuring the safety of their citizens. I think that is the--

Mr. {Barrow.} You described the ideal or optimal role of the state regulator as being a pride toward better action, better regulation nationwide is how you describe it.

Mr. {Jones.} Um-hum.

Mr. {Barrow.} As being basically a driving force for getting--

Mr. {Jones.} I think that they have been the driving force of--in the chemical space that has been basically the only regulation.

Mr. {Barrow.} Aren't you--don't you share the concerns though of others though that if you do have a nationwide standard, if the regulator is malnourished or underfunded, that that could be a problem as well, they can't keep up with the demand? So you don't want to replace something bad with something that--

Mr. {Jones.} No, exactly.

Mr. {Barrow.} --does not exist.

Mr. {Jones.} I--you--it is a challenging dynamic that you are trying to ultimately achieve, where the absence of

action on the federal government doesn't mean nobody gets protected, that it keeps--that--the potential threat of that happening keeps people like me on top of our job, moving the ball forward, which also creates the dynamic where the states feel like they don't feel like they need to regulate because it is going to be taken care of at a national level. And I think that is very--

Mr. {Barrow.} We should understand--you can understand that even if you are doing a good job at the national level, there could be some states you just want to regulate a whole lot more?

Mr. {Jones.} That absolutely I think would be the case.

Mr. {Barrow.} And the problem we have is not the fact that we have two regulators in any given one place.

Mr. {Jones.} Right.

Mr. {Barrow.} We only have 51 regulators as far as the country as a whole is concerned. You recognize the challenge and burden that is to industry.

Mr. {Jones.} That is right. I--and I think that that is the flipside of the--that is why I think it has been so hard to--for people to come together to figure out what is exact--what is that sweet spot there. It is untenable to have to have--to try to sell a product in the United States, and you need to meet 51 or 57 different requirements. At the

same time, you don't want to leave everybody unprotected because people here are not able to get their job done, or are not--don't have the tools to get their job done. And trying to find that sweet spot, I think is very challenging.

Mr. {Barrow.} Thank you. With my--with that, my time is up.

Mr. {Shimkus.} Gentleman yields back his time.

And I--just a point. I think there are only like four states who really have the capability or are involved in this space, versus the other ones that aren't. And when we had--testifying, many states had no capability to do this intensive evaluation. So I just throw that in.

Mr. Jones, a delightful testimony. I usually don't say that very often. Great job. I think you could see from the interest by members present that there is a desire to try to get this right, and find the sweet spot, and I hope we can continue moving forward. You are a great credit to the Agency, and we thank you for joining us. And we dismiss you and ask the final panel to come forward.

{Voice.} How are you doing? Good to see you.

Ms. {Wagner.} Wendy Wagner.

{Voice.} Hi, Wendy. Pleasure to meet you.

Mr. {Shimkus.} We would like to welcome the third panel here, and many of you have been sitting in the room for a

couple of hours now, so we appreciate your diligence and we look forward to your testimony. I think the first two panels went real well, and we look forward to yours.

So I will just do the introductions as your opening statements are called for. It is great to welcome back Cal Dooley, former colleague, now President and CEO of the American Chemistry Council. Obviously, your full statement has been submitted for the record. You have 5 minutes.

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^STATEMENTS OF CALVIN DOOLEY, PRESIDENT AND CEO, AMERICAN CHEMISTRY COUNCIL; ERNIE ROSENBERG, PRESIDENT AND CEO, AMERICAN CLEANING INSTITUTE; RICHARD DENISON, PH.D., SENIOR SCIENTIST, ENVIRONMENTAL DEFENSE FUND; DEAN GARFIELD, PRESIDENT AND CEO, INFORMATION TECHNOLOGY INDUSTRY COUNCIL; ANDY IGREJAS, NATIONAL CAMPAIGN DIRECTOR, SAFER CHEMICALS, HEALTHY FAMILIES; AND WENDY WAGNER, JOE A. WORSHAM CENTENNIAL PROFESSOR, THE UNIVERSITY OF TEXAS SCHOOL OF LAW

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^STATEMENT OF CALVIN DOOLEY

} Mr. {Dooley.} Thank you, Chairman Shimkus, and Ranking Member Tonko, and all the members of the committee. I appreciate this opportunity to be testifying on behalf of the American Chemistry Council, our member companies, as well as 800,000 men and women who work every day in the business of chemistry.

ACC and our member companies are absolutely committed to the modernization and the reform of TSCA that will enhance the public confidence in the safety of our chemicals, and allow our industry and our customer base throughout the value chain to continue to be on the forefront of developing innovations that improve our everyday lives.

You know, some of you were in attendance at a hearing that this committee had in 2010 on a bill that was introduced to reform TSCA by Congressman Waxman. If you were here at that hearing, it was actually one that was fairly contentious, and Richard Denison and I were passionate defenders of our constituencies, but unfortunate, you know, that contentious dialog we had there was a reflection of what--the failure to find a common ground or a balanced approach to a comprehensive TSCA reform. It is unfortunate over the last few years, even on the Senate hearings where Mr. Denison, representing EDF, and I have testified, we were also very polarized and very contentious in some of our dialog. And that was a reflection of the failure for Republicans and Democrats to come together to find a balanced comprehensive reform to TSCA that could secure bipartisan support.

You know, that all changed just this last year when, thanks to the leadership of Senator Lautenberg and Senator Vitter, they brought together diverse constituencies to work out some of our differences, and develop not a perfect bill by either of our perspectives, or any of our perspectives, but develop a balanced approach that could provide for meaningful improvements to TSCA regulations. And it was really that balanced approach that was also groundbreaking in

that we were able to develop the support of 25 members of the U.S. Senate, equally split, well, 12 to 13, between Republicans and Democrats. Again, unprecedented. And I really appreciate the work that this committee has done to try to find ways which we can build upon the progress that was achieved in the Senate, because our industry, and the value chain at large, has also increased their support in TSCA reform, because it is not only the chemical industry, it is the information technology industry, there is actually now an alliance of about 100 different associations representing everyone from the retail federation to toy manufacturers to automobile manufacturers, technology, semiconductors, that have all come together to support the CSIA, because they see it as a balanced and a meaningful reform of the existing TSCA legislation.

Also unprecedented is not only industry, but you also have organized labor that has joined in support of TSCA reform. You have the electrical workers and IBW, the North American Building Trades, the machinists, aerospace, transportation, and the ironworkers have also joined in support.

So the message here is is that, you know, something that is positive is happening here. We have also heard in some of the comments of Jim Jones as well as Administrator Gina

Jackson that the CSIA really does set the foundation for meaningful progress to see reform of TSCA today. It is also, I think, important that when you look at the comments by former Administrator Christine Todd Whitman, and Charlie Auer who was manager of the TSCA Program under President Bush, as well as Steve Owens who was President Obama's appointment that had jurisdiction over TSCA reform, that have also came and support and endorse CSIA. And they did so because they recognize that they address many of the problems that they had concerned with implementation of TSCA. It requires a systematic evaluation of all grandfathered chemicals for the first time. It prioritizes chemicals for EPA reviews so chemicals with the greatest need get the first and greatest attention. It gives EPA more efficient authority and ability to get the data that they need to make the determinations, and it requires EPA to make more information available to the public, a leading goal of environmental advocates and industry alike.

You know, we recognize at ACC that there are some members in the NGO community that would like to see some reforms and some modifications of the existing law, but when we look at the 5 issues that they surfaced early on, we think that those can be addressed in a meaningful and appropriate way that can build and improve upon CSIA, but does not, I

guess, disrupt or create an imbalance in this coalition that could put us back into the gridlock that has been characterized in our ability, or our lack of ability, to achieve TSCA reform over the past better part of 37 years.

You know, I will be pleased to respond in detail to a lot of the questions you have, but my message here is, is that, you know, this bill isn't viewed by being perfect by industry, and I know Dr. Denison will say it is not viewed as perfect by the Environmental Defense Fund, but all of you that are serving in Congress today, just like I served for 14 years, know that there are very few perfect pieces of legislation from one constituent's interest. The only way we are going to see progress in enacting TSCA reform is it is going to take a balanced, comprehensive approach, and I hope that we use the CSIA as that foundation. I know that there are opportunities to make those modest and marginal reforms that will address some of those legitimate issues, but we have to be concerned of the delicate balance that we have in place here, and assure that we don't disrupt that.

[The prepared statement of Mr. Dooley follows:]

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Mr. {Shimkus.} Gentleman's time expired.

Chair now recognizes Mr. Ernie Rosenberg, President and CEO of the American Cleaning Institute.

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^STATEMENT OF ERNIE ROSENBERG

} Mr. {Rosenberg.} Thank you, Chairman Shimkus, Ranking Member Tonko, members of the subcommittee. My name is Ernie Rosenberg, thank you, and I am the President and CEO of the American Cleaning Institute.

Our member companies have facilities in the Congressional districts of two thirds of the subcommittee membership, and the--our members' products are in every home in the country.

Strengthening the Toxic Substances Control Act is a top priority for our member companies. That is why I am here today. A strengthened TSCA has the potential to promote consumer and environmental protection, while enabling innovation for new and improved products. That is why we support the Chemical Safety Improvement Act.

This legislation provides a strong roadmap for action in the 113th Congress. We commend the bipartisan efforts that led to the development of this measure, and especially the work of the late Senator Frank Lautenberg and Senator David Vitter. Twenty-five Senate Republicans and Democrats are cosponsors of what is truly bipartisan legislation.

A lack of confidence in TSCA has prompted states, local

jurisdictions and businesses to restrict certain chemicals. These actions, unfortunately, create a regulatory and business climate that is driven by perceived safety concerns, not by sound science.

Allow me to highlight three important reasons for strengthening TSCA. First, a credible federal program is crucial to having both a national market and improve public confidence in EPA's regulatory program. Second, TSCA must account for ongoing improvements in scientific methods and processes being developed by universities, the government and industry. This information must be considered by EPA when making safety assessments and determinations. Third, TSCA has fostered innovative chemical developments in the United States. We must ensure that this continues in the years ahead. Cleaning product manufacturers are leaders in the development of green chemistries that have led to significant energy savings, water savings and reductions in waste generation in the United States. The development of concentrated laundry and household cleaning products allows products that pack greater cleaning power in much smaller packaging to provide the benefits I have mentioned, and this represents just a few of the innovative, convenient and greener products that are available to consumers today. TSCA's new chemicals program encourages speed to market for

such innovative products because of the rigorous and flexible way the law addresses this task. EPA relies on the strong interaction between government industry to make this happen, and has since the--since I was the manager of the program at the very beginning. The Chemical Safety Improvement Act preserves the efficiencies in the new chemicals review process, which are widely acknowledged to work well and are critical to innovation. To remain innovative, we need strong protection for confidential business information.

A strengthened TSCA can and must be risk-based, and must be--must use the best science. EPA must be able to get the information it needs to make an informed chemical assessment and risk-management decisions. The Chemical Safety Improvement Act strengthens TSCA. It removes barriers to EPA data gathering and regulatory actions. I would call upon EPA to evaluate the safety of chemicals already in use, and enable the EPA to identify and act on chemicals that may pose significant safety concerns.

EPA's enhanced ability to obtain data would encourage industry to provide health and safety information to the Agency without regulatory delays, and with fewer demands on Agency resources.

CSIA also allows more data to make--be made available to the public. For the law to be credible, this is critical.

It would also open up lines of communication between the states and EPA, and allow EPA to share information with them, including confidential business information, something TSCA does not currently allow. CSIA would allow EPA to meet its regulatory obligations, and restore confidence in the Agency's ability to do so.

For the law to become more credible, changes to TSCA must be practical, achievable and workable.

ACIA again thanks you for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Rosenberg follows:]

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Mr. {Shimkus.} Thank you, Mr. Rosenberg.

Now I would like to recognize Dr. Richard Denison, Senior Scientist from the Environmental Defense Fund.

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^STATEMENT OF RICHARD DENISON

} Mr. {Denison.} Thank you, Chairman Shimkus, Ranking Member Tonko, and other members of the committee for your interest in this issue, and for the opportunity to share EDF's perspective on this bipartisan legislation, the Chemical Safety Improvement Act.

I have four key points I would like to make today.

First, we have a major political opening to address an urgent health concern, and to fix a law that everyone believes needs reform. Second, the bill before us has many of the elements needed for effective reform, and a concern for moving reform forward. Third, the bill also has serious problems that must be remedied. And fourth, those problems, while serious, are fixable.

The need for reform is more urgent than ever, with science increasingly linking exposures to certain chemicals to serious health effects.

My organization has been working to reform TSCA for more than 20 years, and I personally for well over a decade. The law simply does not work. It is not protecting the health of Americans, it doesn't provide the information companies need to make sound decisions, and it doesn't give consumers and

the market the confidence that companies need to run their businesses.

In May of this year, we saw a breakthrough with the introduction of CSIA. The bill is both a promising start and far from perfect. It contains many elements of TSCA reform that need significant changes to actually deliver those reforms. I am convinced the problems can be addressed while retaining the bipartisan support needed to pass legislation.

Let me note several ways in which CSIA addresses major flaws in current law. For the first time safety reviews would be required for all chemical--in order to be made and sold. Also for the first time--gain access to confidential business information.

CSIA would address the two main reasons the TSCA safety standard has failed. It would generally replace the current cost benefit standard with a requirement for a health-only standard, and it strikes the least burdensome requirement for TSCA regulations that has, as Mr. Jones said, become a recipe for paralysis by analysis.

CSIA would also fix TSCA provisions that thwart EPA's ability to get new data on a chemical. It could issue test orders and avoid a regulatory process that takes many years. And it strikes the catch 22 under TSCA that requires the EPA first show evidence of risk in order to require testing. But

the bill would also erect some major barriers to EPA effectively and efficiently using these new tools. The safety standard does not ensure protection of vulnerable populations, including pregnant women, infants, workers who may be more exposed or more susceptible to the effects. The bill would not ensure that all information claimed confidential actually warrants trade secret protections. It would weaken current TSCA by barring the testing of new chemicals, or ones lacking enough data to screen their safety. This means EPA would either have to give a pass to data poor chemicals that may post a risk, or waste time scrutinizing chemicals that more data would show pose little risk. And the bill lacks deadlines and has so many procedural requirements that just getting the system up and running would take years.

My testimony includes an analysis I have done that is quite optimistic in terms of time frames that shows that more than 7 years would be required to get to the first safety determination for a chemical.

Finally, the bill's sweeping preemption of state authority needs to be significantly narrowed so that, for example, states can continue to act until and unless EPA takes final action on a chemical, and can, with good cause, obtain waivers that allow them to go further than a state

than EPA--control of chemical risks.

Mr. Chairman, let me end on a positive note. The bipartisan bill offers major political opportunity and conserves the basis for talks to move reform forward, and while its deficiencies are serious, as I mentioned before, I believe they are all fixable. I am encouraged that the informal negotiations on the bill that have been occurring in the Senate already appear to be moving in the right direction, but there is more work to be done. I urge the subcommittee to build on the foundation laid by S. 1009 to pass meaningful TSCA reform legislation in this Congress. The health of--and I thank you for your time today.

[The prepared statement of Mr. Denison follows:]

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Mr. {Shimkus.} Thank you, Dr. Denison.

Now I would like to recognize Mr. Dean Garfield, President and CEO of the Information Technology Industry Council.

Sir, welcome.

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^STATEMENT OF DEAN GARFIELD

} Mr. {Garfield.} Thank you, Mr.--Chairman Shimkus, Ranking Member Tonko, members of the committee.

On behalf of the 54 of the most dynamic and innovative companies in the world, as well as the nearly 6 million people who work in the tech sector, we thank you for hosting this hearing and asking us to testify.

We have submitted our testimony for the record, so rather than repeat it, I will highlight three elements of that testimony.

First, we strongly support this bipartisan and bicameral effort to reform TSCA. We think it is a unique opportunity to advance our human health and environmental shared interests. The tech sector takes very seriously its role as corporate and environmental stewards, whether it is in product design where we are driving down the energy usage of our products, or in sourcing where we are developing and promulgating responsible sourcing, paradigms and programs, or in our recycling and reuse programs that we have all across the world. We view these issues as first priorities and intend to stay engaged. And so thank you for your efforts.

Second, we think this regulatory reform creates an

opportunity to develop regulatory processes that are timely, transport and based on sound science. In that regard, we will be placing particular emphasis and paying a lot of attention to how you deal with the issue of chemicals and articles. In particular, we think it is very important for Congress to give guidance to the EPA in that area, but at the same time, we don't think it should be done in an import/export control fashion, and, in fact, we think the current process whereby the EPA has a case-by-case analysis is one that is appropriate and should be continued.

Finally, we strongly agree with Chairman Shimkus' opening statement that TSCA reform can and should be an opportunity to enhance rather than inhibit innovation. With that in mind, we think it is important for three things to occur. One, as the previous witness, Mr. Jones, pointed out, we think that the approach and direction to EPA has to include some important time limits, particularly as it relates to dealing with innovative or new uses of chemicals. Second, dealing with covered--I am sorry, dealing with confidential business information is critically important. Intellectual property is key, the lifeblood of the tech sector, and so ensuring that confidential business information is maintained as confidential is critically important to us. And third and final, the issue of

preemption is also critically important. We recognize that the states have an important role to play in these processes and in setting standards, at the same time, we develop locally and disseminate globally. And so dealing with 50 or 51 different standards around human health and environmental safety is simply untenable and unworkable for us.

Thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Garfield follows:]

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Mr. {Shimkus.} Thank you, sir.

Now I would like to turn to Mr. Andy Igrejas, National Campaign Director of the Safer Chemicals, Healthy Families. Welcome.

Mr. {Igrejas.} Thank you very much, Mr. Chairman and Mr. Tonko.

Mr. {Shimkus.} Check your microphone.

Mr. {Igrejas.} Thank you. Sorry about that.

Mr. {Shimkus.} That's all right.

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^STATEMENT OF ANDY IGREJAS

} Mr. {Igrejas.} Safer Chemicals, Healthy Families is a coalition of 450 health and environmental organizations, industrial unions and steel and automobiles, as well as businesses, some large, some small, from around the country. There is a broad political spectrum, actually, of membership in the organization in the coalition.

We came together in 2009 to achieve reform of the Toxic Substances Control Act, and we agree with the sentiment and we are hopeful that that day could soon be at hand with the legislation that has been introduced, but I would have to say that we believe that legislation is not yet balanced. It needs a lot of work in order to become balanced, and it needs clearer benefits for public health and the environment sooner, and it needs a clearer break with the dysfunctional past of TSCA, that I think has been surfaced in your own analysis and your own oversight of TSCA.

I want to put the focus back on public health because it is that concern, the mainstream health professional and public health community conclusion that, from pediatricians, obstetricians, others, endocrinologists, that chemicals are contributing to the burden of disease in this country; the

diseases that affect millions of American families, and TSCA reform is fundamentally a solemn exercise in trying to make progress in preventing that effect.

The groups like the Autism Society, Learning Disabilities Association, breast cancer groups and others who are in the coalition are here because of that, and it is what is driving the public concern that is changing the marketplace and driving the states right now. And so we need to make progress on that, that is very clear. And I think you had the right idea when you started with the examination of what was wrong with TSCA, what didn't work and why. And you saw, I think, in the testimony that the law never really got off the ground, that the procedures and the standards proved to be unworkable, they got tied in knots, EPA, trying to regulate asbestos. When they were finally done, they were thrown out of court, and the law didn't make much other progress. And it is a shame that Mr. Dingell is gone because his amendment is one of the clearer parts of TSCA that did do something; the PCB ban. And because of all that, the fact that TSCA didn't restrict the states turned out to be one of its major blessings, one of its only benefits, because states have been able to make process in the interim.

Nevertheless, we are hopeful that the bill can be improved based on the testimony of the Senators and our own

engagement with the Senators' offices and with yourself, being invited here. And I want to highlight a few areas, there are more in the testimony, for the purposes of helping focus improvement and getting to a more balanced bill.

First is the standard. The core idea of the Chemical Safety Improvement Act that the--is that the standard is fixed in the unreasonable risk standard. We believe that it is not. The attempt to fix it is to apply qualifying language for how it should be used in Section 6, but the standard is also used in other sections of the bill. And the related issue of the least burdensome requirement, while that phrase is excised from the bill, a sort of fraternal twin appears that you have heard Jim Jones reference that has basically the same effect. And the bottom line for us is that the--under the bill, our analysis is EPA could still not ban asbestos under this new bill, and that is a problem.

So I think that baggage of TSCA is something to really think clearly about, and we need to break with it in this new bill. It is otherwise going to weigh down this new bill. The clearest--cleanest way to do that would be a new standard, but if not, if that can't be done, fixing this standard so that it is clearly defined as a health-only standard would go a long way to dealing with this problem.

Another problem that has been mentioned is vulnerable

populations and aggregate exposure. Maybe aggregate exposure hasn't been mentioned yet. These are core concepts to the American Academy of Pediatrics' recommendations on reform, and I think they should be embraced more tightly in the bill. The bill mentions them but does not really require them to be dealt with as a fundamental part of reform. And I think if you don't do that, you will be left with safety determinations that simply don't reflect the fact that children, it is just a plain medical fact, are more susceptible to these chemicals than people in heavily-impacted communities are, and that people are exposed to the same chemical from more than one source at a time. And so you need to add up those exposures when you are figuring out what is happening to them, and the protective measures, the risk-management measures, need to reflect that.

So if we don't do that, we will simply be getting the determinations wrong, and they won't really be protecting the public, and I think you want to be able to claim otherwise when we are done with this exercise.

I want to highlight a couple of issues where the bill actually goes backwards and we think does new harm. The first is the issue of frameworks which has been mentioned. The bill requires a lot of new frameworks. It delays the start of the program for several years. We believe that that

sounds too much like the old TSCA. We want less red tape put in front of EPA taking action, not more. Also states' rights. That has been mentioned earlier. The bill infringes on them to a great degree in a way that we think goes against the record. I think you noticed in your comments earlier that not a lot of states have taken the fundamental action, but at least they have made progress on chemicals while the federal government was tied up in red tape. And our fundamental interest in preserving states' ability, both the progress they have made and their ability to make new progress, really is Mr. Barrow's hunting dog analogy that no one expected TSCA to not work out the way that it did, and any problems in this new law, whether the funding or anything else at implementation, we want that safety valve that the states can still take action and can still make progress.

So I will mention the other provisions that are in my-- just briefly. It is CBI, I think they need a new balance on CBI, deadlines, the funding mechanism, broader authority to require testing, but the bottom line position is all of these issues, we think, can be solved. Some of them can be solved quite simply, but our main message is that they really have to be solved for this bill to be balanced.

So thank you very much.

[The prepared statement of Mr. Igrejas follows:]

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Mr. {Shimkus.} Thank you.

And now I would like to turn to Wendy Wagner, Joe A. Worsham Centennial Professor at the University of Texas School of Law. Welcome and your statement, you have 5 minutes.

Ms. {Wagner.} Thank you. Thank you, Mr. Chairman, Ranking Member Tonko and--

Mr. {Shimkus.} And you may want to pull that microphone a little bit closer.

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^STATEMENT OF WENDY WAGNER

} Ms. {Wagner.} That is nice. I have an Ethel Merman voice, so it is good to need a microphone.

Thank you, Mr. Chairman, and Ranking Member Tonko, and the members of the subcommittee. I am pleased to testify here today.

My focus is going to be a little bit different than some of the other panelists. I am going to focus on the good science provisions of Senate Bill 1009.

I have studied the use of science by regulatory agencies, particularly EPA, for over 20 years, written a couple of books, dozens of articles, I have also done some empirical analyses. And based on this extensive study, when I look at the good science provisions in Senate Bill 1009, I see that they are just as likely to undermine the scientific rigor of EPA's decision making as to enhance it. And, in fact, I think if you show the good science provisions to the National Academies, they would identify some fundamental problems with the way the bill proceeds, particularly with the idea that the scientific information available to EPA should be restricted by terms set by Congress with regard to what constitutes acceptable science.

Now, I raise a number of issues in my written testimony. I am just going to highlight three here today.

The first--there are over 40 pages by my count of good science provisions in the bill, but I am not sure what the underlying problem is that those 40 pages are trying to address. There are really serious problems with TSCA and EPA's implementation of TSCA, to be sure. I am not aware in the literature though of problems with EPA's failure to use the best available science in its regulation.

Second, as I read it, the bill reduces rather than enlarges the information available to EPA to regulate using this best available science gateway with the three-prong requirements. There are a number of features of the best available science. Just to take one as an example, according to the best available science, all the information used by EPA in its safety assessments and safety determinations needs to have peer-reviewed data. Now, even with a liberal interpretation of what peer-reviewed data is, and there could be a lot of disagreements about what that is, even with a liberal interpretation, I read that as having the potential to exclude a lot of industry submissions over the last 40 years. The substantial risk reports under AE, for example, I am not sure those would clear just that one barrier in best available science. Even the test data provided by the

manufacturers over the last 30 years, I am not sure that would clear some of the best available science requirements. If EPA wants to bring these industry submissions up to the standards of best available science, it is my reading of the bill that the burden would be on EPA. They would need to make sure the industry submissions meet all the various requirements.

More to the point, the problem with TSCA has been the EPA doesn't have enough information to assess chemicals. It can't regulate chemicals if it doesn't have this information. So legislation that actually further restricts the information available to EPA to do assessments seems to me to be moving in exactly the wrong direction.

I am also not sure what the scientific pedigree is for this best available science provision written in the Senate Bill 1009. It doesn't align with the National Academy's reports I have seen, at least.

Third, the good science provisions, and this has come up before, are loaded with ambiguities. Lawyers, including the students I teach, have a term for this. When you have a mandatory provision that is very ambiguous, it creates what is called an attachment point, because high stakes, litigious groups can latch onto those attachment points and hold the Agency's feet to the fire in litigation. By my count, the

good science provisions in Senate Bill 1009 contain dozens of attachment points. The administrative literature also reveals that when an agency has a statute ladened with all these attachment points that invite litigation, not only will be--it be embroiled in litigation, but it is likely to seek to compromise with the high-stakes, most-litigious groups. It is actually not necessarily either because the agency is captured, it simply wants to get some rules through the process, so it needs to engage in these compromises. One of my worries when I look at this is who will these high-stakes litigious groups be. I am concerned it won't be the best manufacturers in the United States who make the safest and most effective chemicals. The manufacturers taking advantage of these attachment points, I am concerned, will be the manufacturers that make the least effective and most toxic chemicals.

Now, despite the fact that these good science provisions are loaded with attachment points that are likely to lead to litigation and delay, as you have heard, except with one exception, I think, there are no deadlines at all in the statute--I am sorry, in Senate Bill 1009, not the statute. That was not a fraudulent slip. The bill also provides absolutely no mechanisms for ensuring the transparency of whatever side deals in compromises take place.

In my view, the basic goal of chemical policy should be to get safer, more effective chemicals out of our manufacturers. The bill does not provide these kinds of incentives.

If the bill became law as-is, I don't see any possibility of a race to the top among the manufacturers in the United States who make chemicals. Instead, the bill is ladened with a maze of procedural requirements for EPA, with landmines for litigation at every turn. I think we can do better.

Thank you. I look forward to your questions.

[The prepared statement of Ms. Wagner follows:]

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Mr. {Shimkus.} Thank you very much.

Now I will recognize myself for 5 minutes for the first round of--or the round of questionings.

And my first question I want to direct to Mr. Dooley, Mr. Rosenberg and I think Mr. Garfield. And it is based upon the question, let me start this, is based upon the question that I asked Mr. Jones. And many witnesses have testified before our committee on the strengths and successes of existing TSCA Section 5 provisions for new chemicals and new uses of existing chemicals.

Are the changes to TSCA Section 5 in the Senate bill needed and why? Cal, if you would start.

Mr. {Dooley.} ACC, you know, supports the provisions of the modifications of Section 5 in CSIA. We recognize that it is important, even with the new chemicals, that you do have provisions that do allow for EPA to make an affirmative determination that the new chemical will likely meet the safety standard, and that we accept that it is an obligation upon the industry and the manufacturer to provide that information and to allow them to make that determination.

Mr. {Shimkus.} Mr. Rosenberg?

Mr. {Rosenberg.} EPA--thank you. EPA has asked hundreds of manufacturers for data in the new chemical

program since its inception. Without exception, those data have either been provided or the premanufacturer notice was withdrawn. So the deficiencies, if you will, in Section 5, in my view, go to where you end up if you really want to regulate a new chemical, and you end up in Section 6. Section 6 has the least burdensome alternative hurdle, which I completely agree with Jim Jones, is an unmanageable hurdle for the Agency.

So the changes that are made in Section 5 in the bill do one important thing. They do what we are really looking for, which is create a more credible program. And the fact that there is an affirmative determination gives, at least most people, a level of comfort that things haven't just gone through because the deadline expired.

Mr. {Shimkus.} Mr. Garfield?

Mr. {Garfield.} We are still doing some analysis on this, but we are also comfortable with the more--with the creation of a more credible program. The two concerns are ones that have been highlighted before; one, making sure that the timeline and deadlines that have been set are ones that are actually effectuated, and then two, making sure that confidential business information is--continues to be protected.

Mr. {Shimkus.} Do you three feel that this would--has a

chance to harm innovation?

Mr. {Dooley.} Well, there is always, you know, that potential if EPA, you know, didn't take any judicious approach, but I would say that with our experience, and is very consistent with what Mr. Rosenberg said, is that EPA's current administration of the new chemicals Act has been pretty effective, in that it has resulted in, you know, the U.S. being at the forefront of bringing new chemicals on the market that are being used safely, that are ensuring that we are at the forefront in developing innovations, and that is validated by the number of patents that we receive, the disparity in terms of the number of new chemicals and new innovations brought into the marketplace in the U.S. versus our competitors in the EU.

And so we also know that, you know, that, you know, that there are going to be some provisions, perhaps even under the Administrative Act, that can give us a recourse if EPA oversteps their bounds, even in the request of some information.

Mr. {Shimkus.} Mr. Rosenberg?

Mr. {Rosenberg.} Thank you. The innovation is a delicate thing, and it depends on what kind of market the chemical is going to have, how much volume it will have, as-- and how innovative it is, as to what cost you can bear in

going through a regulatory program. Any screening program for chemicals that EPA has will put some drag on innovation because some companies or some chemicals won't be able to bear the cost, but this is a good compromise. This is analogous to what happens in other parts of the world. In no part of the world that I am aware of, including Europe, does the Agency have to make an affirmative finding of safety before a new chemical gets to the marketplace. EPA has the strongest power because it is a premanufacturing requirement, not a premarketing requirement. So nothing--there is no economic value of the chemical yet if it hasn't hit the market, whereas in Europe, you can go to the market without--by just filing a piece of paper.

Mr. {Shimkus.} And speaking to innovation, I would not want to leave Mr. Garfield without a chance to respond.

Mr. {Garfield.} I also agree it is a reasonable compromise that will be impacted perhaps more by EPA's practice. So in reality, the way this works, including the deadline, is that when you come up against the deadlines, EPA and a company will negotiate a suspension of that deadline to ensure that the progress continues to be made in resolving the open issues. And so in part, a lot of this will depend on whether EPA stays true to the deadlines that you have offered or whether they do not.

Mr. {Shimkus.} My time has expired. Chair now recognizes Mr. Tonko for 5 minutes.

Mr. {Tonko.} Thank you, Mr. Chair.

We heard from EPA earlier that cost-benefit analysis should not play a role in the determination of whether a chemical meets the safety standard under a reformed TSCA. The bill before us continues to use the unreasonable risk standard that has historically implied a cost-benefit analysis. A number of stakeholders are on record supporting a safety standard that focuses exclusively on risk, not cost-benefit analysis. For example, ACC's 2009 principle state, and I quote ``consideration of the benefits of chemicals being evaluated, the cost of methods to control their risks, and the benefits and costs of alternatives, should be part of EPA's risk management decision making, but should not be part of its safe use determinations.'' In other words, the determination of whether a chemical meets the safety standard for a particular use should not involve a cost-benefit analysis.

Mr. Dooley, does ACC still support that principle for TSCA reform?

Mr. {Dooley.} Yes, we do. If you had--you know, if you really look at, you know, our policy is, and if you look at the CSIA, is that there is not a requirement to do a cost-

benefit analysis on the prioritization, nor is there a consideration of the cost-benefit analysis in the safety assessment. But when you get to the safety determination, when EPA is making a decision that for some intended use, that there needs to be a restriction, a regulation or perhaps a ban, then we think it is appropriate that you do a cost-benefit analysis of that specific action by EPA, because you might have an instance there where, let us just say it is mercury in a compact fluorescent bulb, you know, something that, you know, an innovation that is, you know, contributing to significant energy savings. That mercury is a critical component of that technology. If you had EPA that would choose to ban mercury because it is potentially a hazardous exposure, and they didn't go through and do a cost-benefit analysis, or are there other alternatives that could contribute to the same environmental benefits and energy efficiency benefits, it would result in bad regulation from our perspective, and bad public policy.

Mr. {Tonko.} Thank you.

Dr. Denison, do you think that cost-benefit analysis should be kept out of the safety standard in a reformed TSCA?

Mr. {Denison.} Yes, I do, Mr. Tonko. I think the--I have a different reading than Mr. Dooley of what the bill requires because I think he stated that the--that cost-

benefit analysis should come in at the point of the safety determination. I think the safety determination needs to be a health-based, risk-based determination on the science.

Now, the factors that Mr. Dooley mentions are appropriate to consider in determining how to address a risk for a chemical that fails a safety standard, and the bill needs to make that demarcation quite clear. That is actually how I read ACC's principles back in 2009.

Mr. {Tonko.} Thank you. And, Mr. Igrejas, does the Safer Chemicals, Healthy Families Coalition have concerns that the unreasonable risk standard in the bill before us will not be a pure health standard?

Mr. {Igrejas.} Absolutely. We read the bill as not having effectively separated out the cost benefit from the risk decisions, and also retaining the least burdensome requirement, which is related but separate for bans and phase-outs.

Mr. {Tonko.} And should any TSCA reform bill this committee considers be absolutely clear that cost-benefit analysis is not a part of the determination that a chemical meets safety standard?

Mt. {Igrejas.} We believe it should be.

Mr. {Tonko.} S. 1009 also leaves in place the substantial evidence standard for judicial review that played

a significant role in the asbestos decision.

Ms. Wagner, how common is that heightened standard of review in the environmental law context?

Ms. {Wagner.} Typically, the Agency is held to an arbitrary and capricious standard, so it is very unusual.

Mr. {Tonko.} Will that standard of review make it harder for EPA to prevail in court when it takes action under TSCA than under other environmental statutes?

Ms. {Wagner.} It is definitely a higher burden. I think the case law is a little murky. Some courts actually don't seem to use substantial evidence differently than others, but some do. On balance, it is likely to be a higher burden.

Mr. {Tonko.} Thank you. There is a strong public interest in improving EPA's ability to take action under TSCA to address the serious risks we face from chemical exposures. We have better working models for dealing with risks and other environmental laws, the pesticides laws, for example. Any TSCA reform bill, in my opinion, considered by this committee should remove the known obstacles to TSCA implementation, such as the cost-benefit analysis component of the safety standard, and this heightened standard of judicial review.

And with that, I believe my time is up and I yield back.

Mr. {Shimkus.} Gentleman yields back his time.

The Chair now recognizes, I believe, Mr. Green from Texas for 5 minutes.

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

My first series of questions I want to ask, and they are just yes or no, for all witnesses. Briefly, do you believe that Lautenberg-Vitter is an improvement over current law or is status quo preferable?

Mr. Dooley?

Mr. {Dooley.} Yes.

Mr. {Rosenberg.} Yes, it is an improvement.

Mr. {Denison.} Mr. Green, in some respects yes, in other respects no.

Mr. {Green.} Okay. Mr. Garfield?

Mr. {Garfield.} My answer is the same. In some respects yes, in other respects no, but in the respects where it is no, it can be improved.

Mr. {Green.} Mr. Igrejas?

Mr. {Igrejas.} I say no.

Ms. {Wagner.} With respect to the good science provisions, no.

Mr. {Green.} Okay. Well, for all the witnesses, in your opinion, are the issues raised in today's hearings on Lautenberg-Vitter issues that can be improved through

clarification, or are they issues that fundamentally cannot be corrected? Why don't I ask the last four since you all are the ones that said it wasn't an improvement?

Mr. {Denison.} Congressman, I do believe the problems can be corrected, and that is based on a number of years of dialogue with other stakeholders, including the two gentlemen to my right here. So I think there are solutions at hand if we can get down to the hard work of negotiating this through and finding the right balance.

Mr. {Green.} Okay. I guess the reason I asked that to start with is that, you know, we know the law from 1976 is old and we need to update it, but believe me, in a Republican Congress, we are not going to get to where a lot of folks would want to be, but I just want to make sure we move that ball down the field, and that includes passing it through the Senate, because I represent a very urban district in East Harris County that has chemical plants refineries, and people who live along those fence lines. And so that is why I would like to improve the law to the best we can get politically through the House and the Senate.

Mr. Dooley, you--can you explain the--and expand on ACC's views on the EPA's authority to require testing of chemicals? Is it--in particular, does ACC support changes to the EPA's current authority to test existing chemicals, and

what changes and why?

Mr. {Dooley.} Yeah, we do support, and that is what I think was one of the, you know, the fundamental, you know, positives about this legislation is, for the first time, those, you know, 60,000 or however many grandfathered chemicals will be subject to prioritization and to a safety assessment. And we support those provisions, and--as well as provisions that would give the ability for EPA under new chemicals to have--facilitate their ability to access the data that they need to make a determination whether or not those chemicals do meet the new safety standard.

Mr. {Green.} Okay. And I know the ACC's position on the safety standard in both current TSCA and in a modernized TSCA. Is the safety standard in Lautenberg-Vitter identical to the current standard in TSCA?

Mr. {Dooley.} No, it is significantly different in that in the new CSIA--rather, the CSIA--

Mr. {Green.} Um-hum.

Mr. {Dooley.} --is that the safety standard of an unreasonable risk to human health and the environment from the exposure to its intended use is the standard there. It does not in any way require a cost-benefit analysis as you do under existing law. So it will make a, you know, significant--it is a significant difference from the existing

standard.

Mr. {Green.} And EPA and other areas in environment, do they also conduct cost-benefit analyses?

Mr. {Dooley.} I am not--

Mr. {Green.} Okay.

Mr. {Dooley.} --sure if I--I need to do a little more research on that one.

Mr. {Green.} And one of the issues is that the Lautenberg-Vitter would--has an addition of deadlines compared to TSCA. Is that a benefit as compared to--a benefit from the additional deadlines?

Mr. {Dooley.} Well, you--the issue of deadlines has been a subject of a lot of conversation with Administrator Jones that was here today. You know, from an ACC perspective, you know, we have no objection to deadlines, but we think the deadlines need to be reasonable. And I thought it was interesting when Administrator Jones was making his statement today, he said he needed deadlines. But the people that we need the information on, what is the appropriate deadlines, is the EPA. You know, we need the information from them in terms of how many chemicals do you think is appropriate of the 60,000 that you want to have go through a prioritization and safety assessment, and perhaps a safety determination. How many of those can you do, and how many

FTE's do you need to do, and what is a reasonable time frame to do those.

I think what is difficult for members of Congress in constructing this legislation is to develop arbitrary deadlines that you would think EPA can meet. What the legislation attempts to do is put the onus and the burden on EPA to set deadlines that they are compelled to meet, which would then be informed upon the capacity and the expertise that they have to carry out the provisions of CSIA.

Mr. {Green.} Okay. Mr. Denison, your testimony discussed the process for evaluating new chemicals. How would EPA determine if a chemical is likely safe under this legislation?

Mr. {Denison.} Congressman, the details of that are left to EPA, I think, not specified in the legislation in any detail, but I think the key here is that there is first the affirmative requirement that evidence of safety be available on a chemical in order for that chemical to be sold. And second, that the bar is actually intentionally, I think, lower than it is for a chemical that is already on the market. So the difference between likely meets the safety standard and meets the safety standard reflects the fact that that chemical is in an early stage of development, it has not yet been on the market, and, therefore, the amount of

information and the amount of ability to demonstrate definitively its safety is appropriately less. But the key difference from current law is, as Mr. Jones stated, changing from a passive system where unless EPA finds a problem, that chemical simply can come onto the market, to one that requires EPA to affirmatively find some evidence of safety as a condition for market entry, and that is a key change.

Mr. {Green.} How does giving EPA the authority to issue orders for testing requirements as found in Lautenberg-Vitter an improvement over the present law?

Mr. {Denison.} Congressman, the length of time that EPA has to take to get a rule through to require testing averages about 5 years. An order could be issued within a few months. We think that is a significant improvement. The only problem I would flag here is that, while the bill makes it easier for EPA to get information, it limits the points in time in the process when it could do so. So, for example, if EPA has a new chemical or a chemical that it is trying to prioritize, and it finds it doesn't have enough data, the bill actually strips the current authority EPA would have to require testing at that stage in the process. We think that is a problem.

So there are some positive aspects of the bill in this regard; order authority and the removal of the requirement to

first show risk, but there is also some restrictions on EPA's current authority to actually require testing.

Mr. {Green.} Mr. Chairman, I know you have been very kind and--but obviously we need to deal with that as a committee when we--to address that. Thank you.

Mr. {Shimkus.} That is because I have great affection for my colleague from Texas.

So now I would like to recognize my colleague from New Jersey, Mr. Pallone, for as much time as he wants to consume. How about that?

Mr. {Pallone.} Well, I won't use too much, I promise, but thank you, Mr. Chairman. I am pleased the committee has convened this hearing, and I certainly appreciate the efforts of my late Senator from New Jersey, Senator Lautenberg, to bring both sides together on this critical issue.

I have met with stakeholders in the environmental community and in the chemical industry, and we can all agree that the status quo is not working. The jail has included the current TSCA statute and its high risk series over the last several years, citing EPA's lack of authority to limit exposure to chemicals that may pose substantial health risks. And I believe there are many other issues that all stakeholders can agree upon, including striking the language that compels the EPA to pursue the least burdensome

requirement that is so strict, it prevented EPA from regulating asbestos.

So, Mr. Chairman, I hope to work with you and our colleagues to craft a bipartisan bill. And I just wanted to ask two questions, if I could.

First is posed to Mr. Denison, and that is, you state in your testimony that, and I quote, ``by EPA merely designating a chemical as high or low priority, all states would be precluded from imposing a new requirement on the chemical.''

So my question is, do you feel this preemption mechanism is triggered too early in the process, and if so, what type of timeline, if any, do you consider practical?

Mr. {Denison.} I do, Congressman. I think the extent to which the law will restrict states' ability to act needs to be placed at the end of the process of EPA's evaluation and determination of the safety of a chemical, and where necessary, the promulgation of a rule that applies the appropriate restrictions. If that preemption kicks in earlier in the process, as it does for new requirements under the bill, the concern I have is that states would not be able to act, and then the incentives for dragging out the length of time it would take to get from simply EPA prioritizing a chemical to that final action, the incentives would be to drag that out as long as possible.

So we need a system that provides incentives for efficient and effective action, and I worry that provision in particular would run counter to that.

Mr. {Pallone.} Do you want to talk about a time--a different timeline any more than you have, or--

Mr. {Denison.} Yes. I think the--those triggers for preemption need to occur at the final action of the Agency. If it finds a chemical meets a safety standard, that would be the final action. If it finds a chemical doesn't meet the safety standard, the final action would be the promulgation of that rule that imposes the appropriate risk management, and that should be the trigger for preemption.

Mr. {Pallone.} All right, thank you.

And then my second question, Mr. Chairman, is to Mr. Igrejas. I hope I am pronouncing it.

As we work to reform TSCA, I believe one of the most important issues is protecting vulnerable populations, such as infants and those living near chemical facilities. In New Jersey, as you know, we have a combination of both a large number of chemical facilities and a high population density. So the consequences of insufficient protection are dire. And so I wanted to ask you, you mentioned in your testimony that you think, and I quote, ``intent and language do not match up regarding protecting these populations.'' So what do you

suggest to ensure the bill works to protect vulnerable populations such as children and those living near the chemical facilities?

Mr. {Igrejas.} Sure. Thank you very much. I think vulnerable populations could be clearly defined first, a definition of what it includes; children, pregnant women, heavily-exposed individuals in communities, and then they should be explicitly required to be included in the safety determination and protected by any risk-management measures. That would play the issue out, so to speak, so that we know the decisions that are made, the measures that are taken are protecting the vulnerable populations.

Mr. {Pallone.} Okay, but nothing more in terms of specifics at this point, other than the definition or how--

Mr. {Igrejas.} The definition and clear language that they are included in not just the assessment phase, which is in the bill now, but in the determinations and risk-management measures.

Mr. {Pallone.} Okay. All right, that is it, Mr. Chairman. I didn't use my 5 minutes. Thank you.

Mr. {Shimkus.} Well, I thank my colleague. And I was going to ask, because it was very interesting, I appreciate you all being here. Maybe we have gone around, but I think we have fleshed out as much as we can right now, and I am

sure we will see some of you through our offices as we continue this process.

Just some final comments. It is really hard for me to believe that the product in the Senate bill is not better than the current law. I mean on the face of it, it--a bill that is--a law that is 37 years and has not been changed, and has proven to be not effective, something has to be better than nothing. I think that is where there is some commonality in moving forward.

The second thing is, this risk-based issue, there is--I guess my--there is--Cal brought up a good issue about the compact fluorescent bulbs, and what is the environmental benefit or societal benefit of maybe a hazardous chemical that is used in a product that benefits mankind. I am not a climate guy here, everybody knows that, but if you are, you like compact fluorescent bulbs, and there is a--some people would believe there is a great return on--in fact, we had debated that in our Cap and Trade Bill on that very same issue.

So there are issues there. Preemption is going to be a contentious issue, and the--and--but I would like people to start talking to us about deadlines because it seems like, through the three panels, well, at least the second two, deadlines was a consistent theme. And I am--Ms. Wagner, I

think your testimony was very intriguing, and I think we are going to look further into your comments and try to flesh out some of that stuff.

I have a unanimous consent request that all members of the subcommittee have 5 days to submit an opening statement for the record. So ordered. I would like to ask unanimous consent to insert letters into the record from the California EPA, Breast Cancer Fund, National Conference of State Legislatures, two from the Environmental Working Group, a letter from 35 Senators and lawyers, from 25 medical professionals, and remind--without objection, so ordered.

[The information follows:]

********** COMMITTEE INSERT **********

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Mr. {Shimkus.} And I would like to remind subcommittee members they have 10 days to submit questions for the record. Without objection, so ordered.

Thank you. With that, we want to thank you for your testimony. Please keep working with us. I think there is some great interest to try to move forward, and hopefully throughout this process we can get through the finish line.

And with that, I will call this hearing adjourned.

[Whereupon, at 1:08 p.m., the Subcommittee was adjourned.]