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DISCUSSION DRAFT ON THE CHEMICALS IN COMMERCE ACT

TUESDAY, APRIL 29, 2014

House of Representatives,

Subcommittee on Environment and Economy

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:17 a.m., in Room 2123 of the Rayburn House Office Building, Hon. John Shimkus [Chairman of the Subcommittee] presiding.

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

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

Mr. {Shimkus.} I would like to call the hearing to order and recognize myself for 5 minutes for my opening statement. Since our March 12 hearing on the original discussion draft of The Chemicals and Commerce Act, we have been working on a bipartisan basis to find common--oh, my apologies. My apologies. My ranking member is not here. I was just busy. If Jerry would shut off my time? Again, my apologies to my colleagues. I was anxious to get started. So I will now open--start again my opening statement for this hearing. Since our March 12 hearing on the original discussion draft of The Chemicals and Commerce Act, we have been working on a bipartisan basis to find common ground. The revised discussion draft before you today contains several significant changes from the earlier version. I won't itemize them now, but I will mention a few highlights.

In Section 4, we have added new authority for EPA to require the development of new hazard and exposure information for priority designation purposes. In Section 5, instead of requiring EPA to grant exemptions for byproducts from Section 5 notice requirements, the new draft gives the EPA discretion to decide whether to grant such an exemption.

Section 6 includes several important changes. The draft now requires EPA to evaluate the risk of harm that chemical substance poses to human health or the environment based upon four specific factors. One is the nature and magnitude of risk. Two is the important--the impact on potentially exposed sub-populations. Three is whether harms has occurred. And, four, the probability that harm will occur from use of a chemical substance.

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

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

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

once it becomes law.

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

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

[The prepared statement of Mr. Shimkus follows:]

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

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

At the last hearing, we heard from witnesses from industry and the public health community on the initial proposal for revising TSCA. Initial reviews from industry witnesses were mixed but mostly favorable. The views of the public health, labor and environmental community were very critical. We have had a lot of helpful testimony from our earlier hearings. Our staffs have been meeting for several months now. And of course, we have 40 years of experience with the existing law.

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

I am willing to keep working on this. And I know the other Democratic members who are engaged in this process are also willing to continue. But time is short. We have little

time left in this Congress, and we are going to have to engage in a more productive process if the goal is to produce a Bill with real potential to become law.

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

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

The stated purpose of the Bill is to provide for the safe and efficient flow of chemicals in interstate and

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

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

their citizens will not become law. There is still time to produce a good Bill.

As I said earlier, I am willing to continue working on this with you. I believe the reform of TSCA is a worthy effort that we can craft legislation that would be supported by a majority of our committee's membership. I know the Democratic members want to keep working toward a compromised Bill that we can support, that will be supported by this Administration and the public interest community and industry, and that has a chance to become law. Let us get back to work on this.

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

[The prepared statement of Mr. Tonko follows:]

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Mr. {Shimkus.} I thank my colleague. I now turn to Chairman of the Full Committee, Mr. Upton, for 5 minutes.

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

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

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

The key focus of the legislation is on so called existing chemicals. These include the thousands of chemicals that have been on the market for decades, which have not gone through the TSCA new chemical review process. Some of these are particularly high priority, especially given human

exposure to them. The draft legislation before us today is aimed at initiating a systematic process to review these chemicals and determine which uses of them are safe, and whether or not we need any requirements or restrictions.

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

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

I particularly want to thank Mr. Shimkus for his leadership on this issue and efforts to find bipartisan common ground. The law has not been updated in nearly 40 years. It has been a very challenging task. But this draft Bill gets us closer towards our objective of a commonsense law that indeed does protect the public health and further

encourages our manufacturing renaissance.

Yield back.

[The prepared statement of Mr. Upton follows:]

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

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

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

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

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

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

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

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

adequate protection from the adverse effects of toxic chemicals.

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

I want TSCA legislation to pass. The President's Cancer Panel found that reform of the Toxic Substances Contract Act is critically needed to reduce the incidents and burden of cancer in this country. Chemical exposures are ubiquitous in our society. According to the Centers for Disease Control, their most recent data is that 75 percent of people tested have the commonly used chemical triclosan and--in their

bodies. That chemical has been shown to interfere with hormone levels in animals. Seventy-five percent of people tested have this chemical in their body. The CDC also found five different PBDEs in more than 60 percent of participants. These chemicals have been linked to serious health concerns, including rising autism rates. And these chemicals are showing up in the bodies of Americans at levels 3 to 10 times higher than found in European population.

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

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

[The prepared statement of Mr. Waxman follows:]

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

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^TESTIMONY OF HONOROABLE JIM JONES, ASSISTANT ADMINISTRATOR, OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION, U.S. ENVIRONMENTAL PROTECTION AGENCY

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^TESTIMONY OF HONORABLE JIM JONES

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

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

We continue to be encouraged by the interest in TSCA reform indicated by the introduction of several Bills in recent years, the hearings on TSCA related issues such as

this one that are being held, and the bipartisan discussions that are taking place. Key stakeholders share common principles on how best to improve our chemicals management programs.

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

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

TSCA gives the EPA jurisdiction over chemicals produced and used in the United States. However, unlike the laws applicable to drugs and pesticides, TSCA does not have a mandatory program where the EPA must conduct a review to determine the safety of existing chemicals. In addition,

TSCA places burdensome legal and procedural requirements on the EPA before the agency can request the generation and submission of health and environmental effects data on existing chemicals. It is also proven challenging to take action to limit or ban chemicals that the EPA has determined to pose significant health concerns.

The EPA believes it is critical that any update to TSCA includes certain components. In September of 2009, the Administration announced principles to update and strengthen TSCA. These include the need to provide the agency with tools to quickly and efficiently obtain information from manufacturers that is relevant to determining the safety of chemicals. The EPA should also have clear authority to assess chemicals against the risk base safety standard and to take risk management actions when chemicals do not meet the safety standard, with flexibility to consider children's health, economic costs, social benefits and equity concerns.

The principles further state that both chemical manufacturers and EPA should assess and act on priority chemicals, both existing and new, in a timely manner. This means that the EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on

relevant risk and exposure considerations. Clear and forcible and practicable deadlines applicable to the agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations. Legislation should also provide the EPA with tools to ensure the protections put in place are carried out and provide a level playing field for the companies that comply.

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

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

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

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

[The prepared statement of Mr. Jones follows:]

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

Your written testimony suggests the discussion draft does not have a risk based standard for review of chemicals that does not consider cost or benefits, and suggests that the standard in the discussion draft is very similar to current Section 6. Let us take a look at Section 6(b) in the discussion draft. That is page 35, lines 15 to 22. And again, we gave your folks a heads up that we would be doing this.

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

Mr. {Jones.} Out of Section 6(b), I believe that that is accurate.

Mr. {Shimkus.} So that is a yes?

Mr. {Jones.} Yes.

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

Mr. {Jones.} That is correct for Section 6(b). Yes.

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

Mr. {Jones.} That is correct.

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

Mr. {Jones.} That is correct.

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

Mr. {Jones.} That is correct.

Mr. {Shimkus.} So there are some things that you like about this revised draft?

Mr. {Jones.} Yes. Absolutely, there are things that I like about--

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

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

Mr. {Shimkus.} Well, I want--I mean, is ``made present'' in this draft and is ``made present'' in current law in Section 5?

Mr. {Jones.} It is.

Mr. {Shimkus.} Okay.

Mr. {Jones.} But the subsequent findings that the EPA needs to make--

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

Mr. {Jones.} I think the existing TSCA Section 5(e) standard is--allows the agency much more flexibility to prevent a chemical from getting on the market--

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

Mr. {Jones.} That is correct.

Mr. {Shimkus.} Okay. And we would then ask for you what kind of language would the EPA propose to clean that up?

Mr. {Jones.} Yeah. Sure.

Mr. {Shimkus.} Because with all due respect to my friends on the minority side, we have been asking for months for language and never received any language from anyone on the minority side. So it is tough to negotiate when we pose language and we don't receive any in return. Let me go to--please state whether you support or oppose the following policy choices in the discussion draft, expanding EPA's

existing TSCA authority to require new testing by manufacturers and processors via rule, order or consent agreement. Does this draft do that?

Mr. {Jones.} Yes, it does.

Mr. {Shimkus.} And isn't order the ability to do an order--a significant improvement over current law and--

Mr. {Jones.} Yes.

Mr. {Shimkus.} --and previous drafts?

Mr. {Jones.} Yes, it is.

Mr. {Shimkus.} So that is a good thing?

Mr. {Jones.} Yes, it is.

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

Mr. {Jones.} It does.

Mr. {Shimkus.} Another good thing.

Mr. {Jones.} That is a good thing. Yeah.

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

Mr. {Jones.} Yes, it does that.

548 Mr. {Shimkus.} Providing this testing authority to
549 ensure compliance with control measures for new and existing
550 chemicals, does this draft do that?
551 Mr. {Jones.} You know, Chairman Shimkus, I can't
552 remember specifically whether it does that, as I don't recall
553 that.
554 Mr. {Shimkus.} Okay. But you can see my line of--
555 Mr. {Jones.} Yes.
556 Mr. {Shimkus.} The answer is we believe it does. My
557 time has expired. I would like to now--I have two more. But
558 I do have time--I will let Mr. Tonko now as questions for 5
559 minutes.
560 Mr. {Tonko.} Assistant Administrator Jones, there are
561 many serious issues with this Bill, but I would like to focus
562 on the expansive preemption provisions. Later today, State
563 Senator Michael Moore from the National Conference of State
564 Legislators will testify that, and I quote, ``States have
565 enjoyed a long history of co-regulation with the federal
566 government in environmental protection and have made sound
567 policy decisions benefiting the American public.'' He goes
568 on to say that the discussion draft will, and I quote,
569 ``strip state's residents of protections enacted by their

elected officials.'' And again quote, ``leave everyone more susceptible to increased harm from toxic chemicals.'' Mr. Jones, do you agree that the states play an important role in protecting human health and the environment from exposure to toxic chemicals?

Mr. {Jones.} I do agree with that.

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

Mr. {Jones.} I would agree it is very broad.

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

preemption language could jeopardize state laws requiring the oil and gas industry to disclose the chemicals used in their hydraulic fracturing?

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

Mr. {Tonko.} Thank you. And what other--what about other states or local laws that are simply notices or disclosures about chemicals? It seems to me they would also be in question. Would you agree?

Mr. {Jones.} Yes.

Mr. {Tonko.} With respect to the identified problems with TSCA, lack of public confidence, lack of public information about chemicals, timely action to address chemical risks, would you say this sweeping preemption provision is likely to do more or do less to address these issues?

Mr. {Jones.} I think that it will--over time, the role

of states will be diminished. And I think that that will decrease the pressure on the agency to move forward as aggressively as I think the drafters were hoping.

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

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

Mr. {Tonko.} Thank you. And since we have not received

any specific examples of state and local regulations that are hampering the 770 billion dollar United States chemical business, I find this debate quite confusing. States have moved to regulate chemicals in response to public concern because the federal program is not functioning properly. Instead of blocking the states from responding to public concerns about chemicals, I believe we should address the real problem of inadequate authorities from your agency. Do you agree with that assessment?

Mr. {Jones.} I would agree with that.

Mr. {Tonko.} Frankly, with a stronger federal program, I believe there would be less public pressure to enact state and local laws for chemical regulation. Public health, labor and environmental groups have stated that this draft would, and I quote, ``curtail functioning state programs in exchange for a federal program that will continue to be dysfunctional.'' And I don't think we ought to let that happen.

With that, Mr. Chair, I yield back.

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

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

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

Mr. {Jones.} Yes, it does.

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

Mr. {Jones.} That is correct. Yeah.

Mr. {Latta.} Okay. And also in your testimony, you discuss how there are 84,000 chemicals listed on the TSCA inventory. And EPA's most recent snapshot of chemicals actually in commerce from the 2012 chemical data reporting,

the CDR roll, captured 7,674 chemicals from 2011. Do you believe that the 7,674 number is accurate of the current TSCA inventory, or where do you believe that number would be today?

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

Mr. {Latta.} Okay. And then when we talk about that 84,000 number, is that correct or is that misleading?

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

Mr. {Latta.} Okay. And then you also mentioned in your

testimony on page two, I saw that the 60,000 or so chemicals that were grandfathered in 1976. How long would you estimate it would take to evaluate those 60,000 chemicals?

Mr. {Jones.} Well, yeah. That sort of goes back to your earlier observation about the 7,400 number.

Mr. {Latta.} Um-hum.

Mr. {Jones.} I think that that represents the universe of chemicals we would want to keep our sites on first, because they are the ones that are being produced at relatively large quantities. And for that universe, I think it would take some time for the agency to get through all that--

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

Mr. {Jones.} It would take several decades to get through all--a number of that--

Mr. {Latta.} So--okay. Like 30 years then, when you say several?

Mr. {Jones.} That's not an--

Mr. {Latta.} Okay. Any idea--what would the cost be to do that evaluation on those--not on the 60,000. Now, we're

just going back to the 7,600.

Mr. {Jones.} So in the early years, because we are required to set priorities, we would be doing the harder things first. And so we would be doing fewer of them in early years. I think after we got through the first thousand or so, I think you would see the number we would complete in a given year would--could potentially increase very dramatically so that you would see in the latter years a much higher number of chemicals being assessed than you would see in early years, even though you might have the same number of dollars being spent in any given year. We have not costed out what it would take to get through all of the chemicals. The discussion draft actually doesn't require us to operate at any pace. And so it would be hard to estimate what it would take to get through when you don't have a pace that you are mandated to work through.

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

Mr. {Jones.} Well, that is the--you know, and it may have been a drafting issue. I just don't--I don't know. But I have referred to it a number of times. And I am sorry if I

am misstating it. But the provision in 17(a)(1)(B), and I believe it is (4), actually preempts a state if the agency, before passage of the law, has issued an order of consent agreement, a rule under Sections 5 or 6. And that is a rather large universe of chemicals that is particular under Section 5. So there--and again, I am not really sure what the--that provision was designed to do. But the way we are reading it, it preempts things from the date that the law passed for anything that already has a significant new use rule, anything that already has a consent agreement. Other than that provision, what you said, Congressman, is accurate. It is prospective action on the part of the EPA.

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

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

Mr. {Waxman.} Thank you, Mr. Chairman. For decades, the Toxic Substances Contract Act has operated under an unreasonable risk standard, which requires EPA to perform a cost benefit analysis to determine whether or not a chemical is to be regulated. This approach has proven unworkable.

Only five chemicals have been regulated under Section 6 of the--of TSCA since 1976.

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

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

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

Mr. {Waxman.} So if this language were enacted, EPA would have to balance the economic cost of regulating against the adverse health and environmental effects of a chemical

before establishing any protections, is that right?

Mr. {Jones.} That is correct.

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

Mr. {Jones.} That is correct.

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

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

Mr. {Waxman.} Okay. I think many in the public would listen to this discussion and find this proposal morally questionable. I share those concerns, and we don't need to take this approach. Time and again, we have shown that when there is a clear goal for protecting health, industry has the

creativity and know how to get the job done. I am also concerned whether the approach in this draft is even workable. Is EPA good at projecting industry innovation? Will EPA give the proper weight to industry costs?

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

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

Mr. {Jones.} That is correct.

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

Mr. {Jones.} I believe we can. Just to be clear, the

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

Mr. {Waxman.} But not in setting the standard itself?

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

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

Mr. {Jones.} The goal would always be to achieve the safety standard. We would want to be able to consider if the scenario where there is a very high cost for very marginal changes in safety that we may have a little lower bar in that kind of a context. We would want--we would not want to be precluded from having a cost consideration.

Mr. {Waxman.} Okay. Let me just say in closing, Mr.

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

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

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

So you get both sides of it in these two rounds of questioning.

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

Mr. {Jones.} It is a Senate confirmed position.

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

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

Mr. {Barton.} So you have a--I would assume you have a technical background in this field in--

Mr. {Jones.} I actually have a policy and economics background.

Mr. {Barton.} Okay. Okay. I didn't--I wasn't here when you gave your opening statement. I would assume that EPA either has no position or is moderately opposed to this, is that fair?

Mr. {Jones.} We have identified a number of areas that we think are not in alignment with the administration

principles that we have pointed out.

Mr. {Shimkus.} If the gentleman would yield just for a second? But--and being fair, you also identified a lot of yes answers to my questions on positive movements of this Bill, would that be correct, Mr. Jones?

Mr. {Jones.} That is correct. Yes.

Mr. {Shimkus.} Thank you.

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

Mr. {Jones.} Well--

Mr. {Barton.} Do you think the administration would be--

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

Mr. {Barton.} What is the biggest problem in the

discussion draft?

Mr. {Jones.} I think the safety standard is probably the biggest one. The new chemicals issue I pointed out is probably second. And then the pace of the agency working on existing chemicals, by the biggest areas.

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

Mr. {Jones.} That is a great question, Congressman Barton. I couldn't agree with you more. As a matter of fact, until this hearing was called, I was supposed to be in Bentonville, Arkansas, today at Walmart who I think has been a real leader in this space in trying to get ahead on safer chemicals. I think some of the chemicals coming behind me in the next panel have been real leaders. New chemicals I don't believe is where the challenge has been. I think it has been with existing chemicals. And there, I think it is a subset

of existing chemicals. We looked at about 1,000 chemicals of that entire universe that Congressman Latta pointed out as chemicals that have expressed some hazard that we think it is really important to--for the agency to evaluate for safety assessment purposes. But because we never have done that, you know--unless a retailer who is telling you they won't accept it, I don't know why a company wouldn't continue to manufacture those. So I think it is existing chemicals. And there, I think it is actually a relatively--relatively narrow subset. I am talking about 1,000 and not, you know, 40,000 or 20,000.

Mr. {Barton.} Right.

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

Mr. {Barton.} My time has expired. But, Mr. Chairman, I want to commend you and the Ranking Subcommittee Member, Mr. Tonko. It sure looks to me like you all are trying to find a middle approach. And I am supportive of that. But I do, from the right, want to say let us don't throw the baby out with the bath water, because we still want to--if we are

going to get a revision, it needs to be something that will work in the real world. And I am leery of continuing to give EPA too much discretion, because I think the more explicit we can deem what they should do, the greater the probability is that they will do their regulatory function in a fair manner. And with that, I yield back.

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

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

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

Mr. Jones, you stated in your testimony that in order to be successful, EPA must have the resources it needs to protect the American people from exposure to harmful

chemicals. I am satisfied that that has been a lack that you have confronted down there. Now, under CICA, does EPA have appropriate resources to quickly and efficiently implement the various framework, process, criteria and guidance provision which must be in place prior to EPA beginning action on specific chemicals, yes or no?

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

Mr. {Dingell.} Okay. So I am--you are telling me no on this. And I am asking you to submit to us additional information--

Mr. {Jones.} Sure.

Mr. {Dingell.} --so that we will have a clear picture of what the needs are. And I ask unanimous consent that that, Mr. Chairman, and other matters be inserted into the record in the appropriate fashion and place.

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

[The information follows:]

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

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

Mr. {Jones.} I am sorry, Congressman. Those are little more than yes or no questions. But the Bill doesn't require--

Mr. {Dingell.} Just yes or no.

Mr. {Jones.} Well, the Bill doesn't require--

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

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

Mr. {Dingell.} Well, that is almost a comical answer here. Now, EPA has over 84,000 chemicals listed in its TSCA inventory, and a little over 200 have been acted on in 37 years. It doesn't make it look like you have authority here, or that you have resources. EPA has identified an initial work plan of chemicals for assessment which includes 83

substances in addition to identifying several hundred chemicals on the safer chemical ingredients list. Is that true, yes or no?

Mr. {Jones.} Yes.

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

Mr. {Jones.} No.

Mr. {Dingell.} Please answer yes or no.

Mr. {Jones.} No.

Mr. {Dingell.} Would you respond in addition for the record on that matter?

Mr. {Jones.} Yes.

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

Mr. {Jones.} Sure.

Mr. {Dingell.} So we have a descent appreciation of our needs here. Now, as you know, I have had the privilege to live in the Great Lakes region, home for 20 percent of the world's fresh water supply, as well as tremendous hunting and fishing and recreational areas. Many of my constituents have

voiced concerns that CICA does not ensure adequate public health and safety standards needed for high risk toxic chemical contamination found in this region. Would EPA be better able to regulate new and existing chemicals if they were granted authority to set priorities for conducting safety reviews based on relevant risks and exposure conditions, yes or no?

Mr. {Jones.} Yes.

Mr. {Dingell.} Would you please submit amplification for the record on that?

Mr. {Jones.} Sure.

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

Mr. {Jones.} Yes.

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

Mr. {Jones.} Yes.

Mr. {Dingell.} Now, it is my concern that if Congress fails to provide necessary funding to a new TSCA program,

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

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

Mr. {McKinley.} Thank you, Mr. Chairman. Let me just begin by applauding you. Your line of questioning at the beginning of this hearing was--they were right on. You were

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

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

Mr. {Jones.} We have been trying to evaluate--

Mr. {McKinley.} Let us take it--yes or no?

Mr. {Jones.} We have been trying to evaluate this and other forms of legislation--

Mr. {McKinley.} Yes or no, please. Do you agree with it that it is--it weakens current law?

Mr. {Jones.} I don't think I would take an opinion on that.

Mr. {McKinley.} Okay. Does it--has it weakened public safety, public health?

Mr. {Jones.} It does not advance public health in the way that we think it--

Mr. {McKinley.} Does it have a link to autism?

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

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

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

Mr. {McKinley.} But if the threat continues to be that it is doing these and other things, you are saying about safety and new chemicals, if it has--are we--I want to make sure I understand your testimony and those from the other side of the aisle. That this is the chemical industry itself is causing these problems? Because if it is not the chemical industry, then it is our staff is writing these things to

decrease public safety and public health and weaken the current law? Who has got the--who wrote the words to make it negative?

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

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

Mr. {Jones.} No, I don't.

Mr. {McKinley.} Okay. Do you think it is trying to weaken current law?

Mr. {Jones.} You know, I think those are questions for the chemical industry who are coming up right behind me. I--

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

Mr. {Jones.} Again, I don't--

Mr. {McKinley.} Yes or no?

Mr. {Jones.} I have been in this game for quite a long time, and I don't attempt to understand all of the motivations behind all of the players. I try to evaluate

what the facts are in front of me and make informed decisions based on that.

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

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

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

I would sure like to understand. I hope that you will be able to submit something to explain why people think the chemical industry wants to put the health of this nation at risk.

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

Mr. {McKinley.} Thank you. I yield back my time.

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

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

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

standard. Further, vulnerable populations are not sufficiently protected under the risk management standard in the draft.

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

I had--

Mr. {Shimkus.} Would the gentleman yield for one second?

Mr. {Pallone.} Oh, certainly. Sure.

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

Mr. {Pallone.} Okay. Thank you. Let me ask some questions of Mr. Jones.

The Toxic Substances Control Act requires that when EPA needs to regulate a chemical, it must use the least burdensome option. And this least burdensome requirement is widely recognized as one of the biggest obstacles to

effective implementation of TSCA. Since EPA's failed attempt to regulate asbestos in the corrosion proof fittings decision, EPA has been saddled with performing time and resource intensive cost benefit analysis on every potential alternative, not just as on a regulatory control option selected. So, Mr. Jones, you referred to this problem as paralysis by analysis in the past. Is this a problem that should be addressed in TSCA reform?

Mr. {Jones.} It absolutely is a problem that should be addressed in TSCA reform.

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

Mr. {Jones.} Thanks, Congressman. I think it would be important in legislation to be clear about how expansive the cost effective analysis would need to be. What we would be worried about is that at court would decide that all 12 or so options of risk management had to be evaluated for us to be able to say that the one we selected was cost effective. Another reading would be as long as we have looked at a

couple of options that that bound the options that we would have achieved the cost effective. Cost effective is a relative term inherently. So I think it would be useful to have clarity on that point so that we don't have the same kind of paralysis by analysis that least burdensome created.

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

Mr. {Jones.} That would be a way to achieve that objective.

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

Mr. {Jones.} I think that you are right that that has-- there is an anti-innovation aspect of that that we have seen over and over again in many, many different contexts, the

ability of the American industry to innovate things that may not have been available at any given time. And our ability to predict that is very limited.

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

Mr. {Jones.} Yes.

Mr. {Pallone.} Yeah. Okay. Well, as I had previously mentioned, I think they should be removed from the draft to enable the EPA to act and to encourage innovation. Those are my questions. Thank you, Mr. Chairman.

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

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

Mr. {Jones.} I have some familiarity with the Canadian approach. Yes.

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

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

Mr. {Pitts.} Well--

Mr. {Jones.} But we would be able to set priorities.

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

Mr. {Jones.} I think it is very important.

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

Mr. {Jones.} No, I don't. I just think it is important for the agency, before a chemical moves to the market, to speak with--speak to its safety.

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

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

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

Mr. {Jones.} I think we would be able to do that. Yes.

Mr. {Pitts.} In your testimony on November 13 before this subcommittee, you testified that a necessary improvement

to TSCA is a mandatory program that gives the EPA the authority to review the safety exist--of existing chemicals. Does the April discussion draft include such a program?

Mr. {Jones.} It moves in that direction. What I think it is lacking is a requirement the agency set a certain number of high priorities every year. Once a priority is--a chemical is determined a high priority, we are then on a pace. We have four years to do a safety assessment, and then three years after that to do a risk management. But the agency could choose to have a very, very low number of chemicals set as high priority. And thinking--creating something that creates that constant forward motion with some robust number I think would be important.

Mr. {Pitts.} Is a four year deadline to complete risk evaluations, established in Section 6, sufficient time for the agency?

Mr. {Jones.} Yes, it is.

Mr. {Pitts.} Does the April draft provide flexibility--enough flexibility to take into account a range of considerations when chemicals do not meet a safety standard, including children's health, economic costs, social benefits, equity concerns? Does that draft provide the flexibility to

the agency that you desire in Section 6?

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

Mr. {Pitts.} And does the discussion draft prohibit EPA from considering cost and benefits when performing--making a risk evaluation on a chemical substance?

Mr. {Jones.} It prohibits us in the risk evaluation phase, yes.

Mr. {Pitts.} In the risk--yeah. My time is up. Thank you, Mr. Chairman.

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

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

Mr. {Jones.} Correct.

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

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

Mr. {McNerney.} Okay. Thank you. Would asking companies to provide the EPA with a minimum data set assist the agency in making timely, informed determinations on these chemicals?

Mr. {Jones.} We don't believe a standardized minimum data set is warranted for new chemicals. And--or for existing chemicals, for that matter.

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

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

Mr. {McNerney.} Oh.

Mr. {Jones.} That would be very beneficial to chemical safety in the United States.

Mr. {McNerney.} Is that permitted in the Chemicals and Commerce Act?

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

Mr. {McKinley.} Is there an opportunity in the Commerce--Chemicals in Chemicals Act to do that?

Mr. {Jones.} I think it is worth exploring.

Mr. {McKinley.} Thank you. We have heard from the GAO and other stakeholders throughout this process that the EPA needs more information and testing. But these so called scientific standards in the new draft simultaneously restrict the EPA's testing authority while establishing a mandatory duty to the EPA to consider a prescriptive list of elements when evaluating studies and tests. Mr. Jones, if enacted,

would the scientific standards language provide additional opportunities for litigation, in your opinion?

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

Mr. {McKinley.} Increased litigation could result in scientific issues being resolved in the courtroom.

Mr. {Jones.} That is correct.

Mr. {McKinley.} Are judges well equipped to make decisions about scientific issues?

Mr. {Jones.} I am not--I would prefer not to--I think in general, they would prefer that they are made in agencies like the EPA.

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

Mr. {Jones.} Yes.

Mr. {McKinley.} Thank you. Mr. Chairman, I yield back.

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

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

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

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

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

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

Dr. {Gingrey.} What is your budget breakdown by category for the individual sections of TSCA?

Mr. {Jones.} Funny you should ask that.

Dr. {Gingrey.} If that is going to take too long, I will just skip down to the next--

Mr. {Jones.} I got it right here. Yeah. So we spend about 16--just under 17 million dollars for new chemicals, about 28 million dollars for existing chemicals, and 12 million dollars or thereabouts on the information systems that service both those.

Dr. {Gingrey.} So what is the EPA budget in both funding and full-time equivalent for the chemical review under Section 5?

Mr. {Jones.} Ballpark, about 16.7 million dollars.

Dr. {Gingrey.} I am sorry. How much?

Mr. {Jones.} Sixteen--just under 17 million, 16.7 million dollars for Section 5.

Dr. {Gingrey.} And what would the agency expect the outliers to be under the new TSCA Section 4 authority?

Mr. {Jones.} I am sorry. Could you ask that again?

Dr. {Gingrey.} What would the agency expect this outlays to be under the new TSCA Section 4 authority?

Mr. {Jones.} You know, we spend about 12 million dollars now in data gathering, but we have not costed out under the--you know, the discussion draft what we would spend under that authority. Interestingly, we would probably be getting more data. But it would be cheaper to get it,

because the orders are much cheaper to do than rulemakings are.

Dr. {Gingrey.} How about Sections 6, 8 and 14?

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

Dr. {Gingrey.} Let me try this one, too. Evaluate 20--let us say 20 chemicals per year. How much money and staff would you--do you think you would need?

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

Dr. {Gingrey.} Sure.

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

Dr. {Gingrey.} Yeah, that sort of leads to the rest of

that question. What would you need to evaluate 50 chemicals, 100 chemicals? And is there an economy of scale?

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

Dr. {Gingrey.} And my final question for you, if the agency got new fee authority provided in the discussion draft, how would you implement it?

Mr. {Jones.} That is an interesting question. The--we have--in the other part of my operation, which is the pesticides program, the--we have fee authority. And the way it actually came about--and actually you got some panelists on the next panel who participated in it--is the stakeholders, the NGOs in the industry actually came up with the constructs. It gets into very great detail, but that is what they wanted. They wanted a lot of detail with respect to it. Whether the--you had a scenario where stakeholders developed the fee structure, or you gave EPA the authority--if we had the authority, we would get together with the

stakeholders to figure out how to do something that was fair and equitable.

Dr. {Gingrey.} Mr. Jones, thank you. Mr. Chairman, I yield back.

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

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

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

Would the second draft be better than current law?

Mr. {Jones.} It has--there are marginal areas of improvement, as particular data gathering authority.

Mr. {Green.} Okay.

Mr. {Shimkus.} So, gentlemen, that is a yes?

Mr. {Jones.} I would--

Mr. {Shimkus.} This is important. It is a yes or no.

Mr. {Green.} What it means if it is a yes, we are going in the right direction.

Mr. {Jones.} You are moving in the right direction.

Mr. {Green.} Okay. Does the discussion draft provide EPA with full and complete authority to obligate companies to provide toxicity data?

Mr. {Jones.} Yes.

Mr. {Green.} Okay. The discussion draft actually does that?

Mr. {Jones.} Yes.

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

Mr. {Jones.} It requires us to include them in our

safety evaluations.

Mr. {Green.} Okay. Does the EPA currently look at the aggregate exposure of chemicals today in meeting the current safety standard? If not, do you believe that the agency should have that authority to do so?

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

Mr. {Green.} Okay. Do you know if the discussion draft has--addresses that?

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

Mr. {Green.} Okay. In the discussion draft, would information claimed as confidential business information be allowed as evidence in a court of law?

Mr. {Jones.} I can't answer that question. Sorry, Congressman.

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

Mr. {Jones.} The substantial evidence I believe is the

judicial standard in the discussion draft.

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

Mr. {Jones.} And I am not able to answer that question.

Mr. {Green.} Okay. Has the agency ever reconsidered exemptions for chemicals regulated under Section 5 of current TSCA? And if so, what chemicals, and would a status reconsideration--has the agency reconsidered exemptions for chemicals under Section 5?

Mr. {Jones.} We have added the number of exemptions under Section 5.

Mr. {Green.} Okay. So if chemicals--can you name those chemicals, or give us a status of that reconsideration--

Mr. {Jones.} There would be categories of chemical--categories that included exemptions over time.

Mr. {Green.} Okay.

Mr. {Jones.} And we can describe what those categories are.

Mr. {Green.} In your testimony, you state that EPA should have the flexibility to consider, among other things,

equity concerns, which--when making a risk management action. Could you explain what you mean by equity concerns, and why are they important to the administration--to the agency?

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

Mr. {Green.} Okay. Well, Mr. Chairman, this is the first time I think in a long time I have any time left. Does anybody on our side need another half a minute or so? I yield back my time.

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

Mr. {Johnson.} Thank you, Mr. Chairman. Mr. Jones, I understand that printed circuit board manufacturers recently met with EPA officials to discuss TSCA reporting obligations on byproducts sent for recycling.

Mr. {Jones.} Yes.

Mr. {Johnson.} Now, the good news is this meeting has been characterized to me by those manufacturers as a

constructive step in addressing industry's concerns that TSCA reporting on byproducts is unnecessarily burdensome and complex. So I would simply like to ask today for your commitment to continue working closely with industry over the next month to determine how reporting on byproducts sent for recycling can be reduced or eliminated.

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

Mr. {Johnson.} Well, we are looking for commonsense. And I appreciate it.

Mr. {Jones.} I agree with that.

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

we can do encourage recycling of those secondary materials--

Mr. {Jones.} Yeah.

Mr. {Johnson.} --which are often rich in metals and other valuable materials, by establishing sensible and non-overlapping reporting regimens that minimize the burden on industry. It ought to be a business friendly environment.

Mr. {Jones.} I think we can figure out a--

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

Mr. {Jones.} Yes, you can.

Mr. {Johnson.} Well, those were easy questions, weren't they?

Mr. {Jones.} They were.

Mr. {Johnson.} Good deal. All right. Thank you. Mr. Chairman, I yield back.

Mr. {Shimkus.} The gentleman yields back his time. The Chair now recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. {DeGette.} Thank you very much, Mr. Chairman. And thank you, Administrator Jones, for coming. You know, I have to say that I--that there are members on both sides of the aisle, as you know, who have been working together on trying to find consensus on this Bill. And we have been meeting for quite some time, Mr. Green and me and Mr. Tonko and the Chairman and others. And we have made a big investment of our time and effort into trying to untie this very complicated knot. But I would agree that time is running short. And I would also agree with what you said, Mr. Administrator, that this latest discussion draft is moving the ball forward a little bit. But I still think we need to have some substantive changes before we get to that sweet spot. And I also agree with the Chairman that I think at this point, the--this side of the aisle, my side of the aisle needs to put some specific language forward. So, Mr. Chairman and Mr. Tonko, I look forward to working with both of you so that we can get some language that will help address the concerns that we still have.

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

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

There is also a new restriction in the latest draft that places on EPA's ability to share the most critical piece of chemical information, health and safety studies. While current law provides that health and safety studies can never be claimed as CBI, the new draft would allow companies to keep secret the identity of chemicals implicated in a health and safety study. So that is what I want to ask you about,

Mr. Jones. Isn't it true that the agency has been tightening its policies on CBI in an effort to increase transparency?

Mr. {Jones.} That is correct.

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

Mr. {Jones.} That is correct.

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

Mr. {Jones.} Yes.

Ms. {DeGette.} Now, would that be consistent with the Administration's principles on TSCA reform?

Mr. {Jones.} No, it wouldn't.

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

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

Ms. {DeGette.} So they wouldn't know what chemicals to

avoid, is that right?

Mr. {Jones.} They wouldn't know what chemicals to avoid.

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

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

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

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

Ms. {DeGette.} Okay. Now, are there cases where the only appropriate unique identifier would be the actual identity of the chemical?

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

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

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

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

Mr. {Jones.} Um-hum.

Dr. {Cassidy.} Okay. And then once determining that, going over to maybe the next section, Section C, there is a

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

Mr. {Jones.} Um-hum.

Dr. {Cassidy.} Would you agree with that?

Mr. {Jones.} That we should be making risk based determinations, yes.

Dr. {Cassidy.} And that there should be some latitude for EPA to make a determination as to what is the potential exposure. If the potential exposure is nil, it sure may be a great hazard, but exposure if nil so therefore we are okay with it.

Mr. {Jones.} Anything times zero is zero.

Dr. {Cassidy.} All the way up until oh, my gosh, we just need to totally eradicate this from society?

Mr. {Jones.} Correct.

Dr. {Cassidy.} Now, that seems that mechanism is laid out here. And it seems like that is what we should--that is the paradigm we should be employing. Would you agree with

that?

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

Dr. {Cassidy.} If the benefit of regulation outweighs the risk?

Mr. {Jones.} The health benefits needs to outweigh the cost.

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

Mr. {Jones.} Um-hum.

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

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

Dr. {Cassidy.} But how else then do you do it?

Mr. {Jones.} If you are able to consider costs in your risk management, you can make choices as to whether or not

you think, as the costs of achieving the ideal level of safety may be such that you may not want to get to that level of safety but a little bit below that--

Mr. {Shimkus.} Would the gentleman yield?

Dr. {Cassidy.} Yes.

Mr. {Shimkus.} What--doesn't the Presidential Executive Order require you to do that any way?

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

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

Mr. {Jones.} No, it--but it matters in terms of ultimately the judicial review that occurs, which the OMB requirements is irrelevant to the judicial review. It is the statute that governs that.

Mr. {Shimkus.} I would yield back to my colleague. Thank you.

Dr. {Cassidy.} And I am sorry. I got all my pages--my staple came off, and it is--and my staples are apart. But it did seem as if there is a graduated way in which the EPA

would be able to do some sort of cost benefit analysis and ultimately--and concluding with the total banning of the substance. But I am hearing from you that you either don't want that authority or that you think you should have the authority. What am I hearing?

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

Dr. {Cassidy.} I don't think people are talking about scientific precision. I think they are talking about some sort of weighing of commonsense.

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

Dr. {Cassidy.} Can I have a little bit--one extra question. So my frustration is obviously this leads to where we are going to ban something even though it costs a million dollars to ban it, and there is only a buck of--if you totally discharge the responsibility for coming up with such

a thing--don't want the authority, then you actually come into a situation where there is the death of commonsense, where you really need to no longer sell fire hydrants because we can't quantitate the relative exposure. Now, we can't have it both ways. We can't say give you a little bit of wiggle room so that we are not banning fire hydrants, and on the other hand saying oh, my gosh, we don't want that authority because we don't have the ability to pull off the analysis.

Mr. {Shimkus.} Gentlemen--

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

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

Mrs. {Capps.} Thank you, Mr. Chairman. And thank you, Mr. Jones, for your testimony today, for being with us. Many stakeholders have raised concerns about the need to protect vulnerable populations in any modernized TSCA. It has been a point I have made in our previous hearings on this topic. I think it is absolutely essential.

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

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

Mr. Jones, you previously testified that a chemical should not be able to pass the safety standard under reformed

TSCA if it is dangerous to a vulnerable population. But my understanding is that this revised draft does not provide this guarantee. Instead, it uses a cost benefit standard to direct EPA to balance the health risks to vulnerable populations--subpopulations against the cost to the industry to take protective action. Do you think--is your opinion that this is an accurate statement? Or if not, would you correct me?

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

Mrs. {Capps.} Okay.

Mr. {Jones.} Otherwise, I think your characterization is accurate.

Mrs. {Capps.} Okay. So that means if we enact this proposal, we should--we couldn't tell parents that the law always puts the health of their children first, right?

Mr. {Jones.} That is correct.

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

Mr. {Jones.} We prefer the latter.

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

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

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

Mr. {Jones.} Section 4 does that, yes.

Mr. {Bilirakis.} Say that again.

Mr. {Jones.} Section 4 does that, yes.

Mr. {Bilirakis.} Very good. Does the expansion of testing authority to cover the chemical prioritization

process provide the agency sufficient flexibility to obtain additional information necessary to take--to make decisions in priorities?

Mr. {Jones.} Yes, it does.

Mr. {Bilirakis.} Okay. Thank you very much. I appreciate--thank you. I yield back, Mr. Chairman.

Mr. {Shimkus.} The gentleman yields back.

Mr. {Tonko.} Mr. Chair?

Mr. {Shimkus.} The gentleman--what--for what purpose does the gentleman ask recognition?

Mr. {Tonko.} Right. If I might, you have mentioned a number of times that you would like to see language from our side of the aisle. There seems to be an implication that somehow we have refused to engage in the process. I just want to clarify the record. After you released your discussion draft in March, our staff sat down on a bipartisan basis to discuss it. Our staff identified 12 areas where we needed to have further discussion in order to reach a bipartisan agreement. Staff discussed these issues. With many of the issues, your staff informed our staff that changes would not be possible. In other cases, I am told your staff expressed some receptivity, but they did not want

to work out language with us. Our staff offered to go to legislative counsel with your staff to work together on the text, but that offer was refused. So if this is a misunderstanding and you would like our staff to work out language together, I would suggest we direct them to do so. We are happy to engage, and I hope there is sufficient flexibility to address the stakeholders' concerns.

Mr. {Shimkus.} If the gentleman would yield?

Mr. {Tonko.} I will yield.

Mr. {Shimkus.} Yeah, this has been an interesting process for me in that we have worked diligently with members, with staff, with Full Committee staff, sometimes with individual staffs at other times. We continue to have asked for language. We have not received language. We can go through this process of junior high, he said what to who and who is talking to who, and why aren't they doing this to the other person? It--I am telling you, I am--it is a tad frustrating. All we are trying to do is drop a draft of a Bill. We have accepted language. We have moved the process forward. We want to continue to do that. We hope that you will work with us in that process. But there is a time when members need to talk to members. And with all due respect to

our staff who are very, very smart, if there is a problem with this process, then you can walk down the hall. You can pick up the phone. We can meet with our staff together, which we have done with some members. So we are moving forward. We appreciate the help and support. And if there has been frustration, it is just this is a very difficult process. Many of us are not lawyers. And this thing has not been revised since I was in high school. We can do better, and that is all we are trying to do.

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

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

Mr. {Tonko.} Okay.

Mr. {Shimkus.} So--

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

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

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

I will introduce everybody first and then call you individually for your opening statements. I think that is, for me, the most expeditious way of--from my left to right,

we are joined by the Honorable Cal Dooley, President and CEO of American Chemistry Counsel, former colleague, great friend. And we appreciate you being here. Dr. Beth Bosley, President, Boron Specialties, on behalf of the Society of Chemical Manufacturers and Affiliates. Again, thank you for being here. MR. Mark Greenwood, Principal of Greenwood Environmental Counsel. Sir, welcome. You have testified before. So we--good to see you again. Dr. Len Sauers, Vice President of Global Sustainability for Proctor & Gamble Company. Again, another familiar face. Mr. Steven Goldberg, Vice President and Associate General Counsel, Regulatory & Government Affairs for BASF. You have also been here before. Mr. Andy Igrejas--

Mr. {Igrejas.} Igrejas.

Mr. {Shimkus.} Igrejas. Oh, you are over there? Okay. We have got our things mixed up--National Campaign Director of Safer Chemicals, Healthy Families. Another familiar face. And the Honorable Michael Moore on behalf of the National Conference of State Legislators. Sir, welcome. So we will start with Mr. Dooley. Your full statement is in the record. You are recognized for 5 minutes. And thank you for coming.

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^TESTIMONY OF HONORABLE CALVIN DOOLEY, PRESIDENT AND CEO, AMERICAN CHEMISTRY COUNCIL; DR. BETH BOSLEY, PRESIDENT, BORON SPECIALTIES, LLC, ON BEHALF OF THE SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES; MARK GREENWOOD, PRINCIPAL, GREENWOOD ENVIRONMENTAL COUNSEL, PLLC; DR. LEN SAUERS, VICE PRESEDENT, GLOBAL SUSTAINABILITY, THE PROCTOR & GAMBLE COMPANY; STEVEN GOLDBERG, VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL, REGULATORY AND GOVERNMENT AFFAIRS, BASF; ANDY IGREJAS, NATIONAL CAMPAIGN DIRECTOR, SAFER CHEMICALS, HEALTHY FAMILIES; AND HONORABLE MICHAEL MOORE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES.

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^TESTIMONY OF HONORABLE CALVIN DOOLEY

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

been raised by a number of members of this committee at the February 27 hearing on the previous draft.

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

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

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

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

considerations are only considered in the risk management phase of the regulation.

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

And Congressman Pallone has asked about TSCA's current requirement to apply the least burdensome option. He mentioned that in his questions earlier today. This draft eliminates the least burdensome requirements, enhancing EPA's ability to efficiently and effectively impose regulations on chemicals.

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

I think it is instructed to see how the CICA could apply to the use of this fluorescent--CFL fluorescent light bulb.

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

public policy.

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

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

[The prepared statement of Mr. Dooley follows:]

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

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^TESTIMONY OF DR. BETH BOSLEY

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

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

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

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

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

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

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

Regarding existing chemicals, the new draft contains an additional requirement for EPA to review available

information on a chemical, including any screening level information, before requiring testing. We support this change. It only makes sense that EPA leverage all the available data and information before pursuing potentially burdensome testing regimens.

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

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

As I have mentioned in prior testimony, the Bill should also expand TSCA's Section 8(e) to authorize submission of

non-adverse data and to require EPA to take that data into account when prioritizing and evaluating chemicals. Presently, Section E is biased toward only adverse data, because that is all that we can submit. Such an enhancement would greatly increase the amount of data submitted under this authority, which can only improve the EPA's understanding of chemical hazards.

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

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

unreasonable risk.

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

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

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

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

[The prepared statement of Dr. Bosley follows:]

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Mr. {Shimkus.} Thank you very much. Mr. Greenwood, you are recognized for 5 minutes.

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^TESTIMONY OF MARK GREENWOOD

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

What I would like to do is offer some comments of the strengths of this Bill in the context of some of the historical issues that have occurred in the TSCA program. And I really would like to respond to something that I think is a fairly puzzling characterization I have heard that somehow this discussion draft is worse than the current law. And just as kind of a reality check and--I thought I would reflect back on 1990 when I started as an office director at EPA. And if they could have given me a choice between the law that was there on the books, which by the way is the law we have today, and this discussion draft, which would I have

preferred to do the best job I could to protect the American people from chemical risk? I found it very easy. I would select the discussion draft.

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

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

A second one that is very important is prioritization. One of the curses that TSCA is that is has always been the statute, particularly in Section 6, that can do anything but has a mandate to do nothing. And that has been a problem institutionally. EPA and the TSCA program has always had problem getting more resources for the program. It has had a problem getting its regulations through the review process.

We often saw the phenomenon which I experience several times when new political leaders would come into EPA, they look at this wonderful new tool and say this can be used for this special project. And that special project then disappeared when they left. And the career people at EPA were left with another failed project.

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

The third thing which I think you have added, which is an improvement over other drafts, is this distinction in the safety standard/now risk evaluation and risk management provisions to distinguish what you call a significant risk and an unreasonable risk. And what is important there is probably less the specific words of the standard than the fact that you articulate the considerations that go into that decision. And they are very distinct. So you do have a significant risk decision that looks solely at health and environmental factors, and explicitly says that costs and benefits are not part of that decision. And I thank you for

Jim Jones recognized that that is an important change.

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

The second area I want to address is actually confidential business information, which has often been identified as a systematic problem with TSCA. Now, this perception I think unfortunately can be traced back to some events that occurred during my tenure at EPA. Back in 1990, we decided to create a new strategy for the program in which we tried to, as we said, go public with the information that we had about health and environmental risks of chemicals. It was very much aligned with--at that time with the public right to know programs. We were in charge of the toxic release inventory. And we thought that was a good thing to do. Now, in going on and doing this, I am afraid we kind of stirred a rather serious debate. And we have had a debate on CBI reforms and CBI changes, which have gone on for many years. It was not productive. It was very polarized. The debate was not very well explained. However, a group of people working on this Bill, in the Senate and in the House,

have come together. NGO groups are involved. Industry was involved, to come up with some commonsense reforms which I think, as a package, have really advanced this debate, and I think can resolve a lot of the issues that have plagued the program for over 20 years. So in a sense, you had a guerilla war for the last 20 years on this topic. And you have the ability in enacting this to perhaps ratify the TSCA CBI treaty of 2014 and resolve this war. And that has got to be a success story in any case.

Thank you for your time.

[The prepared statement Mr. Greenwood follows:]

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

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^TESTIMONY OF LEN SAUERS

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

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

The time for action is now. A strong and effective federal chemical management program will lessen pressure on

states or markets to independently take action to regulate chemicals. Enhancing consumer confidence is P&G's single most important objective for modernizing TSCA. We recognize and hear from our consumers that they are concerned about chemicals used in every day products. We believe a modernized TSCA will strengthen public confidence in EPA's oversight of the safety of chemicals used in the everyday products that consumers bring into their homes and use around their families.

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

and NGO stakeholders that a new safety standard in a modernized TSCA should be health based only.

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

Another important element of the proposed CICA act is support for innovation through protection of confidential business information. Proctor & Gamble invests two billion dollars annually in research and development. It is 60 percent more than our next closes competitor, and more than most of our competitors combined. Once we bring new products to market, we have significant interest in protecting our confidential business information from public disclosure to our competitors. Appropriate protections for confidential information allow innovative companies to succeed, and for P&G to earn our consumers trust and loyalty. We rely heavily on the protection of confidential business information

afforded by Section 14 of TSCA to remain competitive.

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

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

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

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

[The prepared statement of Mr. Sauers follows:]

********** INSERT 5 **********

Mr. {Shimkus.} Thank you. Now, the Chair now recognizes Mr. Goldberg for 5 minutes.

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^TESTIMONY OF STEVEN GOLDBERG

} Mr. {Goldberg.} Thank you. Chairman Shimkus, Ranking--

Mr. {Shimkus.} I think there should be a button for that.

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

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

A number of key principles and concepts for TSCA modernization are the subject of agreement among a wide variety of stakeholders, including the fact that TSCA should provide for additional authority for EPA to review and manage

risks from existing chemicals on the market as it has successfully done for new chemicals since TSCA's inception. A prioritization process is an appropriate way for EPA to commence reviewing existing chemicals in order to ensure its resources are spent in the most efficient way.

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

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

The benefit and cost considerations are not appropriate when making a safety assessment, but are critical in deciding

the appropriateness of risk management measures. As discussed, there should be appropriate protections for CBI. And, finally, EPA will require sufficient resources to be able to fulfill its mandate in a timely manner under a modernized TSCA.

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

Ultimately, one key to success of a modernized TSCA is ensuring that EPA has the resources to do its job. And there was extensive discussion about how many chemicals it could review and what sort of time period. Ultimately, a program that provides EPA the authority but not the resources to do that job is a losing proposition for the chemical industry, our customers and the public. And so the program posited by the CICA clearly will require additional resources in EPA's Office of Pollution Prevention and Toxics to allow this program to work.

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

Ultimately, while PRIA provides some direction for possible approaches towards meeting resource needs in the

chemicals area, it is a somewhat imperfect model. It is a different type of statute. It is a product registration statute instead of a substance statute, as more fully noted in my written testimony. However, there are some models I think that will help.

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

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

And we thank you very much for your consideration.

[The prepared statement of Mr. Goldberg follows:]

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

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^TESTIMONY OF HON. MICHAEL MOORE

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

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

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

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

Throughout my career in public service, I have seen the benefits of--state and federal chemical policy firsthand. As a state environmental police officer, I worked under the

office of state--of the state attorney general's environmental strike force to investigate crimes associated with illegal chemical practices. The state plays a vital enforcement role in chemical incidents as the primary investigatory authority in these matters, often coordinating with several federal and state organizations to ensure a safe and efficient response. For 18 years, I investigated serious violations of state law that had significant impacts on local communities.

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

incident.

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

When I became a state legislator, it became more apparent how intricately states must be involved in chemical policy. The--TSCA has not been updated for nearly 40 years, and states have acted to pass laws that complement the federal policy. All of these state laws would pass with the welfare of the public in mind. Beyond the host of Massachusetts' law that provides increased protection from toxic chemicals, several communities in my district are currently experiencing difficulties in costs associated with federal preemption of railroad operations. That really adds--I commend the subcommittee for their commitment to business

and interstate commerce in this draft, and understand the motivations for a uniform federal chemical policy to promote these goals. However, the advancements of these ideas cannot come at the expense of public and environmental safety. I share the residents' belief that approximately--I share the residents' belief that live on the other side to the potential spills--to the potential problems of spills entitles them to a measure of involvement in ensuring chemical safety. When 100 gallons of a chemical called Styrene, used in the manufacturing of Styrofoam, was spilled in one of these preempted yards, a cooperated effort of rail yard employees and workers from state municipal agencies were responsible for the cleanup. The incident was handled safely and professionally by all involved parties with only minor complaints of irritated eyes and lingering smells. However, if a rail yard is federally preempted from state law, and chemicals being transported are preempted, the citizens of these communities have no recourse to protect their homes and families from future spills. There must be a balance struck between the benefits of interstate commerce and the need for public safety. State legislators have and must continue to play a role in chemical policy in order to reach that

balance.

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

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

[The prepared statement of Mr. Moore follows:]

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Mr. {Shimkus.} Thank you. And now, I would like to recognize Mr. Igrejas for 5 minutes.

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^TESTIMONY OF ANDY IGREJAS

} Mr. {Igrejas.} Thank you very much, Mr. Chairman. Safer Chemicals, Healthy Families is a nonpartisan coalition of health, environmental labor organizations and businesses. We came together to do TSCA reform in a meaningful way, and we remain committed to that. I appreciate the opportunity to testify. And I especially appreciate the process you followed of having discussion drafts before going forward with a formal Bill. And I want to use the opportunity to encourage a different course before you do that.

We took this very seriously. We had a team of experts review the new draft. And we did note improvements. So I want to point them out so you don't have to do it for me. The testing authority is an improvement. The getting rid of the best available science definitions, the definitions of adequate information, et cetera. But we were still unanimous in our analysis that the improvements don't alter the bottom line, which is that when you take the ambitious preemption in the Bill--the sweeping preemption, with the things that have rolled back pieces of federal law, and then the fact that the

things that I believe you intend as improvements in the Bill, are still not there in our analysis. The net effect is to go backward. That is what we--that is our analysis of the Bill still.

The first question we asked our self, will the EPA be able to impose restrictions on unsafe chemicals under the Bill? And we came to the same conclusion that Jim did, that even though you have separated the assessment from the decision on risk management, the bottom line there is still that EPA has to prove something, too much like what it has to prove now, which has been shown to be unworkable, in order to impose the restrictions needed to ensure safety. And I hope you will agree that is a threshold issue that we have to solve, and I think we want people outside of the chemical industry concurring that it has been solved before we go forward.

The second questions is does the Bill establish a clear idea of safety that we can all be sure will protect pregnant women and children? And I think our answer again was no. I did want to credit that the assessment is now clearly health based, and there is a foothold for some key concepts like vulnerable populations, aggregate exposure, et cetera. But

they are not lined up in a way that assures the protection for pregnant women and children. And this term significant risk, which may turn out to be an improvement or something that we can work with, it is still unclear what that means. And we want to make sure it is clear.

The third question was does it improve or diminish the oversight of new chemicals? And this is where we are still perplexed over all that--our position, and I think most people's sense, is that new chemicals should be made to be safe--shown to be safe before they get on the market. That is the administration's principles. It is how a lot of people when they first get into this issue, they think chemicals work like drugs, and they are surprised that it doesn't work that way, and they think it should work that way. But we were--and the chemical industry has always said the new chemicals program, as it is, works fine. But we do see some rollbacks in that authority here.

They have limited authority to--and criteria whereby they can order development information and pose some risk management. And the new draft restores one of those, but still takes back a couple of those pieces of authority. We would like to see that removed.

We also asked will this increase the transparency and public confidence, which is a goal that has been even unstated, the industry is has enunciated. And our answer was no, again. I think the draft adds a layer of murkiness. And this has come up. For the first time, you explicitly allow the delinking--or require really the delinking of a chemical from the health and safety study--the chemical identity from a health and safety study that might implicate it as having health concerns. And that really does mean you could have a secret carcinogen on the inventory. That would be very hard for the public to track, is this being managed well? And I think the idea of public confidence is that when chemicals do have problems, we can see how they are being managed. And so that is going to be something that will undermine transparency.

The low priority designation, if it worked the way it was reference by one of the members, I forget if it was Mr. Latta, that it was just in ordering, what EPA is going to get to later. But because of the remaining links preemption here that it is not just EPA saying we are not going to look at this now, but we are going to prohibit states from looking at it in the future. All on the basis of this likely to be

safe, as opposed to that they found it to be safe, I think that that would be interpreted by many in the industry as basically a hall pass that people will want that. This is sort of a promise this chemical will never get looked at. And the first time something bad ends up somewhere that we don't want it, we are going to have a scandal. And the credibility of the whole program I think, and what the safety means, will come down. The preemption has been discussed in some detail. We agree with the comments that it is sweeping and overly ambitious. And so we would urge a different approach in the Bill.

I have engaged in a lot of dialog with people in industry on a lot of these issues. Part of our reaction is that we don't see a lot of what I had seen as ideas that have come out with--for more common ground approaches reflected in these drafts. And perhaps it is time to focus in on some key issues. And I think those would be is there a definition of safety that we can all understand and get behind, and not just my coalition but the folks in the medical community, the pediatricians, others that have weighed in on that subject. Is there clear authority that everyone agrees the EPA would have to impose conditions needed to ensure safety? Is there

a schedule and resources that we know are making meaningful progress at the federal level? And maybe that would be, you know, good for government work right there. Some real progress, but nothing that goes backwards. That is what we would be looking for.

So I would encourage that approach, Mr. Chairman. And thank you very much.

[The prepared statement of Mr. Igrejas follows:]

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Mr. {Shimkus.} Appreciate your testimony. And, again, we welcome all our panelists. And I recognize myself for the first 5 minutes for questions.

I guess I would like to start with this cost benefit analysis that Mr. Jones had testified briefly on, and that whole discussion near the end of the first panel, and offer anyone a chance to make a comment on it.

Mr. Greenwood, you look like you are ready to do that.

Mr. {Greenwood.} Well, one of the things actually I mentioned in our--my testimony was when you talk about cost benefit analysis and this unreasonable risk standard and what it means, I think it is useful to consider the fact that just a month ago, EPA proposed a new rule. This is under the FIFRA Statute for pesticides, but it is under an unreasonable adverse effects in the environment standard, very similar to unreasonable risk standard--proposed a set of very protective new standards for farmworkers, and explicitly indicated that this is to deal with some very serious effects on farmworkers, their families, on--to address the issues in environmental justice, and articulated this as part of the unreasonable risk standard. These are legitimate qualitative

factors to consider. There was a cost benefit analysis done.

Interestingly enough, the cost benefit analysis showed that if you purely look at the monetized costs and benefits, actually the regulation--the cost exceeded the monetized benefits. However, the government decided that because of the qualitative benefits, which can be considered in cost benefit analysis, this was a justified rule, and it was a rule that met the unreasonable risk standard. So I think we have to be very careful, assuming that the mere existence of a cost benefit analysis or unreasonable risk necessary leads to a less protective set of standards.

Mr. {Shimkus.} I--Mr. Dooley?

Mr. {Dooley.} If I can just add on to that? And that is--I use the example of the mercury in the light bulb. You know, if you didn't have a cost benefit analysis that considered, you know, the societal benefits, the environmental benefits, you could well have this product never brought to market. And I, you know, find it a little bit frustrating with Mr. Jones' testimony is that when he cited the EPA's principles, and even in his written testimony, he makes a very clear statement that they--for when chemicals do not meet the safety standard, they need to

have the flexibility to consider children's health, economic costs, social benefits and equity concerns. They are saying that you need a cost benefit analysis. That is consistent with President Clinton's Executive Order. It is consistent with President Obama's Executive Order. And it is consistent with the language in your discussion draft on page 45, which states determine whether technically and economically feasible alternatives that benefit human health or the environment, compared to the use proposed to be prohibited or substantially prevented, will be reasonably available.

This comment that Mr. Jones had that you have to weigh one alternative to another is not embodied in the draft legislation that you have presented to this committee.

Mr. {Shimkus.} Thank you. Let me move on. I will never get through all the questions. But for the Senator, does this Bill--and CERCLA is our Superfund federal legislation. CERCLA and Superfund are two federal pieces of legislation. Does this Bill exempt any of CERCLA and Superfund from regulation? Because--why I say that is your--in your comments about spills, that is all under CERCLA. And that is all under Superfund and remediation and the like. So my point is, those things aren't going to be exempted under

this piece of legislation. And it is an apples and oranges comparison. And I just wanted to--

Mr. {Moore.} That comparison may be--I would have to go back and research whether the Superfund and CERCLA is. But, actually, as my panelists--fellow panelist up here just presented the fluorescent light. Massachusetts actually just passed a recent mercury ban. So the question is in Massachusetts, would this--

Mr. {Shimkus.} Yeah. So no fluorescent light bulbs in Massachusetts?

Mr. {Moore.} Oh, no. We have fluorescent light bulbs.

Mr. {Shimkus.} But there is mercury in there?

Mr. {Moore.} But we--right. But there is a mercury ban that has been in place. And the Massachusetts law regarding the mercury ban would actually be preempted. So that is a law that Massachusetts actually passed that you preempted.

Mr. {Shimkus.} Okay. Well--okay. Thanks. The--now, I have lost all control over the direction I was going to go. Let me move to Mr. Greenwood. Some of the people involved in this debate have strong feelings about federal preemption. We just started talking about that. Why is it important to address preemption, and do you think the discussion draft

takes the right task?

Mr. {Greenwood.} Well, I think it is very important to address preemption. And I--but I would say it in the following way. It is important because that I think it is an increasingly important issue that needs to be teed up, actually for international purposes. And here is the context. Obviously, the United States, we get nervous about anything that goes to preemption, because it goes to key principles of the history of our country. But in the world of chemical management across the world today, we are facing a series of different kinds of controls from other parts of the world. There is a--we want to have at some point some kind of consistency of standards across borders. Obviously, within the country. But more and more the threat of making that very hard to do is the fact that we have countries around the world with their own chemical programs.

In the case of Europe, we have got a set of standards in reach that cover a continent. And if you are going to try to advance the interest of the United States and engage with the other parts of the world as your trading partners, you have to have a consistent position. The ticket for entry in that discussion is one country, one voice. You have to be able to

say we are here as the United States with our position in dealing with other countries and with European community. And our trading partners don't not want to negotiate with the individual states in the United States. They are expecting the federal government to speak for the country.

So at some point, one of the things that needs to be considered here is how preemption or other mechanisms that try to get people, the state regulators and the federal regulators, on the same page for purposes of these discussions will factor into how TSCA is designed.

Mr. {Shimkus.} Yeah. And I appreciate. My time is far expired. And I would like to now turn to Mr. Tonko, the Ranking Member, for 5 minutes.

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

Earlier, EPA told us that the discussion draft fails to address some key elements of meaningful chemical safety reform, and in some way weakens current--in some ways, weakens current federal law. That alone should give us pause. But the Bill also includes sweeping preemption of state and local laws.

Essentially, the Bill completely ties the hands of state and local regulators to protect human health and the

environment from toxic chemicals in commerce.

Senator Moore, I would like to explore the potential impacts of this preemption language with you. In your testimony, you mentioned that the State of Massachusetts--the Commonwealth of Massachusetts has passed several toxics use reduction laws, including a comprehensive chemicals management program requiring companies to develop a plan for pollution prevention. Why did Massachusetts develop this program, and were the federal programs inadequate?

Mr. {Moore.} Well, obviously in Massachusetts, we are looking at the needs of our--we determine to be the needs of our commonwealth, and what we determined are going to protect the welfare and the safety of our citizens, and protect the environment. So we are looking at our state and how we think we should move forward in a comprehensive process of addressing chemical use.

Mr. {Tonko.} So does that suggest the federal programs were inadequate?

Mr. {Moore.} I don't want to say inadequate, but I think everyone can admit that the EPA is--with the amount of work that they have to do, they are overtasked. There is a lot of responsibility put upon them. And from previous

testimony, what, there is 80--84,000 chemicals that right now have not been analyzed or looked at by the EPA.

Mr. {Tonko.} Has this program helped reduce toxic chemical use in your home state?

Mr. {Moore.} Yes. Yes, I don't have the exact figures. But I can tell you it has reduced toxic chemical use.

Mr. {Tonko.} And Section 17 of the discussion draft contains extremely broad language that preempts states from implementing laws and regulations that require the collection of information about chemical substances, or that restrict or prohibit the use and manufacture of those chemical substances. Senator Moore, how could this language affect your ability as a state legislator to serve your constituents?

Mr. {Moore.} Well, I think if we are going to be looking at state laws to protect the welfare of our citizens and the environment, and looking for our state regulatory agencies, Department of Environment Protection, I think having access to information is going to help up develop policies or state laws and regulations that are going to adequately support that need.

Mr. {Tonko.} In addition to preempting existing state

law, Section 17 of the discussion draft preempts state and local governments from passing new laws in the future to protect human health and the environment from toxic chemicals in commerce. That is putting a lot of faith in success of our federal program. Senator Moore, are you confident that the federal program envisioned by this Bill would be sufficient to protect human health and the environment from toxic chemicals?

Mr. {Moore.} From what I know of the legislation, at this point, I wouldn't not say so. Again, I--the concerns I have is that there are a lot of responsibilities put upon the Environmental Protection Agency from reviewing new chemicals to reviewing existing chemicals. I don't know what the resources that they would have to actually adequately perform this function.

Mr. {Tonko.} So then how do you see this as best working? What role should the state play, and what role should the federal government play?

Mr. {Moore.} I think they should work hand in hand. As discussed, I think government and business should work hand in hand in the promoting of interstate commerce, the promoting of business. I think the federal government and

state government should work hand in hand, working off each other's best practices and moving those initiatives forward. I don't think any one entity can do it alone. This is--I know the panel has said that, you know, when you are dealing on international trade issues that they want to know what the policies of the federal government. Well, state government also has--when we go abroad on trade issues, they want to know what state issues are being put forth. And we--in conjunction, we have to work with our federal partners. But we are not always putting--states are not always putting forward the initiatives being sought by the federal government. So there is different initiatives that each state are going to be looking at.

Mr. {Tonko.} Well, I appreciate your testimony and that of the panelists. I agree that the best model is one that sets a strong federal minimum standards, but allows our states to enact standards that respond to local needs and go above and beyond federal law to protect human health and the environment.

And with that, Mr. Chair, I yield back.

Mr. {Shimkus.} The gentleman yields back his time. The Chair now recognizes the gentleman from Ohio, Mr. Latta, for

5 minutes.

Mr. {Latta.} Thank you very much, Mr. Chairman. And thanks very much to our panelists for being here today. We really appreciate your time and your presentations.

Dr. Sauers, if I could start with a question to you. With TSCA regulating chemicals and of course, in the U.S. commerce, many of which become ingredients in consumer products, are there other departments and agencies out there that have authority over the safety of those packaged consumer products that are used in the home? And if so, would you explain the role of those other U.S. departments and agencies, and how that regulatory jurisdiction compares to what we are discussing for the EPA under TSCA?

Mr. {Sauers.} Um-hum. Yes, Congressman, thank you. The Proctor & Gamble Company makes a whole host of consumer products. We make drugs, food products, beauty care products, laundry detergents, things like that. And different agencies regulate different products. So if I think of our food products, beauty care products, cosmetics, drugs, those are regulated by the FDA. So chemicals that go into those products that are solely used in those products would not be regulated by TSCA. They are regulated by the

FDA.

Now, for those chemicals that go into say laundry detergents where the EPA would have a jurisdiction and would regulate those chemicals, the use of the chemical in the finished product is regulated by the Consumer Products Safety Commission. And they are the ones that regulate the use of hazardous chemicals in those products. So if something were to be declared say toxic, you know, by EPA, it would probably fall within the definition of hazardous within the federal Hazardous Substances Act, which the CPSC administers. And then the CPSC would then have a jurisdiction for labeling on the product, banning the use of the material. You know, if the felt that labeling could not ensure safe use of it for a consumer, they could ban the use of it there.

So there is a whole host of regulatory agencies overseeing these things.

Mr. {Latta.} Well, let me follow-up. Suppose if the EPA determines a chemical as a low priority. And as set aside under TSCA based on the EPA's knowledge of the chemical's limited use in the industrial environment, and that chemical may have significant hazardous properties, but the EPA understands there is a limited exposure to the

chemical and the exposure is well managed by occupational controls, would prevent a consumer product manager, like yours, from using that low priority chemical in an everyday product used by families in the home?

Mr. {Sauers.} Um-hum. If it was a chemical that was regulated by TSCA, then the Consumer Products Safety Commission would come into effect with its use in a finished product. And if it indeed was say a low priority chemical for which there was toxicity associated with--you know, a toxic--a potential--it would then be declared as hazardous by CPSC, and then there is a whole host of criteria on how hazardous materials are then handled in finished consumer products. There is a whole host of labeling requirements that would be on something like that. And the agency could also ban the use of a product if they felt that the labeling would not protect the consumer.

Mr. {Latta.} Mr. Goldberg, some people have been arguing that the United States needs a TSCA that mirrors REACH. Your company's a global company. So would you argue that having the same system would be in your interest?

Mr. {Goldberg.} Since we deal with so many different regions, I think we realize that we have to live in and adapt

to regional differences in the context of chemical management programs that fit the levels of both of protection, which hopefully from the BASF standpoint are consistent along all those regions, but also the individual regional differences that exist. And so while certainly from some degree we would all love, in the abstract world, harmonization that made it easier to live with. The fact of the matter is there are differences. And the schemes among these various regions can be very different. REACH is a very, very different scheme, even down to its basic nature, than TSCA is. And so while there are learnings--and as Mr. Jones said, there are some benefits that we can take moving from region to region, for example sharing of data, at the end of the day, we realize the need to adapt and be responsive to individual chemical management regimes.

Mr. {Latta.} So you agree that it would be important for the U.S. to have a system that is unique just to the United States?

Mr. {Goldberg.} Yes. I mean, in the context of the European system, for example, it is not a chemical management system the way we think of it here. It is really largely an--at least it started information gathering system that is

registrant or company based, as opposed to a substance based system that we have here. Changing that would require a rather dramatic overhaul. And as I have discussed with some of my colleagues, even in the environmental community, it is not a system I think that adapts itself well necessarily here.

Mr. {Latta.} Okay. So you think the lessons of REACH that the United States should avoid in TSCA would be this adapting well?

Mr. {Goldberg.} Well, I think there are a number of lessons we have learned about REACH, including the bureaucracy that has revolved around it, the costs--ongoing costs involved, which have not necessarily established themselves with measured levels of protection, because to date it has been about information gathering and not about risk management. And the goals of modernizing TSCA, as I said as one of my principles, is to provide EPA with additional authority to adequately manage risks.

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

Mr. {Latta.} Thank you very much, Mr. Chairman. My time has expired, and I yield back. Thank you for your indulgence.

Mr. {Shimkus.} The Chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. {McNerney.} I thank the Chairman. I also want to make sure the Chairman understands that we appreciate your bipartisan effort. I don't think we are there yet, Mr. Chairman. But if we keep working together, we will get there.

One of the things--I mean, there is a lot of reasons to want to change and improve TSCA. One of them I think is that there is a lack of confidence in the public in chemical safety in this country. And I think that is a problem that the companies, the businesses would want to address firmly. And it is one of my concerns with the Chemicals in Commerce Act is that it may actually go in the wrong direction, reducing public's confidence in our chemical safety in this country.

Mr. Igrejas, would you respond to that?

Mr. {Igrejas.} I think that is the concern. And it is why we counseled that we really focus in on the idea of safety--a definition of it, and the standards that the public health community, and not just the ones I represent but other folks, the American Public Health Association, the

pediatricians, others all agree it is something that would protect people. Legal authority to then implement what is needed to protect people after review against that safety standard, and funding and direction for EPA to make progress in making those decisions. And that is what we still don't see in this Bill because of the issues that have--that came up in Mr. Jones' testimony. And so we are concerned about that.

And then there is also--there are areas where some of the tools that EPA uses right now to provide protection for people are rolled back. We have highlighted the new chemicals program. And these tools are not ones that we think do the jobs to protect people from new chemicals, but they are at least there. EPA has sort of stitched together the ability to order testing and impose restrictions at different times. But some of that is rolled back.

And then you have the increase in secrecy on chemicals in the Bill with the explicit requirement that identity is hidden, even when it is linked to a health and safety study. And so I think that those things--well, we need to beef up the first thing and pull back on the other things I mentioned where the existing program is pulled back.

Mr. {McNerney.} Thank you. Mr. Moore--or, Senator Moore, the right to know laws are often used by states to protect their citizens. If this provision is stripped, how do you think it will affect the NCSL's work in ensuring public safety?

Mr. {Moore.} We would have to look at the implications of the state involved. I guess we couldn't look at it on a state by state basis, because this would then preempt the states having a right to implement the Right to Know law. So it is not even an issue that you could go back to each state legislator or administrator and--how do we get around this? If this preemption applies to the Right to Know law, there is nothing that the states could actually do to protect the public safety employees or workers who are being exposed to these types of chemicals.

Mr. {McNerney.} Okay. Thank you. Mr. Sauers, my understanding is that Proctor & Gamble is working to reduce animal use in testings. Do you--how do you feel that fits in with chemicals and safety--Chemicals in Commerce Act?

Mr. {Sauers.} Um-hum. Yeah. Thank you, Congressman. Yes, we are very sensitive about the use of animals in safety testing. As a company, we invest about 350 million dollars

on the development of alternatives. We appreciate very much the provisions that are stated in here that promote the use of animal alternatives, using structure activity relationship and things like that. So it is well represented and appreciated.

Mr. {McNerney.} Okay. Thank you--

Mr. {Shimkus.} Would the gentleman yield for a preemption question?

Mr. {McNerney.} Sure.

Mr. {Shimkus.} Because I think this--there is a lot of confusion. And so for Mr. Greenwood, how does--how do you think the preemption works? Does it, as I have been--we have heard, completely tie the hands or does it just preempt as the EPA acts on individual chemical--on an individual chemical?

Mr. {Greenwood.} That has been my--the latter point is what I--my understanding. When EPA acts, then there is the indication of the preemption. But it has to be the action of the agency, which then accomplishes--

Mr. {Shimkus.} So if there is no action, there is no preemption?

Mr. {Greenwood.} No. That is my understanding. That

is how I have read the Bill.

Mr. {Shimkus.} Okay. And thank you. Thank you, Mike. And--

Mr. {McNerney.} Just--I am going to yield back.

Mr. {Shimkus.} The gentleman yields back. The Chair now recognizes the gentlelady from California, Ms. Capps, for 5 minutes.

Mrs. {Capps.} Thank you, Mr. Chairman. And I thank this panel here for being here today with us. And I particularly want to welcome a former colleague, Cal Dooley, with whom I was privileged to serve in the House of Representatives in representing a lovely district not very far from my own home. And it is a pleasure to have you be a part of this panel.

As we heard from the first panel, the Bill before us fails to require protection of vulnerable populations in managing identified risks of existing chemicals. This fundamental flaw, in my opinion, could put women, children, the elderly, the disabled, workers and residents of hotspot communities at serious risk. Any TSCA reform Bill this committee considers should really ensure the protection of vulnerable populations.

And I would like to begin by discussing the specifics of how we could ensure that protection. I have asked some questions of our EPA witness about specific requirements. I want to follow-up on that with you, Mr. Igrejas. Mr. Igrejas, do you think that a chemical that is dangerous to a vulnerable population should be able to pass the safety standard under a reformed TSCA?

Mr. {Igrejas.} No.

Mrs. {Capps.} Can you explain whether the current draft offers that protection?

Mr. {Igrejas.} We think it doesn't provide the protection.

Mrs. {Capps.} Does your coalition, Mr. Igrejas, believe that risk management decisions must ensure that significant risks to vulnerable populations are addressed?

Mr. {Igrejas.} Yes, we do.

Mrs. {Capps.} And does the current draft ensure that vulnerable populations are protected from the risks identified when evaluating existing chemicals?

Mr. {Igrejas.} We believe that it does not. I could get into the details, but it does not.

Mrs. {Capps.} Well, I will give you a chance to do

that. Are there some specific changes that you would recommend that we need to include in such legislation as reforming TSCA to ensure strong protections for vulnerable populations?

Mr. {Igrejas.} Well, one of the key ones is the--right now, the assessment does specify that they look at vulnerable populations, but against the standard that we still don't know exactly what it means in the Bill. And I think we have identified that. It doesn't require that you aggregate the exposure to the vulnerable populations. And that is the key issue, because there might be multiple vulnerable populations for the same chemical. If you look at flame retardants, you have firefighters who now have a cancer prevention project that is about their disproportionate exposure to these chemicals when they go into fires. That is higher exposure for an adult. Then you might have children where there is the smaller amount of exposure could cause harm when the chemicals are used as directed in the home. And you want to make sure that the EPA is mapping the exposures--all the exposures that either of those groups has against them, and then devising the restrictions to make sure that they can only be used in a safe way and that the harm isn't occurring.

And I think the absence of aggregate exposure in the assessment--and then the key thing that was talked about a lot in the discussion by Mr. Jones is if EPA ultimately can't impose the restrictions needed to ensure the safety, then a lot of that is academic. You don't want to have all this risk identified and then not be able to actually go ahead and impose the restrictions.

Mrs. {Capps.} Um-hum.

Mr. {Igrejas.} So for those reasons, we think that it does not. Even though vulnerable populations and a decent definition of it are in the Bill, they are not actually protected by all the provisions.

Mrs. {Capps.} So it looks like there is some technology or a capability of identifying the risks and of actually, at least better than we are now, mitigating them. Would that be your assessment? Is that--

Mr. {Igrejas.} That definitely is. I think the--I cite the model of the pesticide program. And we can't import all the details of it here. But the basic idea of that you look at vulnerable populations. You add up the exposures. You impose the needed restrictions. That is the model that we have had in effect. There have been measurable public health

improvements from it. So we know it can be done. It is just that is there the will to do it?

Mrs. {Capps.} Right. But there is a pathway, or there is some precedent for doing this. Finally, could you speak to the public's opinion, because you work a lot with the public opinion on this topic as well? I would think that properly protecting children and seniors and the other vulnerable populations would--from the effects of dangerous chemicals should be fairly widespread, the enthusiasm for it might be a popular topic. What is your idea here?

Mr. {Igrejas.} Yes. It is--the support for protecting pregnant women and children from toxic chemicals in the sense of that there is a concern about chemicals now that they could be having an effect on a lot of the chronic disease that we see in the country. It is widespread. And so you would be on solid ground in taking action to do all those things with public opinion. And I can provide the details on that.

Mrs. {Capps.} I appreciate that. So in order to effectively reform TSCA, the Bill before us needs significant revisions regarding the protection of vulnerable populations. And there is a will in the country to do--or there is a

desire to do this. So I urge my colleagues and the stakeholders on this panel to refuse to support any--at least that is my opinion--that we shouldn't support any TSCA reform Bill that creates the illusion of progress while still leaving these vulnerable populations unprotected.

Thank you, Mr. Chairman. And I yield back my time.

Mr. {Shimkus.} The gentlelady yields back her time. We want to--seeing no other members, I have a unanimous consent request to place some letters into the record, a letter from 3M Corporation, a letter from 13 attorney generals, the American Association for Justice, Texas Campaign for the Environment, Mom's Clean Air Force, National Hispanic Medical Association and National Medical Association, the American Public Health Association, a number of healthcare organizations, a letter from 72 health professional, public health and environment and public interest groups. And that is it. Not this letter. Okay.

Mr. {Voice.} Oh, yeah. Sorry.

Mr. {Shimkus.} Yeah. I am sorry. I--see, I was right. Staff was wrong. We will note that down for the first time. And also a letter we received--I received from Ranking Member Waxman and Ranking Member Tonko on this legislation and

hydraulic fracturing.

Without objection, so ordered.

[The information follows:]

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

Mr. {Shimkus.} We want to thank you. This is a tough issue. You guys are all the experts. We do want to continue open discussions and comments, language, anything. You can come in and see me. An important piece of legislation. And we learned a lot today, and we appreciate your participation.

With that, I will adjourn the hearing.

[Whereupon, at 1:12 p.m., the subcommittee was adjourned.]