The Committee on Energy and Commerce

Memorandum

April 25, 2014

To: Members, Subcommittee on Environment and the Economy

From: Majority Committee Staff

Re: Hearing on the Discussion Draft entitled "The Chemicals in Commerce Act."

On Tuesday, April 29, 2014, at 10:15 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Environment and the Economy will hold a hearing on the discussion draft entitled "The Chemicals in Commerce Act."

I. **Witnesses**

A. Panel I

- The Honorable Jim Jones, Assistant Administrator, Office of Chemical Safety and Pollution Prevention, U.S. Environmental Protection Agency.

B. Panel II

- The Honorable Calvin Dooley, President & CEO, American Chemistry Council;
- Dr. Beth Bosley, President, Boron Specialties, LLC, On behalf of the Society of Chemical Manufacturers and Affiliates;
- Mr. Mark Greenwood, Principal, Greenwood Environmental Counsel, PLLC;
- Dr. Len Sauers, Vice President, Global Sustainability, the Proctor & Gamble Company;
- Mr. Steven Goldberg, Vice President & Associate General Counsel, Regulatory & Government Affairs, BASF;
- Mr. Andy Igrejas, National Campaign Director, Safer Chemicals, Healthy Families; and,
- The Honorable Michael Moore, on behalf of the National Conference of State Legislatures.

II. Background

On October 11, 1976, the Toxic Substances Control Act (TSCA, 15 U.S.C. 2601 *et seq.*) became law. Designed to identify, assess, and control potentially dangerous chemicals in U.S. commerce that were not adequately regulated under other Federal environmental statutes, TSCA regulates all phases of chemical manufacturing. As several new titles have been added to TSCA since 1976, the original law is redesignated as Title I.

The Subcommittee has held several hearings (June 13, 2013, July 11, 2013, September 18, 2013, November 13, 2013, February 4, 2014, and March 12, 2014) to review core sections of Title I, proposed Senate amendments to those sections, and a discussion draft of amendments to TSCA proposed on February 27, 2014.

On April 22, 2014, Chairman Shimkus released a revised version of the February 27, 2014, discussion draft to amend Title I of TSCA entitled "The Chemicals in Commerce Act" (revised discussion draft). This hearing is an opportunity to review the provisions of the revised discussion draft.

III. Major Revisions Included in the Revised Discussion Draft

In section 4, the revised discussion draft adds new authority for the Environmental Protection Agency (EPA) to require the development of new hazard and exposure information for priority designation purposes if existing information is insufficient.

In section 5, instead of requiring EPA to grant exemptions for by-products from section 5 notice requirements, the revised discussion draft gives EPA discretion to decide whether to grant such an exemption. Also in section 5, the revised discussion draft changes the legal standard for regulating a new chemical substance from "is likely to result in" to "may present" an unreasonable risk of harm. This change mirrors current law.

Section 6 of the revised discussion draft requires EPA to evaluate whether a chemical substance designated as high priority presents or will present, in the absence of regulation under section 6, a significant risk of harm to human health or the environment under its intended conditions of use based upon four factors: the nature and magnitude of the risk, impact on potentially exposed subpopulations, whether harm has occurred, and the probability that harm will occur from use of a chemical substance. The revised discussion draft makes explicit that, in making such risk evaluations, EPA is not to consider economic costs or benefits of the use of the chemical substance or of reducing exposure.

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

Section 6 of the revised discussion draft also adds deadlines for EPA to take action on existing individual chemicals. EPA must complete a risk evaluation within four years after

designating a chemical as high priority, and must promulgate any restrictive rule on an existing chemical within three years after finishing the risk evaluation. The revised discussion draft would allow for extensions to factor in additional information, but the total of all extensions cannot exceed three years.

Also in section 6, the revised discussion draft eliminates requirements that EPA determine if a rule imposing requirements or restrictions on a chemical substance is "proportional" and results in net-benefits. The revised discussion draft retains the requirement that EPA determine whether its rules are cost-effective, and whether economically feasible alternatives that benefit human health and the environment exist. Finally, the revised discussion draft requires EPA to provide for a reasonable transition period in cases where it restricts use of a chemical.

Section 8 of the revised discussion draft provides EPA the discretion to use either rulemaking or order authority to compel the collection of existing studies on a chemical substance. It also requires EPA to limit the potential for duplicative reporting requirements, minimize the impact on small businesses, and target rules only on those entities most likely to have the information.

Section 14 of the revised discussion draft requires EPA to provide guidance on and accept a unique chemical identifier as a replacement for public disclosure of a chemical identity and makes explicit that chemical identity should be protected from disclosure as part of a health and safety study.

Section 17 of the revised discussion draft changes the effect of an EPA designation of a chemical substance as low priority. In the previous draft, a low-priority designation would have pre-empted any State regulation of a chemical substance. The revised discussion draft limits the pre-emptive effect on a low-priority designation to just those State and local regulations established after the low-priority designation.

Section 23 of the revised discussion draft streamlines the science and information quality policy provisions of the bill. Specific details about science, including a definition of best available science and some details on information quality requirements, are replaced by codification of five science assessment factors currently used in guidance by EPA. The revised discussion draft also clarifies that decisions on testing, new chemicals, and existing chemicals under TSCA must be made based on the weight of such scientific evidence.

Attached are links to the following documents:

- Revised discussion draft: http://energycommerce.house.gov/hearing/chemicals-commerce-act-0;

- "Red-line" comparison of the revised discussion draft to the February 27, 2014, discussion draft : http://energycommerce.house.gov/hearing/chemicals-commerce-act-0; and,

- March 12, 2014, hearing memo, which reviews the February 27, 2014, discussion draft: http://docs.house.gov/meetings/IF/IF18/20140312/101890/HHRG-113-IF18-20140312-SD005.pdf.

Please contact Jerry Couri, Tina Richards, or David McCarthy with the Committee staff at (202) 225-2927 with any questions.