Testimony
of
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On behalf of the

Society of Chemical Manufacturers & Affiliates

Before the

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Energy and Commerce Committee
Subcommittee on Environment and the Economy

On the

"Chemicals in Commerce Act"

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Good morning, Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee. My name is Beth Bosley, and I am the President of Boron Specialties in Pittsburgh, Pennsylvania. Boron Specialties is a specialty chemical manufacturer and a woman-owned small business.

I am pleased to be back in Washington to share my perspective on behalf of the Society of Chemical Manufacturers and Affiliates regarding the draft Chemicals in Commerce Act. I would also like to commend Chairman Shimkus and his staff for all their hard work in what I see as a very workable, good-faith vehicle for bipartisan TSCA reform.

As an entrepreneur and small business owner, I offer a unique perspective that I hope you find helpful as you consider this draft legislation. I am admittedly still digesting some of the bill, and need to caveat my remarks by saying that my views might change, and certainly will become more refined, as I am able to look at it more closely. And time does not allow me to flag every potential question or concern I have about the bill.

But, in general, I can say how pleased I am that it shares many features with the bipartisan Chemical Safety Improvement Act that was introduced in the Senate last year. I can also say that it is a clear improvement over the status quo. The Senate bill was able to get broad bipartisan support, with a quarter of the Senate, Republicans and Democrats, cosponsoring it. I see no reason why a bipartisan outcome is not possible in the House. I would now like to discuss some important areas in the draft. Many of the points I will make have also been mentioned and fleshed out in prior testimony before this committee.

A Robust New Chemicals Program is essential to America's ability to innovate and create jobs.

I cannot overstress the importance of market access to startups and small businesses like mine. In general, the new chemicals provision in the draft bill preserves the delicate balance in existing law between the opportunity to innovate and protecting human health and the environment. I am pleased to see that it retains the current statutory exemptions (e.g., for mixtures) and the authorization for exemptions such as the research and development and test marketing exemptions, for example. It also authorizes the current regulatory exemptions for byproducts and transitory intermediates. Finally, it preserves the authority used to issue the low volume chemical and polymer exemptions. As a clarification, when I speak of exemptions this does not mean exempt from TSCA or any compliance obligations; rather, it simply means such chemicals are exempt from Pre-manufacture notification or PMN requirements or eligible for expedited review, so long as they meet certain criteria. Chemicals making use of these exemptions are actually inherently restricted, since they are bound by rigorous criteria.

The draft maintains the 90 day review period for PMNs, which I support. This helps ensure swift access to market. EPA actually completes review of many new chemicals in far less time than 90 days while still being protective, so this is very reasonable. The draft would require EPA to determine during the review period, whether a new chemical is likely to meet or not likely to

meet the safety standard. Establishing a safety standard is an improvement over the current situation and should give the public more confidence in the new chemicals process. As I have mentioned in prior testimony, an overly-stringent standard like that for food, drugs and pesticides would be inappropriate and would grind new chemical innovation to a halt.

As the Subcommittee and Committee consider the bill further, I offer some suggestions regarding its treatment of Section 5:

- Current law authorizes EPA to extend the 90-day review period by rule, which is too procedurally demanding, so EPA usually uses 15-day extensions (with the consent of the submitter) if they need more time. The draft (and the Senate bill) eliminate the rulemaking requirement, and also expressly authorize waiver agreements. I am concerned that EPA might now routinely exercise both authorities, so that the default review period would be 180 days. Agency staff are quite able in the current 90-day period to determine if they need new data, so I would drop the 90-day extension authority altogether and simply authorize waivers of the 90-day limit.
- Current law also prohibits a submitter from commencing manufacture before the expiration of the 90-day period, even if EPA has dropped its review. The draft (and the Senate bill) preserves this. But why not authorize a submitter to submit a Notice of Commencement as soon as it has been notified by EPA that EPA has dropped its review?
- Finally, I believe some drafting corrections might be warranted to clarify EPA's ability to issue Significant New Use Rules applicable to anyone, and to authorize the commencement of manufacture upon the establishment of Section 6 restrictions. SOCMA staff would be happy to discuss these with Subcommittee staff offline.

Innovation also requires adequate protection of confidential business information.

The draft bill strengthens Section 14's confidential business information provision and represents a balanced approach to increased transparency and trade secret protection. It authorizes sharing of CBI with states – but not local governments -- and medical personnel on a need to know basis. Trade secrets that might be disclosed to medical personnel would presumably be treated in much the same way personal medical information is under the Health Insurance Portability Accountability Act (HIPAA)—something medical professionals have experience managing.

The bill also imposes reasonable limitations on CBI protection that should help increase transparency. Companies would have to determine how long they believe their CBI protection is necessary. This fixes one of the core problems under the current law: the open-ended protection of CBI. In addition, there would be periodic re-substantiation requirements during reporting cycles, not unlike the present circumstances with the Chemical Data Reporting (CDR) rule.

I note that the bill eliminates the criminal penalties for disclosure contained in existing law and in the Senate bill. I assume that means such disclosure would be subject to the general criminal provision in Section 16(b), as well (potentially) to the Trade Secrets Act, the applicability of which the bill restores.

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The bill provides mechanisms for a more complete picture of chemicals in commerce.

The draft would break the inventory of existing chemicals into active and inactive lists. There are currently about 84,000 chemicals on the TSCA inventory, but far fewer in actual commerce. EPA should focus its resources on prioritizing active chemicals in commerce. The bill, in general, mandates this. Establishing an accurate and manageable inventory of chemicals in commerce should give the public more confidence.

As I have mentioned in prior testimony, the bill should expand TSCA Section 8(e), as the Senate bill does, to authorize submission of non-adverse data and to require EPA to take it into account. Presently, Section 8(e) is biased towards adverse data. Such an enhancement would greatly increase the amount of data submitted under this authority, which can only improve EPA's understanding of chemical hazards.

I am pleased to see that EPA would be able to obtain information from processors, who are oftentimes the customers of upstream manufacturers. I am somewhat concerned that the bill does not necessarily require some degree of processor reporting, however – a potential problem with the Senate bill as well. A significant shortcoming of TSCA currently is the lack of accurate use and exposure information. Manufacturers have to make educated guesses on how a chemical they make is used when a customer or entity further downstream to them is not inclined to share such proprietary information. Increased processor reporting would be very helpful in giving everyone a fuller picture of chemical uses and exposures. Indeed, I would strongly recommend that the bill go further and give EPA authority to request information from non-consumer commercial users where needed. The Consumer Specialty Products Association has put forward a very sensible proposal in this regard.

Finally, the Subcommittee should consider specifically authorizing (or even requiring) EPA to consider robust summaries of test data prepared under REACH (or for other reasons). This would be an efficient way to leverage available data without having to confront complex concerns arising under research contracts and data ownership agreements.

The EPA's ability to request data is enhanced.

The bill would require EPA to divide the existing chemical inventory into active and inactive chemicals in commerce, and to prioritize active chemicals into high or low priority buckets. Should EPA determine that more data is needed to affirm safety, it would be given enhanced mechanisms for data collection.

TSCA section 4 would also be strengthened by expanding EPA authority to request data by rule, consent agreement, or order. Typically it takes years for EPA to go through a rulemaking process, so from a procedural standpoint, order authority would dramatically speed things up.

As a caveat, however, before ordering testing EPA should first consider all available information. It should also have a sound scientific and risk basis for the request and testing should be tiered. It appears the bill provides these standards, although the bill dramatically

condenses the comparable provisions of the Senate bill. This is an issue on which I'd like to reflect a bit more before taking a position.

Cost-benefit analysis is separated from safety standard.

The risk management provision under the current statute has received criticism for being married to the "unreasonable risk" standard and being too cumbersome for EPA to implement. It requires EPA to determine the "least burdensome" regulatory measures for chemicals that present a risk. In the draft, costs and benefits are separated from what is now a purely health and environment based safety standard, and the least burdensome requirement is taken out. EPA would instead have to look at risk management measures that are proportional to the risk, provide net benefits, and are cost effective. These are all positive steps, and these issues are expressed more simply than in the Senate bill. The bill also collapses the safety assessment and safety determination steps that the Senate bill separates – which makes a lot of sense and should expedite action.

However, the bill still requires EPA to assess the cost-effectiveness of its chosen restrictions "compared to alternative requirements or restrictions that the Administrator may reasonably adopt." This approach maintains the current law's problematic requirement that EPA identify economically feasible alternatives. To avoid over-analysis or unnecessarily vulnerable rules, I recommend the committee consider limiting EPA's evaluation to alternatives identified by commenters on a proposed rule, so that it need only choose among the least burdensome of those. People who believe they have a more cost-effective approach will not hesitate to describe them in comments; EPA should not have to imagine others. That would alleviate much of the objection to current Section 6, as interpreted by the *Corrosion-Proof Fittings* case.

Relatedly, perhaps the bill's greatest improvement over the Senate bill is its clarification that low-priority determinations would be judicially reviewable. This solves the problem under the Senate bill of state requirements being preempted by actions that are not subject to judicial review.

Don't let perfect be the enemy of the good.

I have covered the major ways in which this bill is an improvement over the status quo. If we are ever to see a TSCA bill enacted, we must realize that it will never be all things to all people.

The House draft is just that, a draft. It provides a vehicle for balanced TSCA reform and for discussing crucial, unaddressed issues like how many existing chemicals EPA must complete action on by what date, and the related question of EPA's resources. I hope that this hearing marks the first step in a constructive, bipartisan process to facilitate its advancement.

Thank you for this opportunity to share my perspective. I look forward to your questions.