Testimony of Roger Harris
On behalf of the

National Association of Chemical Distributors

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

"Discussion Draft of the Chemicals in Commerce Act of 2014"

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

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

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

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

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

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

Preemption:

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

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

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

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

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

Confidential Business Information:

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

Deadlines:

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

Prioritization:

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

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

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

Reporting:

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

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

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

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

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

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

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

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