

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 {York Stenographic Services, Inc.}

2 RPTS KUHNS

3 HIF104.180

4 H.R. ____, THE TSCA MODERNIZATION ACT OF 2015

5 TUESDAY, APRIL 14, 2015

6 House of Representatives,

7 Subcommittee on Environment and the Economy

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:15 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. John
12 Shimkus [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Shimkus, Harper,
14 Latta, McKinley, Johnson, Bucshon, Flores, Hudson, Cramer,
15 Upton (ex officio), Tonko, Schrader, Green, DeGette, Capps,
16 McNerney, Cardenas, and Pallone (ex officio).

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

17 Staff present: Charlotte Baker, Deputy Communications
18 Director; Leighton Brown, Press Assistant; Noelle Clemente,
19 Press Secretary; Jerry Couri, Senior Environmental Policy
20 Advisor; David McCarthy, Chief Counsel, Environment/Economy;
21 Tim Pataki, Professional Staff Member; Tina Richards,
22 Counsel, Environment; Chris Sarley, Policy Coordinator,
23 Environment and Economy; Jessica Wilkerson, Legislative
24 Clerk; Jacqueline Cohen, Democratic Senior Counsel; Rick
25 Kessler, Democratic Senior Advisor and Staff Director, Energy
26 and Environment; and Ryan Schmit, Democratic EPA Detailee.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

27 Mr. {Shimkus.} The committee will come to order.

28 Before I start with my opening statement, I want to
29 recognize my classmate and my friend, Lois Capps, who has
30 announced her retirement, although I imagine she will be a
31 pain in our side for about a year and a half yet, so a very
32 nice thing. So I will recognize myself for 5 minutes for an
33 opening statement.

34 Today marks an important milestone in our effort to
35 modernize TSCA. The more we work together, Member to Member,
36 on a bipartisan basis, the more we understand each other and
37 how much we hope to accomplish. Our subcommittee has put in
38 a lot of hours on TSCA over the past couple years, and
39 actually I would say the past couple weeks, and that effort,
40 we believe, is about to pay off. It is gratifying to work
41 directly with Members on both sides of the aisle who bring so
42 much dedication to the task.

43 A week ago we unveiled the bill before us today.
44 Besides the bill language itself, that announcement carried a
45 couple other important messages. First, Members have been
46 working together directly, challenging each other to find

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

47 common ground, and discovering that we share many policy
48 objectives. Let's talk about some of those policy
49 objectives.

50 First, I think we all want EPA to do objective, science-
51 based examinations on some of the chemicals that are already
52 on the market. EPA already has some of these in mind to
53 evaluate because EPA thinks they have potential for
54 unreasonable risk of injury to human health and the
55 environment. Meanwhile, if manufacturers want to take a
56 proactive approach and ask the Agency to perform a risk
57 evaluation, we are okay with that as long as it meets the
58 same rigorous science requirements as the ones EPA itself
59 initiates, and the manufacturer is willing to pay the EPA
60 administrative costs of performing the work.

61 We also want to continue protecting confidential
62 business information, but for CBI claims made after our bill
63 becomes law, we would like manufacturers to reestablish those
64 claims at least once every 10 years. We think EPA should be
65 allowed to mandate testing on a chemical in order to complete
66 a risk evaluation, since the risk evaluation step is new to
67 TSCA.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

68 These are just a few of the provisions that appear in
69 the discussion draft. I think we also agree that the process
70 is, and should be, moving forward. Leading Members on both
71 sides are committed to that momentum. We will listen
72 carefully to stakeholders on what they like in the draft, and
73 we welcome suggestions they have for improvement. We will
74 collect those comments and then we will sit down as a
75 subcommittee and make decisions. Members should plan on a
76 subcommittee markup about a month from now on May 14th.

77 To facilitate our work, we will publish a revised bill
78 text reflecting consensus revisions in time to use as the
79 subcommittee markup vehicle, and I will be asking Chairman
80 Upton to schedule it for full committee consideration as soon
81 as practicable after the subcommittee has done its work.

82 I thank all of the witnesses today for their willingness
83 to participate. Assistant Administrator Jim Jones, you are
84 no stranger to this committee. Your agency has already
85 offered some informal technical assistance for which we are
86 grateful, and we expect to continue working with you on it
87 until the final version passes both bodies of Congress and is
88 signed by the President.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

89 We also welcome our second panel of witnesses. You are
90 all also friends to this Committee and we have been grateful
91 for your perspectives in the past. We look forward to
92 hearing from you on this fresh new approach.

93 Finally, I thank Chairman Upton for his full support on
94 this bill, and my friends, Paul Tonko and Frank Pallone, and
95 the subcommittee members and I would say the subcommittee
96 staff on both sides for all their active participation and
97 partnership in this project. Let's all keep working together
98 to get this vitally important legislation enacted.

99 [The prepared statement of Mr. Shimkus follows:]

100 ***** COMMITTEE INSERT *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

101 [The information follows:]

102 ***** INSERT 6 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

103 Mr. {Shimkus.} And with that, I yield back my time and
104 yield 5 minutes to the gentleman from New York, Mr. Tonko.

105 Mr. {Tonko.} Thank you, Mr. Chair, and I certainly
106 appreciate the tone. I value the friendship and partnership
107 we have in serving this committee.

108 Good morning to each and every one of our witnesses and
109 to my fellow panelists here. Thank you, Chair Shimkus, for
110 calling this important hearing, this very important hearing.

111 Our subcommittee spent a good deal of time on the Toxic
112 Substances Control Act in the last Congress. We had a number
113 of very good hearings covering many of the provisions of the
114 current law, and although we did not get to an agreement, the
115 exercise provided the members of this subcommittee with a
116 much better understanding of the current law and its
117 associated shortcomings. It is a new Congress. We have
118 another opportunity to develop a bill to address the key
119 problems with current law.

120 For much of the past 37 years, TSCA served the industry
121 well, but I would caution that TSCA needs to be balanced. It
122 needs to serve all perspectives well. Existing chemicals

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

123 remain on the market, and new chemicals entered commerce
124 through a limited review process that does not require
125 licensing or compel the production of minimal data sets.
126 Information provided by chemical manufacturers could be
127 labeled as confidential business information with less review
128 of whether the CBI claims were justified or not. Even in the
129 face of strong evidence that a chemical substance indeed
130 presented a significant risk, the Environmental Protection
131 Agency was unable to act.

132 For all practical purposes, TSCA has no enforceable
133 safety standard. Under the law's standard of unreasonable
134 risk and the requirement to produce substantial evidence, the
135 burden of proof of harm as interpreted by the courts is too
136 high to enable EPA to address even well-characterized risks.
137 In addition, the Agency has insufficient resources and little
138 authority to require manufacturers to produce information for
139 an adequate evaluation of those chemical risks. This is
140 especially true for thousands of older chemicals that
141 remained in commerce with no evaluation from the time the law
142 was passed to the present moment.

143 The overriding problem with TSCA is that the public has

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

144 no confidence in this federal program. As a result, the
145 public does not believe that the presence of a chemical in
146 the marketplace has any relationship to its safety. That is
147 not good for industry and it is not good for the public. The
148 federal program must have credibility.

149 The discussion draft that is the subject of today's
150 hearing represents a significant departure from the proposal
151 offered by Senator Vitter and Senator Udall, and I believe
152 that is an important step here in this House. It is also
153 different from the approach taken in the House last year. So
154 I believe that this draft has a number of benefits relative
155 to these two other proposals, and that is a very beneficial
156 thing in this process.

157 I want to commend the chair for working with us and
158 demonstrating a desire to discuss and address concerns raised
159 by Democratic members and by different stakeholders and
160 interest groups. I appreciate and applaud the Chair's
161 decision to narrow the scope of this effort and to focus on
162 the key problems with TSCA.

163 Again, I appreciate the partnership and the friendship,
164 but there is much more work to do, and I am prepared to work

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

165 with you as are the other members of our subcommittee, Mr.
166 Chair. My hope is that we can produce a bill that all
167 members of our subcommittee can support, one that truly can
168 become law. If we are to do that, the final product must
169 reflect compromise and gain the support of a broad coalition
170 representing all of the major stakeholder groups and it must
171 have the support of the Administration. I believe we can get
172 there and that this discussion draft makes a great start
173 toward the goal of passing a law but I do not want to mislead
174 anyone. There are still some tough issues to address. A new
175 TSCA must do more for public health and the environment than
176 the current law. It must preserve state authority to act to
177 protect their citizens in the absence of meaningful federal
178 action, and changes in policy alone will not be enough. The
179 Agency must have adequate resources by which to fulfill its
180 obligation to the public and to the regulated community. A
181 reformed TSCA should generate more innovation, not more
182 litigation.

183 I want to thank all of our witnesses who are
184 participating in today's very important hearing. Your input
185 on this draft legislation will be very important to our

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

186 efforts as we move forward, and again, I would like to thank
187 you, Mr. Chair, and commend you for tackling this important
188 and very challenging issue. It is not easy. I look forward
189 to working with you and the other members of this
190 subcommittee to complete this very important task.

191 And with that, I yield back.

192 [The prepared statement of Mr. Tonko follows:]

193 ***** COMMITTEE INSERT *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

194 Mr. {Shimkus.} The gentleman yields back his time, and
195 you know, without objection, what I would like to do, Mr.
196 Jones, is allow you to go for 5 minutes, and then when
197 Chairman Upton and the ranking member come, after that we
198 will let them give their opening statements, and with that,
199 you are recognized for 5 minutes.
200 Welcome.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

201 ^STATEMENT OF HON. JAMES JONES, ASSISTANT ADMINISTRATOR,
202 OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION, U.S.
203 ENVIRONMENTAL PROTECTION AGENCY

204 } Mr. {Jones.} Thank you. Good morning, Chairman
205 Shimkus, Ranking Member Tonko, and other members of the
206 subcommittee. I appreciate the opportunity to join you today
207 to discuss the much-needed reform of chemicals management in
208 the United States and the opportunity to engage early on the
209 recently released discussion draft, the TSCA Modernization
210 Act of 2015.

211 As you know, chemicals are found in almost everything we
212 buy and use. They contribute to our health, our well-being
213 and our prosperity. However, we believe it is essential that
214 chemicals are also safe.

215 TSCA gives the EPA the jurisdiction over chemicals
216 produced, used, and imported into the United States.
217 However, unlike laws applicable to pesticides and drugs, TSCA
218 does not have a mandatory program that requires EPA to
219 conduct a review to determine the safety of existing

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

220 chemicals. In addition, TSCA places burdensome legal and
221 procedural requirement on the EPA before the Agency can
222 request a generation and submission of health and
223 environmental effects data on existing chemicals. As a
224 result, in the more than 3-1/2 decades since the passage of
225 TSCA, the EPA has only been able to require testing on a
226 little more than 200 of the original 60,000 chemicals listed
227 on the TSCA inventory and has regulated or banned only five
228 of these chemicals under TSCA Section 630, the last of which
229 was in 1990. In the 25 years since, the EPA has largely
230 relied on voluntary action to collect data and address risks.

231 In the absence of additional federal action, an
232 increasing number of States are taking actions on chemicals
233 to protect their residents, and the private sector is making
234 their own decisions about chemicals to protect their interest
235 and to respond to consumers, it is clear that even with the
236 best efforts under current law and resources, we need to
237 update and strengthen TSCA and provide the EPA with the
238 appropriate tools to protect the American people from
239 exposure to harmful chemicals.

240 The EPA believes that it is critical that any update to

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

241 TSCA include certain components. In September 2009, the
242 Administration announced a set of six principles to update
243 and strengthen TSCA.

244 While the Administration does not have a position on the
245 discussion draft, there are several important observations
246 that I would like to offer.

247 The discussion draft provides the EPA with more
248 effective authority to compel the generation of health and
249 safety data on existing chemicals. The discussion draft
250 should give the EPA authority to set priorities for
251 conducting safety reviews on existing chemicals based on
252 relevant risk and exposure considerations. The draft
253 includes two means by which risk evaluations could be
254 initiated for existing chemicals. The first is that EPA
255 would be required to conduct a risk evaluation upon a finding
256 that the combination of hazard from and exposure to a
257 particular chemical substance has the potential to create an
258 unreasonable risk of injury to health or the environment.
259 The second allows for a chemical manufacturer to request that
260 EPA conduct a risk evaluation for a particular chemical
261 substance. In practice, this would likely lead to EPA

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

262 focusing the majority of its limited risk evaluation
263 resources on completing evaluations for chemical substances
264 requested by industry, which, once requested, start the clock
265 ticking on a number of deadlines. This could result in
266 evaluations for the chemicals with the most potential for
267 risk being put off indefinitely while EPA works on the
268 evaluations requested by industry. Additionally, the
269 requirement that EPA make an affirmative finding of the
270 potential for unreasonable risk, prior to initiating a risk
271 evaluation, creates a possible analytical catch-22 in which
272 EPA must make a finding regarding the potential for risk
273 prior to beginning the risk evaluation process. I note that
274 once the EPA is able to conduct an evaluation that finds
275 risk, the discussion draft appears to impose rigorous
276 deadlines for taking regulatory action to reduce those risks.
277 However, in many cases the deadlines in the draft are
278 unreasonably short.

279 The use of TSCA section 6 to limit or ban a chemical
280 that poses a significant risk has been a major challenge.
281 The discussion draft clearly removes TSCA's requirement that
282 the EPA demonstrate it is using the least burdensome

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

283 requirements needed to provide adequate protection. The
284 draft appears consistent with Principle 1 in that it
285 specifies that risk assessments should include consideration
286 of information on potentially exposed populations but not
287 information on cost and other factors not directly related to
288 health or the environment. The discussion draft, however, is
289 ambiguous on how EPA is to incorporate cost and other factors
290 into a risk management rule under section 6(a).

291 In the current discussion draft, the cap on fees is
292 eliminated; however, there are not provisions that ensure EPA
293 will be given a sustained source of funding for
294 implementation, as articulated in Principle 6. The
295 discussion draft is consistent with the Administration
296 principles in the area of transparency and availability of
297 information on chemicals, including giving the EPA the
298 ability to share chemical data with state, local and tribal
299 governments.

300 Mr. Chairman, thank you again for your leadership on
301 TSCA reform. I will be happy to answer any questions you or
302 other members have.

303 [The prepared statement of Mr. Jones follows:]

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

304 ***** INSERT 1 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

305 Mr. {Shimkus.} Thank you very much for your opening
306 statement, and I appreciate the comments I would like to turn
307 to Chairman Upton and thank him for his friendship and
308 support as we move forward, and you're recognized for 5
309 minutes.

310 The {Chairman.} Well, thank you, Mr. Chairman.

311 It is today an important milestone as we work to bring
312 our chemical safety laws into the 21st century, and I thank
313 Chairman Shimkus for his bipartisan member-to-member work
314 bringing this legislation before the subcommittee. I also
315 commend the ranking member of the full committee, Mr.
316 Pallone, for collaborating across the aisle to develop a
317 proposal that in fact we can all embrace.

318 We have heard from a diverse cross-section of
319 stakeholders that TSCA needs modernizing. When first enacted
320 nearly four decades ago, the structure was a bit of an
321 experiment. When our predecessors on this committee designed
322 TSCA, they were clearly attempting to reconcile diverse
323 points of view within Congress and with the American public.
324 But our challenge today is the same, but now we have the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

325 benefit of experience. Our witnesses include the
326 Administration's main point person on chemical regulation,
327 industry experts with global regulatory experience, and a
328 person who manages a chemical business on a day-to-day basis.
329 As someone responsible for meeting the payroll, she may have
330 the most valuable experience of all. We look forward to all
331 of your testimony today as we collectively work together in
332 the days ahead to get the project done.

333 Last year we spent lots of hours, countless hours,
334 trying to develop bipartisan legislation only to find that we
335 put more issues on the table than we could resolve. Drawing
336 on that lesson, this year's bill is a little bit more
337 focused.

338 First, it kicks the starting process of selecting
339 chemicals already in commerce for risk evaluation and, if
340 necessary, rulemaking to mitigate that risk. From among
341 chemicals already on the market, EPA selects ones that it
342 sees as potentially posing an unreasonable risk. Second, the
343 bill also lets the market select chemicals for risk
344 evaluation by allowing a manufacturer to ask for and pay for
345 an evaluation. In either case, the risk evaluation must

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

346 stand up to rigorous scientific standards set out in the
347 legislation. If EPA does identify an unreasonable risk, it
348 must turn immediately to drafting a rule tailored to mitigate
349 that risk. These rules will focus on the danger at hand.
350 Once written, those rules will be shared by all Americans.
351 Rooted in science, the EPA decisions will obviate state-by-
352 state attempts to regulate interstate markets, and everyone
353 from moms in Michigan to consumers around the world will have
354 the confidence that a chemical cleared by EPA won't harm them
355 or their families. So let's continue the bipartisan momentum
356 and get this legislation through the committee and the full
357 House. This is the year for meaningful reform.

358 I again want to particularly thank Mr. Shimkus for his
359 strong work to get a bill to the plate where we can finally
360 get some runs scored. Yield back.

361 [The prepared statement of Mr. Upton follows:]

362 ***** COMMITTEE INSERT *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

363 Mr. {Shimkus.} The gentleman yields back his time. The
364 chair now recognizes the ranking member of the full
365 committee, Mr. Pallone, for 5 minutes.

366 Mr. {Pallone.} Thank you, Mr. Chairman.

367 I am pleased to be here today to continue this
368 subcommittee's important work to reform the Toxic Substances
369 Control Act. Chairman Shimkus's new discussion draft, the
370 TSCA Modernization Act of 2015, is a thoughtful and
371 innovative approach that has the potential to move chemical
372 regulation forward. The chairman and the Majority staff have
373 worked closely with Democratic members, including our ranking
374 member, Mr. Tonko, to improve this draft, and I am happy to
375 say that our work is ongoing. I look forward to hearing from
376 EPA, affected industries, and environmental stakeholders this
377 morning to plot a course forward and begin to strengthen this
378 draft.

379 Improving the federal government's ability to identify
380 and manage risks from the chemicals that are manufactured and
381 processed in this country is critical. For 6 years now,
382 there has been widespread agreement among industry, labor,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

383 and nongovernmental organizations that TSCA needs to be
384 reformed.

385 In 2009, the EPA Administrator said that TSCA had proven
386 to be ``an inadequate tool for providing the protection
387 against chemical risks that the public rightfully expects.''
388 The American Chemical--or I should say, the American
389 Chemistry Council said it wanted to work with stakeholders,
390 Congress, and the Administration to make reform a reality.
391 And a coalition of public interest groups said that by
392 updating TSCA, Congress can create the foundation for a sound
393 and comprehensive chemicals policy that protects public
394 health and the environment while restoring the luster of
395 safety to U.S. goods in the world market.

396 At that time, stakeholders and policymakers pursued a
397 vision of a fully reformed TSCA, ensuring that no chemical
398 would go on the market without being found to be safe. All
399 chemicals in commerce would be subject to minimum testing,
400 and aggressive regulation would ensure to the American public
401 a reasonable certainty of no harm from the chemicals they are
402 unwittingly exposed to every day. Six years later, that
403 vision is still my goal but the risks from toxic chemicals in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

404 our environment and the products we use every day are serious
405 and pressing, and progress toward that vision has been
406 elusive.

407 This new discussion draft does not attempt to realize
408 the goal of a fully reformed TSCA with assurances that all
409 chemicals in commerce are safe but it will give EPA tools to
410 reduce risk now, in a package that I think has the potential
411 to become law, and it will give consumers the ability to
412 choose chemicals and products that have been reviewed for
413 safety against a purely risk-based standard.

414 Under this draft, EPA would have the ability to require
415 testing through orders, rather than just rulemaking. That is
416 an important step forward, although it won't fix all of the
417 problems in Section 4 of the existing law. The draft would
418 also ensure that EPA's determinations of unreasonable risk
419 under section 6 of current law will be made without
420 consideration of costs and with explicit protections for
421 vulnerable populations. EPA would then be able to move
422 forward with risk management without the paralyzing
423 requirement to select the least burdensome option. These too
424 are essential steps forward, although issues in section 6

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

425 still remain.

426 Additionally, the draft would remove outdated limits on
427 user fees to provide more resources for EPA's activities
428 under TSCA, although it could do more to ensure that EPA
429 actually receives those funds. The draft also would direct
430 EPA to update the TSCA inventory, providing better
431 information to consumers and policymakers on the universe of
432 chemicals in commerce in the United States, and the draft
433 would require substantiation of CBI claims in the future,
434 preventing abuse of CBI claims and ensuring greater
435 transparency. These are all positive changes that would
436 empower EPA to offer greater protections for human health and
437 the environment. Importantly, the draft also avoids some of
438 the significant concerns that have been raised about past
439 proposals, such as limits on the ability of EPA to regulate
440 articles and limits on the ability of states to be partners
441 in enforcement.

442 This bill reflects robust bipartisan outreach, which I
443 hope to continue in the coming weeks. Mr. Chairman, you
444 deserve credit for a strong process so far, and a strong
445 product. Some important issues remain to be worked out, such

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

446 as setting yearly targets for EPA initiated risk evaluations,
447 ensuring that private rights of action are protected, and
448 targeting risks from the worst of the worst chemicals, PBTs.
449 So I hope we can come together to strengthen this proposal
450 and produce a law.

451 I welcome the testimony from today's witnesses, which
452 will point the way for further work on a bipartisan basis.
453 We have all, Mr. Shimkus, myself, Mr. Tonko and of course Mr.
454 Upton, we really consider this a goal that can be
455 accomplished on a bipartisan basis, and I just want to thank
456 everyone for all their hard work, particularly over the last
457 2 weeks. You know, we had a recess for 2 weeks but the staff
458 were certainly not in recess. They were working very hard on
459 this bill.

460 Thank you, Mr. Chairman.

461 [The prepared statement of Mr. Pallone follows:]

462 ***** COMMITTEE INSERT *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

463 Mr. {Shimkus.} Thank you. I also want to thank you for
464 your personal involvement, and we were working. There was a
465 conference call for about an hour, and I think you were on
466 the road somewhere and I was on the road somewhere, and staff
467 was here, and it was a good start, so people were working
468 hard, and I appreciate it.

469 Now I would like to recognize 5 minutes to start the
470 questions, and Mr. Jones, how many chemicals already on the
471 market is EPA currently assessing on a yearly basis? And I
472 think check the microphone.

473 Mr. {Jones.} I am sorry.

474 Mr. {Shimkus.} That is all right.

475 Mr. {Jones.} Thank you. We identified about 80
476 chemicals several years ago for assessment. We have assessed
477 final assessments for five of them, and we have about 20
478 under evaluation right now, so it is hard, since we are so
479 early in the early days of attempting to evaluate existing
480 chemicals, it is hard to right now estimate exactly how many
481 per year we are doing. Somewhere in the range between three
482 and eight I would say would be an accurate number.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

483 Mr. {Shimkus.} To evaluate, let's say, 20 chemicals per
484 year, how much many and staff would you need? Do you have--

485 Mr. {Jones.} I would think we would need at least twice
486 the existing chemical resources we have right now to do 20 a
487 year.

488 Mr. {Shimkus.} Would the discussion draft, particularly
489 the section--you kind of highlighted part of this in your
490 testimony--requiring manufacturers to pay all costs related
491 to the requested reviews all you, the EPA, to have more
492 chemicals evaluated?

493 Mr. {Jones.} Yeah. One of the tricks that we have
494 observed in the way the bill is drafted is that those
495 resources actually don't come to EPA, and so they go to the
496 Treasury, and so we are limited by the appropriated resources
497 that we have, so it doesn't really expand our capacity.

498 Mr. {Shimkus.} Yeah. Is there--and that is why we have
499 the hearing and stuff because--I am being whispered in my ear
500 that you are right, so we obviously--the intent is for--if
501 there are user fees, the whole intent is for you to be able
502 to get access to it so you can have the ability. And so if
503 there are ways that you get your smart people involved and we

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

504 get our smart people involved, maybe there is--I don't know
505 what we can do but we need to make sure that that happens. I
506 think that is the intent--what is that, Mr. Chairman? I know
507 I am not the smart guy.

508 Does the discussion draft improve the agency's ability
509 to require the submission of hazard and exposure data by
510 authorizing the EPA to obtain it by rule, consent agreement,
511 or by issuing an order?

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

513 Mr. {Shimkus.} Does the discussion draft allow EPA to
514 select and do risk evaluations on chemicals whose exposures
515 and hazards have the potential to be high enough to create an
516 unreasonable risk?

517 Mr. {Jones.} Well, it is interesting because the
518 language creates an additional step that we don't have today
519 and that we have to--that is why I refer to it as the
520 potential catch-22. We actually have to make a finding
521 before we can initiate a review, and that finding is somewhat
522 related to risk, even though the whole point of a risk
523 evaluation is to determine the risk. So it creates somewhat
524 of a barrier actually to initiating a risk evaluation.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

525 Mr. {Shimkus.} And obviously the intent of the
526 legislation is to be, as was stated in some of the opening
527 statements, a more slimmed-down, more efficient, more
528 simplistic process of getting from A to B to C to judgment
529 ruling, so we want to make sure we have that, and any help
530 you can provide in addressing that, we would be--because look
531 at schematics of current law, and you look at schematics of
532 other possible laws, they are much more complex, and we would
533 like to--our intent is not to be--our intent is just to get
534 the job done.

535 Mr. {Jones.} I think that could be achieved.

536 Mr. {Shimkus.} The discussion draft excludes cost
537 considerations when EPA performs risk evaluations, saving
538 that issue for when and if a risk management rule is written.
539 Do you agree that the risk evaluation should focus on hazard
540 and exposure?

541 Mr. {Jones.} Yes.

542 Mr. {Shimkus.} You testified that the discussion draft
543 is ambiguous on how EPA is to incorporate cost and other
544 factors into a risk management rule under section 6A. Can
545 you explain why you said that?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

546 Mr. {Jones.} Thank you. That is probably one of the
547 most important observations that we have around the
548 discussion draft. So the existing standard of unreasonable
549 risk has been interpreted by courts to be a risk-benefit
550 balancing where the Agency has actually got to demonstrate
551 that the health benefits of the rule literally outweigh the
552 costs imposed by the rule. It is not clear whether or not
553 that interpretation that exists right now would be changed at
554 all. There are some parts of the draft that make it appear
555 that actually cost shouldn't come into consideration in
556 determining the level of protection achieved, but that would
557 conflict with the cost-benefit balancing that previous courts
558 have determined, and then there is the cost-effectiveness
559 language, and so our observation is, it is not clear if this
560 discussion draft is maintaining the existing cost-benefit
561 balancing, if it is attempting to exclude costs completely
562 from the risk management, or if it wants costs considered but
563 in some general way without being explicit. So it is a
564 clarity issue from our perspective.

565 Mr. {Shimkus.} Thank you, and my time is expired, but I
566 think you have raised an issue that what is the--you have

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

567 courts--decisions courts have rendered and then
568 simplistically changing a law, so my guess is, the courts
569 would then have to render judgment under new statutes versus
570 old statutes.

571 So having said that, I will recognize the ranking
572 member, Mr. Tonko, for 5 minutes.

573 Mr. {Tonko.} Thank you, Mr. Chair, and again, much
574 exchange here has cited the hard work done over the last
575 couple of weeks, so allow me to further compliment and thank
576 the staff for their devotion to this effort along with my
577 colleagues.

578 We need TSCA reform certainly because under current law,
579 the American public is exposed to industrial chemicals
580 without that sufficient bit of safeguard to protect public
581 health. So tens of thousands of chemicals in commerce have
582 never been tested for safety, and EPA does not currently have
583 the necessary authority or resources to tackle this backlog.

584 So Mr. Jones, what is EPA currently doing to address the
585 highest-priority chemicals under TSCA?

586 Mr. {Jones.} Thank you, Congressman Tonko. So we
587 identified--we evaluated the 1,200 or so chemicals with known

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

588 hazard, and we compared them against criteria that were
589 related to severity of hazard as well as the potential for
590 exposure, and from that priority-setting process, we have
591 identified a little over 80 chemicals that we think are the
592 most important to assess first, and we have now begun to
593 assess those chemicals.

594 Mr. {Tonko.} And then would this draft as it currently
595 stands enable that work plan?

596 Mr. {Jones.} It sets a little bit of a higher bar than
597 the priority process that we did in making a judgment that
598 there is actually the potential for the exposure to exceed
599 the hazard, which we did not do in our priority--

600 Mr. {Tonko.} Any clarification that we need to have in
601 the language that we are proposing?

602 Mr. {Jones.} I think we don't want to create a
603 potential unmanageable bar, I think if that might be useful.

604 Mr. {Tonko.} Okay. The last thing we should do in TSCA
605 legislation is make it harder for EPA to act against the
606 worst chemicals. What changes could we make to ensure that
607 the chemicals EPA thinks are the highest priority get
608 reviewed and addressed?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

609 Mr. {Jones.} Well, as I mentioned, having a requirement
610 that we make a finding that the exposure may exceed the risk
611 before we have actually done the risk assessment is I think
612 an unnecessary requirement up front. And then as I mentioned
613 earlier, I think it is important that we all have a clear
614 understanding of what the actual risk management standard is,
615 and I don't think it is clear right now what that standard
616 is, which opens the potential for there to be a lot of
617 litigation after decisions are made.

618 Mr. {Tonko.} And adding a minimum number for EPA is a
619 beneficial thing when it comes to initiating reviews?

620 Mr. {Jones.} If the Congress wants a certain pace to be
621 achieved, and my experience is that being clear about what
622 kind of--what your expectations are about how quickly the
623 Agency acts is pretty important.

624 Mr. {Tonko.} Let me focus on the role of cost
625 considerations that the chair was quizzing you about, and
626 using those costs in the effort to assess and manage risks.

627 This bill includes, as he indicated, explicit language
628 to indicate EPA's risk evaluation cannot take cost into
629 consideration. The language is intended to ensure that EPA's

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

630 determination of whether or not a chemical presents an
631 unreasonable risk does not include cost considerations but
632 cost analyses are never part of that risk. They are,
633 however, or should be included in an analysis of the options
634 available to reduce identified risks for risk management. So
635 are there--and again, I heard the give and take, the
636 bantering that you and the chair had, but are there suggested
637 changes that you can share that would make that effort more
638 clear?

639 Mr. {Jones.} Yeah, I think that the--and this goes back
640 to the risk management standard Congress is trying to put
641 into place, and the Administration believes the costs are an
642 important consideration in risk management, which is
643 different from saying that the risk management standard
644 should be a risk-benefit balancing, as I have testified
645 before. In the chemicals arena, that is a very challenging
646 thing to do because the risks that we are looking at are
647 often not quantifiable but the costs almost always are, and
648 what we got out of the Corrosion Proof case was a finding
649 that the Agency had to numerically determine that those
650 benefits literally numerically were larger than the costs,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

651 which creates--you end up with a cost-biased standard, which
652 has been one of the problems that we have had. So being
653 clear about whether the Congress is looking for a cost-
654 benefit balancing or you want a standard that requires the
655 consideration of costs, which may not sound like it is a lot
656 different but actually in reality it is quite different,
657 would be very useful.

658 Mr. {Tonko.} Well, I think any kind of, you know,
659 suggested changes would be very helpful for the subcommittee
660 as we move forward, and I appreciate your input here today.
661 I yield back.

662 Mr. {Shimkus.} The gentleman yields back his time. The
663 chair now recognizes the vice chair, Mr. Harper, for 5
664 minutes.

665 Mr. {Harper.} Thank you, Mr. Chairman. Mr. Jones,
666 thank you for being here today and shedding some light on a
667 very important subject for us, and we look forward to working
668 together on both sides of the aisle and with you on coming up
669 with a solution that works, and I appreciate your input on
670 the discussion draft today.

671 You testified that priority chemicals should be assessed

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

672 and acted upon in a timely manner if the chemical poses a
673 risk. For your work plan chemicals, have you determined that
674 some show an unreasonable risk?

675 Mr. {Jones.} So we have demonstrated with the five
676 assessments we have completed that three of them demonstrate
677 risk. Two of them we said were not significant risks. But
678 unreasonable risk under current TSCA has been interpreted by
679 courts to mean that the health benefits outweigh the costs,
680 and so what we are doing right now for the three chemicals
681 where we have demonstrated significant risks were evaluating
682 the health benefits that we have identified and comparing
683 them to the cost of potential regulation and ultimately we
684 need to come up with a risk management that balances the
685 health benefits with the costs. So that is the part of the
686 process that we are in right now.

687 Mr. {Harper.} So the three of the five that you are
688 moving forward on, you haven't completed that process,
689 correct?

690 Mr. {Jones.} That is correct. We are in that process.

691 Mr. {Harper.} So what is the status of the risk
692 management rules on those particular three chemicals?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

693 Mr. {Jones.} So we are right now--we have articulated
694 the health benefits, the risk, and we are right now
695 evaluating the cost of potential regulation, which also
696 involves looking at evaluating the risks and the benefits of
697 the alternatives and determining whether or not we have
698 figured out the least burdensome way to adequately protect
699 against the risk.

700 Mr. {Harper.} You know, when you have those five that
701 you were looking at, ruling two of those, did you start the
702 process on all five at the same time?

703 Mr. {Jones.} Yes, we did.

704 Mr. {Harper.} And are they supposed to proceed at the
705 same pace, or I assume each one can be at a different level,
706 but are you proceeding--are the three that you are looking
707 at, are they at the same spot in the process?

708 Mr. {Jones.} They are actually, although that is a
709 little bit by happenstance because sometimes you run into a
710 difficult issue and it may take a little longer to resolve,
711 but the three that we are looking at, whether or not there is
712 unreasonable risk, they are moving at pretty much the same
713 pace.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

714 Mr. {Harper.} Now, you said there are 80 that have been
715 identified.

716 Mr. {Jones.} That is correct.

717 Mr. {Harper.} And how many--who determines which ones
718 are looked at next and assessed?

719 Mr. {Jones.} That would be me.

720 Mr. {Harper.} Okay.

721 Mr. {Jones.} We actually had a public process where we
722 identified factors that we wanted to look at. They were
723 factors like carcinogenicity, reproductive toxicity,
724 persistence bioaccumulation, and we also wanted to make sure
725 there was exposure so that we weren't looking at potentially
726 hazardous chemicals for which nobody was being exposed. We
727 had public participation around that at some workshops, and
728 then we finalized the criteria, and then we evaluated about
729 1,200 chemicals against the criteria that we developed, and
730 these are the ones that came out on top.

731 Mr. {Harper.} So how many assessments do you believe
732 will be completed this calendar year?

733 Mr. {Jones.} That is a tricky one because we are taking
734 on some--there are at least three that will be above the five

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

735 that we have done that is very clear will be completed. We
736 are also looking at some of the most challenging compounds,
737 which are flame retardants, and we are looking at several
738 dozen of those, and they are quite complicated, so it is hard
739 for me at this point to predict how many of the flame-
740 retardant assessments we will complete.

741 Mr. {Harper.} Yield back the balance of my time.

742 Mr. {Shimkus.} The gentleman yields back his time. The
743 chair now recognizes the ranking member of the full
744 committee, Mr. Pallone, for 5 minutes.

745 Mr. {Pallone.} Thank you, Mr. Chairman.

746 The testimony we hear today will be essential as we work
747 to move this draft forward, and I know we have heard already
748 today and we will continue to hear from the second panel that
749 there are a number of changes needed to the draft, and I
750 appreciate my colleague, Mr. Tonko, for highlighting some of
751 those changes. I would like to focus briefly on some of the
752 things I think this draft gets right, and if you can to just
753 answer yes or no, but I am not going to restrict you
754 completely. I just want to get through it.

755 First, I would like to highlight some of the problems in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

756 current law that I think this draft addresses. So Mr. Jones,
757 does this draft remove the least-burdensome language that has
758 been an obstacle to EPA action under section 6?

759 Mr. {Jones.} Yes.

760 Mr. {Pallone.} Does the draft remove the statutory cap
761 on user fees in existing law?

762 Mr. {Jones.} Yes.

763 Mr. {Pallone.} Is it your view that the draft needs to
764 do more to ensure that EPA actually receives adequate
765 resources to carry out this program?

766 Mr. {Jones.} Yes, and I would just say it is because
767 the draft as written right now does not allow the fees to
768 come to EPA.

769 Mr. {Pallone.} Okay. Would you have any recommendation
770 in that regard?

771 Mr. {Jones.} We could work with the committee to figure
772 out how to write that. We have done this before.

773 Mr. {Pallone.} Okay. Well, I just hope that we can
774 make changes to ensure that EPA has the resources as we move
775 forward. Otherwise, you know, what goes is it?

776 Turning back to the draft, does this draft require

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

777 justification of future CBI claims, unlike current law?

778 Mr. {Jones.} Yes.

779 Mr. {Pallone.} And does this draft provide explicit
780 protections to vulnerable populations and therefore improve
781 current law?

782 Mr. {Jones.} It is a little ambiguous. It precludes
783 EPA from determining a chemical meets the safety standard
784 unless we have evaluated vulnerable populations but doesn't
785 speak to scenarios where we find that the safety standard is
786 not met.

787 Mr. {Pallone.} Okay. I think these are all very
788 important points, and I recognize that the draft is not as
789 comprehensive as some past proposals, but I think it would
790 move the ball forward on chemical regulation and improve
791 current law.

792 I also wanted to recognize again the subcommittee
793 chairman, Mr. Shimkus, because he has tried to avoid some of
794 the major issues that have stalled proposals in the Senate.
795 So let me ask you about some of that.

796 Mr. Jones, I know that you raised concerns about article
797 provisions in the Senate bill. Are those concerns addressed

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

798 here?

799 Mr. {Jones.} Yes, they are.

800 Mr. {Pallone.} Okay. And you also raised some concerns
801 about the ability of states to co-enforce requirements of EPA
802 TSCA rules and to regulate chemicals while EPA is evaluating
803 them. Are those concerns addressed here?

804 Mr. {Jones.} Yes.

805 Mr. {Pallone.} Okay. I think it is--again, I think
806 this draft is a good starting point. Obviously we still have
807 a lot of work to do but we have had a very good process so
808 far, and I look forward to continuing to work with the
809 chairman and Mr. Tonko. And so at this point, I can't
810 believe I am actually yielding back, but I accomplished
811 everything I wanted to accomplish.

812 Mr. {Jones.} It was my short answers.

813 Mr. {Pallone.} Thank you.

814 Mr. {Shimkus.} The gentleman yields back his time, and
815 I hope those answers are helpful to you and I hope they are
816 not harmful to me.

817 So with that, I would like to yield 5 minutes to the
818 gentleman from Ohio, Mr. Latta, for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

819 Mr. {Latta.} Well, thank you very much, Mr. Chairman,
820 and thanks very much for holding this very important hearing
821 today, and Administrator, thanks for being with us today.

822 Last year when you testified before the subcommittee, in
823 April, in fact, just about a year ago, I discussed with you
824 the TSCA inventory. You stated how the actual number of
825 chemicals on the TSCA inventory somewhere between 7,000 and
826 84,000, the 7,000 number being the rough number of chemicals
827 produced in large quantities and overall the 84,000
828 representing those chemicals that have been on the inventory
829 and how it could be potentially misleading. Let me ask, do
830 you believe that the discussion draft before us would give a
831 more accurate picture of the chemicals actually in commerce
832 on any given date?

833 Mr. {Jones.} It would, yes.

834 Mr. {Latta.} Okay. And also, how effective do you
835 believe the least-burdensome provision has been under the
836 current law?

837 Mr. {Jones.} I think it has created a barrier under the
838 current law.

839 Mr. {Latta.} Okay. Could you explain that, how it has

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

840 created a barrier?

841 Mr. {Jones.} So for example, right now there are three
842 chemicals that we have identified as posing significant risk,
843 and before we can move forward regulating them, we have to
844 evaluate about eight different risk management scenarios that
845 are identified in the statute and show how for each one of
846 them we are selecting the one that poses the least burden on
847 society at large, so we have to analyze each of these
848 potential risk management options and then just pick the
849 least burdensome one, which as a general matter I don't have
850 a problem with but it is not always necessary to evaluate
851 everything to know which one is going to be the least
852 burdensome ultimately and we are required to do that under
853 the statute.

854 Mr. {Latta.} Let me ask, how much time does that add to
855 the process?

856 Mr. {Jones.} Well, you know, we are doing it right now
857 for the first time in 30 years, and so I will have a clearer
858 answer when we have actually finished that analysis, and
859 whether or not a court ultimately upholds did we do enough
860 analysis for each of the risk management options that are in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

861 the statute.

862 Mr. {Latta.} Let me ask about under the proposed draft
863 bill before us is on the deadlines, and you know, the
864 deadlines we are looking at that the Administration will
865 conduct and publish risk evaluation under the subsection for
866 chemical substance not later than 3 years after the date on
867 the Administrator makes a finding, 180 days after the date on
868 which the manufacturer requests the risk evaluation, and it
869 also goes on to state that if the Administrator determines
870 that additional information is necessary to make a risk
871 evaluation, a determination under the subsection, there is--
872 it can be extended a date of 90 days after receipt of
873 additional information or 2 years after the original
874 deadline, and with that, you know, where do you see that--do
875 you see that would be a good time frame?

876 Mr. {Jones.} You know, I think deadlines are really
877 important for the government to have, but they are pretty
878 short, and the only one that I think that the Agency has some
879 potential for meeting is the initial assessment if EPA
880 initiates the review, 3 years--our experience so far is that
881 between 2 and 3 years, so having the deadline be the latter

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

882 end of it seems appropriate.

883 Us turning an assessment around in 6 months from an
884 industry submission I think is unrealistically optimistic. I
885 would love to be able to do proposed rules within 6 months of
886 a safety evaluation. My experience is that that is also just
887 unrealistic from past experience.

888 Mr. {Latta.} Well, you know, with the 3 years, you
889 know, how long on general--you are saying 2 to 3 but how many
890 different chemicals are out there that have taken more than 3
891 years for you to do an evaluation on?

892 Mr. {Jones.} So it is possible that something that is
893 hugely challenging from an exposure potential or hugely
894 challenging from understanding the hazard that it would take
895 longer than 3 years, I would expect that as a general matter,
896 3 years is a deadline that could be achieved for the vast
897 majority of the chemicals we would evaluate.

898 Mr. {Latta.} Well, thank you very much, and--

899 Mr. {Shimkus.} Will the gentleman yield the last 44
900 seconds?

901 Mr. {Latta.} I yield back.

902 Mr. {Shimkus.} Under the industry applied evaluation,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

903 you will have more data in that process than when you just
904 pick a chemical out of the air and say we have to do this one
905 as our requirement under current law. Is that correct?

906 Mr. {Jones.} It is not clear that that would be the
907 case. I assume that that was some of the assumptions that
908 were built into that 6-month deadline. It is not obvious the
909 way it is drafted that we would have more. The other--

910 Mr. {Shimkus.} Well, if the industry is willing to have
911 you expedite this, my guess is that there would be, you know,
912 a working relationship that--but we will work to clear that
913 up. My assumption would be, they are going to give you what
914 they have to try to get an expedited--I mean, that is the
915 whole benefit of going through this process is coming to a
916 decision.

917 Mr. {Jones.} Yeah. The draft is written that all they
918 have to do is request it, so they don't have to actually give
919 us anything.

920 Mr. {Shimkus.} Okay. Thank you. I thank my colleague.
921 The chair now recognizes the gentleman from Oregon, Mr.
922 Schrader, for 5 minutes.

923 Mr. {Schrader.} Thank you, Mr. Chairman. I appreciate

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

924 it.

925 How does the Agency currently and then under your
926 interpretation of the new discussion draft balance individual
927 risk and responsibility versus, you know, absolute risk, if
928 you will, posed by certain chemicals?

929 Mr. {Jones.} That is a good question, Congressman.
930 Right now we are looking at a compound that is used as a
931 paint stripper, and it has actually resulted in deaths across
932 the country over the last 15 years, and so arguably--and it
933 results in deaths because people sometimes use it in an
934 enclosed space, and so if you--it is theoretically possible
935 that we could mitigate that risk by a labeling restriction,
936 although when you look there actually is a labeling
937 restriction right now although the fine print is quite fine,
938 and so you try to struggle with the effectiveness of giving
939 people information to protect themselves versus what may be
940 the reality is to whether or not people avail themselves of
941 that, and so it is something that we right now are struggling
942 with, with a chemical that we have made a priority compound
943 because, you know, individuals do have some responsibility
944 with respect to protecting themselves, but at the same time,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

945 if past is prologue and giving information may not be
946 effective, we think we have the ability to protect people
947 from themselves.

948 Mr. {Schrader.} I think one of the struggles this
949 committee is going to have and the Congress writ large is
950 balancing that personal responsibility. If people are
951 allergic to certain things and most people are not allergic
952 to, does that make that a toxic substance generally speaking.
953 So I think we are going to have a lot of work to do to find
954 out what that appropriate balance is. This is still the
955 United States of America and people do bear personal
956 responsibility for their own health and well-being, and
957 labeling, albeit small or large, hopefully adequately,
958 demonstrating what potential harm it may cause to certain
959 subpopulation is important but the real world is anything in
960 excess is probably toxic, in popular terms, carcinogenic.
961 Everything is carcinogenic these days. I think we have to be
962 thoughtful and I would hop the EPA would balance their
963 rulemaking with whatever legislation we have going forward.
964 I am interested in the cost-effectiveness discussion.
965 You are interested in apparently more leeway than is now

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

966 granted under this legislation. I would probably be against
967 that. My concern is that costs should be taken into account.
968 We have a Superfund site in my state where EPA's
969 interpretation has gotten to where if one individual sort of
970 maybe could have ingested a certain amount of fish on a daily
971 basis, way in excess of what any person would do, even tribal
972 members, that at a level that is way below the current
973 toxicity standards, that that would pose a significant risk
974 and needs to be mitigated by extremely expensive
975 alternatives, and the judgment I have seen so far from EPA is
976 that they want to have a very expensive alternative to what
977 could be a simpler solution to I think a very exaggerated
978 risk. So I would hope that you would take this into account.
979 I hope that the legislation does not reduce the cost. In
980 fact, to me it seems pretty clear. You know, when you are
981 determining the risk, okay, cost should not perhaps be part
982 of the discussion, but certainly, certainly, absolutely, 100
983 percent cost-effectiveness should be part of, a major part of
984 the solution, and I would fight against any language that
985 said cost should be just a consideration. That, to your
986 point, is a loophole you could drive a truck through at the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

987 end of the day. So I hope you would be at least open to the
988 current legislation as currently written.

989 Mr. {Jones.} We think it is very important for cost to
990 be considered in the risk management. It is about how it
991 should be considered, and as I was saying, right now it is
992 not clear if it needs to be considered in a literal balancing
993 of cost and benefits, and that we have stated numerous times
994 how challenging that is for chemicals where it is always
995 possible to estimate cost. It is often not possible to give
996 a numeric monetization to the benefit.

997 Mr. {Schrader.} Well, if you can't monetize it that
998 what can't be measured should probably be done. I mean, at
999 the end of the day, there has to be--everyone is susceptible.
1000 There are going to be some persons, some individuals, some
1001 child, some remote genetic configuration of any given
1002 individual that is going to be at risk with any given
1003 chemical or food substance, whether it is deemed safe or not,
1004 and I think it is extremely important not to get wrapped
1005 around the axle on having completely irrelevant, with all due
1006 respect, solutions that are not actually benefit to the
1007 population writ large.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1008 As a veterinarian, it is all about epidemiology. You
1009 are not going to save everybody at the end of the day, and we
1010 have to understand that, and I think America in this 21st
1011 century has to become sophisticated enough to understand
1012 where is the maximum risk exposure.

1013 With that, I would like to yield the balance of my time
1014 to the chairman of the committee--or ranking member. Excuse
1015 me.

1016 Mr. {Shimkus.} Yeah, you don't want to give it to me--
1017 no, you might want to give it to me.

1018 Mr. {Tonko.} Thank you. I thank the gentleman for
1019 yielding.

1020 I would like to turn briefly to a concern I have that
1021 the draft is too specific about how the Agency should conduct
1022 science. Agency decisions must be transparent including
1023 those about science, but in my opinion, these are decisions
1024 best left to technical experts. This draft includes
1025 requirements that EPA act based on a specific definition of
1026 the weight of the scientific evidence and requires EPA to
1027 consider a lengthy list of factors including sponsor
1028 organizations, uncertainty and more.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1029 So Mr. Jones, when these scientific requirements are
1030 included in the statute, does that open EPA's use of science
1031 up to litigation?

1032 Mr. {Jones.} So any requirement that you have to do,
1033 you then either--if you don't do it, you are open to
1034 litigation. I think that the science requirement that most
1035 troubles us is the consideration of a threshold effect, which
1036 is something that we do right now, but it is certainly
1037 possible that in 10, 15 or 20 years, it is not even part of
1038 the scientific, you know, lexicon. And so boxing us into
1039 things that may become obsolete in the future scientifically
1040 are the kinds of things we would like to generally avoid.

1041 Mr. {Tonko.} Thank you, and I share those concerns, and
1042 I yield back.

1043 Mr. {Shimkus.} The gentleman yields back his time. The
1044 chair now recognizes the gentleman from Ohio, Mr. Johnson,
1045 for 5 minutes.

1046 Mr. {Johnson.} Thank you, Mr. Chairman.

1047 Administrator Jones, about a year ago, you testified
1048 before this committee on TSCA reform. You may remember at
1049 that meeting, I expressed my concern to you that TSCA

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1050 reporting requirements seemed to incentivize manufacturers,
1051 for example, in the electronics industry, to landfill
1052 byproducts instead of recycling them, even when those
1053 byproducts are rich in recyclable metals and other valuable
1054 materials--copper, for example. In other words, we are
1055 making it more cost-effective for manufacturers to put that
1056 stuff in the dirt than to recycle it, save money, create
1057 jobs, and be more environmentally conscious.

1058 You may also remember that last October I sent
1059 Administrator McCarthy a letter asking the EPA to complete
1060 its analysis of data collected during the 2012 chemical data
1061 reporting, or the CDR cycle, with the idea that such an
1062 analysis would help EPA reassess the need for CDR information
1063 in future reporting cycles. In December I received a
1064 response from Administrator McCarthy that the analysis would
1065 be completed by early 2015. It is now April, and no analysis
1066 has been finalized, and while the EPA has had talks with my
1067 staff, and I know that there has been some exchange of
1068 information with industry, it has not provided the
1069 electronics industry nor the public with any new information
1070 for some time now. So because it appears that this analysis

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1071 is ongoing, I remain hopeful that the EPA still has the
1072 opportunity to safely incentivize the recycling of byproducts
1073 and render any other options to solve this problem
1074 unnecessary.

1075 But the first step must be the release of the analysis
1076 of 2012 CDR byproducts. Can you tell me when that data will
1077 be released?

1078 Mr. {Jones.} Thanks, Congressman, and thank you for
1079 raising this issue to our attention. We have spent a fair
1080 amount of time evaluating the issue that you brought to our
1081 attention. We have begun to communicate with your staff as
1082 well as the electronics industry the results of our analysis.
1083 I would be reluctant to give a date on the release of the
1084 analysis before checking with my staff, but we are very close
1085 to being able to give an answer to the question that you
1086 raised.

1087 Mr. {Schrader.} Okay. Administrator McCarthy said
1088 early 2015. Is that still a projection? Are looking at the
1089 first half of this year or--

1090 Mr. {Jones.} It is the first half of this year.

1091 Mr. {Schrader.} Okay. All right. Well, I look forward

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1092 to getting that. I appreciate that.

1093 What is the EPA's cost for doing the analysis that they
1094 do? Is it pretty consistent or does the cost vary from
1095 chemical to chemical?

1096 Mr. {Jones.} It is going to vary pretty significantly
1097 from chemical to chemical.

1098 Mr. {Schrader.} Okay. Can you give us an example?

1099 Mr. {Jones.} Yes. So the first five chemicals that we
1100 looked at, we project that the regulation for those that we
1101 think bear consideration of regulation will cost about a
1102 million and a half dollars and the analysis will have been a
1103 million dollars. That applies to three of them, and so the
1104 chemicals that demonstrated some risk are significantly more
1105 expensive to do than the two chemicals which did not
1106 demonstrate any risk. So when you find no risk, it is
1107 relatively cheap. There we estimated about a million
1108 dollars, so actually much of the cost is associated with the
1109 regulatory requirements of the analysis necessary to support
1110 a regulation.

1111 Mr. {Schrader.} You just said something that maybe I
1112 misunderstood you. Why would you be considering regulating a

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1113 chemical that provides no risk anyway?

1114 Mr. {Jones.} I am sorry. I must have stated it
1115 backwards.

1116 The chemicals that demonstrated risk are the ones that
1117 we are doing regulatory analysis for to support a potential
1118 regulation.

1119 Mr. {Schrader.} Okay. All right.

1120 The discussion draft gives the EPA to select a chemical
1121 substance for risk evaluation under TSCA section 6. Would
1122 the EPA rely on information that is currently available to
1123 the Agency to make those selections?

1124 Mr. {Jones.} That is now we would intend to--

1125 Mr. {Schrader.} That is how you put those in the risk
1126 category?

1127 Mr. {Jones.} Yes.

1128 Mr. {Schrader.} Okay. I think I have only got 34
1129 seconds left, and I can't get this last one in. Mr.
1130 Chairman, I will yield back some of my time.

1131 Mr. {Shimkus.} The gentleman yields back his time. The
1132 chair now recognizes the gentleman from Texas, Mr. Green, for
1133 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1134 Mr. {Green.} I am sitting in as the ranking member.

1135 Mr. Tonko had to go, although from Paul from New York doesn't
1136 really want me from Texas doing it.

1137 Mr. {Shimkus.} You better take down that placard
1138 because you might hurt him.

1139 Mr. {Green.} Yeah, I don't want to get him in trouble.

1140 Thank you for being here. I particularly want to thank
1141 Chairman Shimkus and Ranking Member Tonko and our ranking
1142 member and chair of the full committee for working on this
1143 issue. It has been frustrated because it has been a law
1144 since 1976, and I know for the last two terms this
1145 subcommittee has tried to see how we could deal with it, but
1146 it sounds like, you know, we will go small and see what we
1147 can do and do just problem-solving, which I think is a great
1148 way to go.

1149 If enacted, would the TSCA Modernization Act improve
1150 EPA's ability to make a risk determination and a risk
1151 management plan for existing chemicals?

1152 Mr. {Jones.} That is an interesting question. For the
1153 way it is structured right now, because the only things--
1154 because the way the fees don't come to the Agency for

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1155 industry-submitted requests, it would absolutely make it
1156 clearer what we had to do and how many. We have to do
1157 whatever they submitted to us. But because we are not
1158 getting the fees, I think it would crowd out our ability to
1159 initiate any on our own. Now, if there is a solution that
1160 allows the fees to come to EPA, then I think it would clearly
1161 allow us to have more pace to existing chemicals program.

1162 Mr. {Green.} Okay. Would the discussion draft retain
1163 the current TSCA timing of preemption of state and local
1164 action?

1165 Mr. {Jones.} Basically, yeah, it would retain the--it
1166 would eliminate the--it would basically be similar to what is
1167 currently required in TSCA, marginally different.

1168 Mr. {Green.} Under the discussion draft, would risk
1169 determination be based solely on health and safety factors
1170 without consideration of cost?

1171 Mr. {Jones.} The risk evaluation would, yes.

1172 Mr. {Green.} Currently, the EPA is allowed to disclose
1173 confidential business information to state and local
1174 government officials. Is that part of this package?

1175 Mr. {Jones.} Currently it is quite difficult to do that

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1176 but under this provision, the provision in the discussion
1177 draft, it would make it quite straightforward to do that.

1178 Mr. {Green.} Okay. Will the discussion draft allow EPA
1179 to disclose the confidential business information to the--
1180 well, strike that. Under current TSCA, is EPA allowed to
1181 disclose CBI to a treating doctor or a healthcare
1182 professional?

1183 Mr. {Jones.} It is quite--that is what I was saying.
1184 It is quite burdensome for us to do that right now, which is
1185 something that--

1186 Mr. {Green.} Would this discussion draft help with
1187 that?

1188 Mr. {Jones.} Yes.

1189 Mr. {Green.} Would the discussion draft authorize the
1190 EPA to disclose--well, I take that back again. Under current
1191 law, is there any limit to the length of time for
1192 confidential business information claim?

1193 Mr. {Jones.} No.

1194 Mr. {Green.} Under the discussion draft, would there be
1195 any time limits?

1196 Mr. {Jones.} Yes, 10 years.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1197 Mr. {Green.} Okay. The discussion draft creates a new
1198 term, ``potentially exposed subpopulations.'' Under the
1199 definition provided in the discussion draft, would the
1200 thousands of chemical plants that I have and the people that
1201 work there and the people that live around it in our district
1202 be covered under the definition of potentially exposed
1203 subpopulations?

1204 Mr. {Jones.} It is certainly possible that they would
1205 be, yes.

1206 Mr. {Green.} Now, obviously you want those jobs there
1207 but we also want to make sure that the products they are
1208 producing that our country needs are safe as possible. In
1209 your testimony, you note the discussion draft lacks a
1210 sustained source of funding for the chemical safety
1211 management, which goes back to the funding. Would you
1212 recommend to our subcommittee the best way to address that
1213 concern?

1214 Mr. {Jones.} I think it is a relatively straightforward
1215 fix that has the funding that is designated here going to the
1216 EPA, which right now it would not go to the EPA.

1217 Mr. {Green.} And I think that is something we will

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1218 consider. Are there current statutes that provide a
1219 sustained source of funding that could be used as a model for
1220 TSCA reform?

1221 Mr. {Jones.} Yeah, both the drug law--PDUFA is the
1222 acronym--or the pesticide law, the Pesticide Registration
1223 Improvement Act, both have funding mechanisms.

1224 Mr. {Green.} You state in your testimony that EPA
1225 strongly feels that any update to TSCA must provide the
1226 agency with the ability to make timely decisions and the
1227 ability to take action to address that risk. Do you believe
1228 that the discussion draft provides the agency with the needed
1229 authority to make those timely decisions?

1230 Mr. {Jones.} The timeliness is clear. As I said
1231 earlier, I think that the ambition is quite impressive and
1232 perhaps not manageable. I think the part that I am
1233 struggling is looking for more clarity as to exactly what the
1234 risk management standard is so we are not fighting in
1235 litigation forever about what it actually means.

1236 Mr. {Green.} And I agree. I would hope when we finish
1237 it, we give the clarity that you need so there is no question
1238 at all. In fact, EPA is downstairs in the Energy and Power

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1239 Subcommittee so you all are regular guests here in our
1240 committee.

1241 Mr. {Jones.} We carpooled over.

1242 Mr. {Green.} But any suggestions I know we would all
1243 appreciate that. And do you believe the discussion draft
1244 gives the EPA to authority to address the identified risk?
1245 If not, what changes would we need to ensure the Agency has
1246 that authority?

1247 Mr. {Jones.} Again, that goes back to clarity of what
1248 the risk management standard is is important.

1249 Mr. {Green.} Thank you, Mr. Chairman. I know I am over
1250 time. I appreciate it.

1251 Mr. {Shimkus.} The gentleman yields back his time. The
1252 chair will now look to my colleague from Indiana, Mr.
1253 Bucshon. Do you waive?

1254 Mr. {Bucshon.} I waive.

1255 Mr. {Shimkus.} The chair now recognizes the gentlelady
1256 from Colorado, Ms. DeGette. It is good to have her back.
1257 She was very active last Congress, and we are glad to see her
1258 here with us.

1259 Ms. {DeGette.} Thank you very much, Mr. Chairman. I

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1260 really appreciate you having this hearing, but even more so,
1261 I appreciate the amount you have worked with Mr. Green,
1262 myself, Mr. Tonko and others on really trying to make
1263 progress on this path to TSCA reform. It is not easy as we
1264 all had been saying. If it was easy, it wouldn't have taken
1265 us 30 years to fix it.

1266 And thank you, Assistant Administrator Jones, for coming
1267 over to give us some thoughts this morning. I want to start
1268 by looking at EPA's ability to require testing of chemicals
1269 under the draft. This discussion draft includes an important
1270 change to EPA's authority under section 4 of TSCA by
1271 empowering the EPA to require testing through order rather
1272 than rulemaking.

1273 So if you can talk to us about how order authority will
1274 improve your ability to require testing under section 4, that
1275 would be great.

1276 Mr. {Jones.} Sure. Right now we are required to do a
1277 rule if we want to compel the generation of health and safety
1278 data for a chemical, and we are also required to make a
1279 finding that we have some reason to believe there may be an
1280 unreasonable adverse effect for such chemicals, so you get

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1281 into this kind of a catch-22. You want the data because you
1282 don't know but you need to know something before you compel
1283 it, and then you have to do a rule, and rulemaking is a very
1284 long process and so it can take many, many years. So an
1285 order authority would allow us to move much more quickly to
1286 require generation of health and safety data.

1287 Ms. {DeGette.} Do you have any sense about on an
1288 average how much more quickly that would be?

1289 Mr. {Jones.} Well, in our pesticides program, we have
1290 order authority and have had it for 40 years, and when we
1291 find that there is data that we need to require, we are able
1292 to issue orders in matters of months as opposed to 4 or 5
1293 years.

1294 Ms. {DeGette.} Okay. Now, that change was one that I
1295 had sought in section 4 but this draft doesn't seem to
1296 address the catch-22 that EPA has long faced, and you talk a
1297 little about it. It seems that under this draft, the EPA
1298 would still have to find that a chemical might present an
1299 unreasonable risk before they were required--before they
1300 could require testing, and that is what you were just talking
1301 about.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1302 Mr. {Jones.} So the way we have read the discussion
1303 draft, Congresswoman, is that to issue an order, we don't
1304 need to make that finding, so that seems to be addressed. It
1305 is in the context of to initiate a risk evaluation, we need
1306 to have some reason to believe the exposure exceeds the
1307 hazard.

1308 Ms. {DeGette.} And so how do you think the language, or
1309 do you think the language can be adjusted in this discussion
1310 draft to reflect that issue?

1311 Mr. {Jones.} I think it would be relatively
1312 straightforward to do that instead of having some reason to
1313 believe exposure exceeds hazard, have some reason to believe
1314 there is exposure, have some reason to believe there is
1315 hazard.

1316 Ms. {DeGette.} Okay. So it is the ``exceeds hazard''
1317 that is the issue?

1318 Mr. {Jones.} Yes, I think so.

1319 Ms. {DeGette.} If you could work with us to supplement
1320 your response to give us some technical assistance on that,
1321 that would be really helpful. We would appreciate it.

1322 In addition to granting the EPA order authority to

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1323 require testing, the discussion draft also includes a
1324 provision to allow manufacturers to request that EPA evaluate
1325 their chemicals for safety. The discussion draft requires
1326 the EPA to make a finding on any evaluations requested by
1327 companies within 6 months. Is that going to be enough time
1328 to perform a robust evaluation of a chemical?

1329 Mr. {Jones.} I don't think so, no.

1330 Ms. {DeGette.} How long does the evaluation of a
1331 chemical usually take?

1332 Mr. {Jones.} It usually takes a couple of years, and
1333 this was the conversation the chairman and I were having that
1334 the discussion draft doesn't require the manufacturers to
1335 submit all the data necessary to do an evaluation. If it
1336 did, it would still require a couple of years. And so they
1337 could just say I want you to evaluate my chemical. The other
1338 thing is that when there is a controversy around the
1339 chemical, it is often the case that EPA's interpretation of
1340 the data doesn't agree with the manufacturer's.

1341 Ms. {DeGette.} So do you think there is some language
1342 we could put together to tighten that up a little bit?

1343 Mr. {Jones.} It would seem like it is more about how

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1344 much time the Agency should have to do--

1345 Ms. {DeGette.} So maybe, Mr. Chairman, that is
1346 something we can talk about as we go forward.

1347 Mr. {Shimkus.} Would the gentlelady yield?

1348 Ms. {DeGette.} I would be happy to.

1349 Mr. {Shimkus.} I still think there is this debate about
1350 what is industry going to provide, and that was the whole
1351 part.

1352 Ms. {DeGette.} Right.

1353 Mr. {Shimkus.} If they are providing a lot of data,
1354 then the timelines may be legit, so we will visit that.

1355 Ms. {DeGette.} Okay. Good. All right.

1356 The last thing is that the discussion draft proposes
1357 amending section 9 of TSCA to allow the EPA to set fees to
1358 help defray the costs of additional chemical testing but it
1359 doesn't flag funds to be used specifically for that purpose.
1360 So my question is, does the Office of Chemical Safety and
1361 Pollution Prevention have sufficient funds appropriated to
1362 undertake additional testing of new chemicals under TSCA?

1363 Mr. {Jones.} Not as written in the discussion draft.

1364 Ms. {DeGette.} So if we had some kind of a dedicated

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1365 fund rather than just solely relying on appropriations, would
1366 that be of assistance?

1367 Mr. {Jones.} Yes, it would.

1368 Ms. {DeGette.} Thank you, Mr. Chairman.

1369 Mr. {Shimkus.} The gentlelady's time is expired. The
1370 chair now turns to Mr. Cramer from North Dakota for 5
1371 minutes. Do you waive?

1372 Mr. {Cramer.} I would yield to Mr. Hudson.

1373 Mr. {Shimkus.} The gentleman has yielded to Mr. Hudson,
1374 who is recognized for 5 minutes.

1375 Mr. {Hudson.} Thank you, Mr. Chairman.

1376 Thank you for being here today. I appreciate your
1377 testimony. It has been very informative.

1378 My first question: TSCA as amended by the discussion
1379 draft requires that the agency have a need for testing and
1380 exposure information before it imposes a requirement on
1381 manufacturers and processors to develop that information. Is
1382 that a good requirement?

1383 Mr. {Jones.} I believe so, yes.

1384 Mr. {Hudson.} All right. Last year you asked that each
1385 chemical evaluation have a deadline for completion. Are the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1386 deadlines in our bill about right for that?

1387 Mr. {Jones.} I rarely say this: They are a little too
1388 short.

1389 Mr. {Hudson.} Really? Well, what do you think they
1390 ought to be?

1391 Mr. {Jones.} Well, I think that we can complete
1392 assessments within 3 years. I don't think we can even with
1393 industry-submitted data complete an industry-submitted
1394 assessment in 6 months. As much as I would love to do a
1395 rulemaking in 6 months, I think we probably need upwards of 2
1396 years to do a rulemaking.

1397 Mr. {Hudson.} EPA has authorized some 90 chemicals as
1398 TSCA work plan chemicals. Does the discussion require a
1399 change to that program?

1400 Mr. {Jones.} It requires us to make a finding that is
1401 above and beyond what we did in the identification of the
1402 priority chemicals.

1403 Mr. {Hudson.} Well, would work plan chemicals likely be
1404 selected for risk evaluations under the House discussion
1405 draft?

1406 Mr. {Jones.} They would likely be but, again, we would

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1407 have to do one additional step that we have not done
1408 heretofore, make a determination that we think it is likely
1409 or possible that the exposure exceeds the hazard, which we
1410 have not done.

1411 Mr. {Hudson.} Gotcha. I have got a question as far as
1412 fees, collection of fees currently. How does the Agency
1413 currently collect user fees under TSCA?

1414 Mr. {Jones.} We only have a few right now for the
1415 submission of a new chemical under the pre-manufacturer
1416 notification program. Those fees don't come to EPA either,
1417 so except for some small businesses, manufacturers when they
1418 submit a new chemical to EPA for review submits a fee with
1419 that.

1420 Mr. {Hudson.} And those go back to the Treasury?

1421 Mr. {Jones.} They go back to the Treasury.

1422 Mr. {Hudson.} What is your budget breakdown by category
1423 for individual sections of TSCA?

1424 Mr. {Jones.} I would need to get back to you on that
1425 but we could provide that pretty quickly.

1426 Mr. {Hudson.} I would appreciate it if you would do
1427 that. What is the EPA budget in both funding and FTEs for

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1428 chemical review under section 5 and under section 6 of TSCA?

1429 Mr. {Jones.} Again, that would be part of what we would
1430 get back to you on, overall budget breakdown between existing
1431 chemicals and new chemicals.

1432 Mr. {Hudson.} Okay. Well, I would appreciate that
1433 information, and I thank you.

1434 Mr. {Shimkus.} Would the gentleman yield?

1435 Mr. {Hudson.} I yield back to the chairman.

1436 Mr. {Shimkus.} Just a follow-up. So on new chemicals,
1437 you have 90 days, and then with the possibility of an
1438 additional 90 days?

1439 Mr. {Jones.} Um-hum.

1440 Mr. {Shimkus.} And so we are saying on existing
1441 chemicals, it will take 3 years? That is just part of the
1442 date we are having.

1443 Mr. {Jones.} Yes.

1444 Mr. {Shimkus.} You will have to explain to me why--not
1445 now but you will have to explain to me why that is, and with
1446 that, I yield back the time and now, she has been very
1447 patient, my colleague from California, Ms. Capps, for 5
1448 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1449 Mrs. {Capps.} Thank you, Mr. Chairman, first of all,
1450 for holding the hearing, and our witness for your testimony.

1451 Under current law, TSCA has used an ``unreasonable
1452 risk'' standard to evaluate the safety of a chemical. This
1453 is understood to be a cost-benefit standard, which in effect
1454 requires the Agency to balance the economic value of a
1455 chemical against the adverse health effects such as cancer,
1456 autism. Besides posing serious ethical problems, this
1457 approach has also proven to be unworkable.

1458 Mr. Jones, what is the impact of this cost-benefit
1459 standard in the context of TSCA?

1460 Mr. {Jones.} Well, as I have mentioned, it is often
1461 very difficult for certain health outcomes to the way in
1462 which we do risk assessment to monetize them. Some we are
1463 able to. There are some carcinogens which we are able to
1464 monetize. There are some pollutants like particulate matter
1465 where we are able to monetize. In the case of a chemical
1466 that we are looking at right now where death is the outcome,
1467 we can monetize that. There are some outcomes the way our
1468 risk assessment is designed, we are not able to monetize
1469 them, and so our ability to say that these benefits literally

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1470 outweigh these costs is challenging. It is not impossible
1471 but it creates a challenge for us.

1472 Mrs. {Capps.} So since 2009, there has been widespread
1473 agreement that this cost-benefit standard does need to be
1474 abandoned. This subcommittee has repeatedly received
1475 testimony that TSCA's current safety standard is failing to
1476 protect the general public and particularly vulnerable
1477 populations. EPA, the American Chemistry Council, even oil
1478 refineries have all stated that cost should not be part of
1479 safety determinations under TSCA. I welcome the changes in
1480 the discussion draft to explicitly exclude costs from risk
1481 evaluations but I am not sure they go far enough.

1482 So my question, Mr. Jones, is: do you think changes are
1483 needed in this draft to ensure the safety of chemicals as
1484 evaluated against a purely health standard?

1485 Mr. {Jones.} Well, what I said so far today is that
1486 right now it is just ambiguous as to what the standard is,
1487 and that I think is critically important so we don't spend,
1488 if this were to become law, the next 30 years litigating what
1489 the standard is. The Administration has said that the safety
1490 evaluation should be risk-based but the Administration has

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1491 also said that cost should be a consideration in the risk
1492 management.

1493 Mrs. {Capps.} Right. I hope you will work with this
1494 committee because we intend to, I hope, move forward to
1495 ensure the language gives effect to that kind of intent.

1496 Another important component of the safety standard in
1497 any TSCA proposal is protection for vulnerable populations.
1498 Vulnerable populations include infants and children, the
1499 elderly and disabled, workers, and those living near chemical
1500 facilities. In their 2009 report, Science and Decisions, the
1501 National Academy of Science recommended that vulnerable
1502 populations should receive special attention at all stages of
1503 the risk assessment process.

1504 Mr. Jones, do you agree that it is important to address
1505 risks to vulnerable populations when managing chemical risks
1506 under TSCA?

1507 Mr. {Jones.} Yes.

1508 Mrs. {Capps.} I am pleased to see this draft includes
1509 an explicit protection for vulnerable populations blocking
1510 EPA from finding that a chemical does not present an
1511 unreasonable risk if the agency finds that the chemical

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1512 presents an unreasonable risk for a vulnerable subpopulation.
1513 In other words, if a chemical fails to meet the standard for
1514 a subpopulation, it doesn't meet the standard, period.

1515 Mr. Jones, do you think that requirement is going to
1516 provide the protection that we need for vulnerable
1517 populations?

1518 Mr. {Jones.} It is interesting, Congresswoman Capps.
1519 When we make the determination that a chemical doesn't pose
1520 an unreasonable risk, we have to make the finding you
1521 described, and this just goes back to the earlier comments
1522 for when what the actual safety standard is when we find that
1523 there is risk is not clear, and for that reason it is not
1524 clear how vulnerable populations would be included in that,
1525 so when we find there is a risk.

1526 Mrs. {Capps.} So we need more clarity?

1527 Mr. {Jones.} There needs more clarity there.

1528 Mrs. {Capps.} Yes. And I appreciate the efforts made
1529 in this draft to ensure, and I can see now it is important to
1530 emphasize the word ``draft.''
1531 It probably does need to be
1532 changed along the way. Costs are left out of safety
evaluations and that vulnerable populations are protected.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1533 This is sort of we are this far on it but I hope we can
1534 continue to work to improve this draft. I applaud the
1535 efforts that we have made so far but we have a ways to go to
1536 make sure that we move chemical regulation forward, and I
1537 yield back.

1538 Mr. {Shimkus.} The gentlelady yields back her time.

1539 Seeing no other members asking for questions, we do want
1540 to thank you for, it is obviously not long in congressional
1541 time but a legislative hearing, and we want to thank the
1542 members for being very diligent and involved and engaging in
1543 your responses. We look forward to working with you, and
1544 with that, we will dismiss you and ask for the second panel
1545 to come forward.

1546 Mr. {Jones.} Thank you.

1547 Mr. {Shimkus.} We would like to start. We want to
1548 thank the second panel for coming and appreciate you sitting
1549 through the first round. Hopefully a lot of questions will
1550 be generated based upon the comments. The way I would like
1551 to do it is, I will just introduce one at a time when their
1552 time comes for the opening statements, and again, welcome. A
1553 lot of them are familiar faces that we have seen here

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1554 numerous times, so friends of the committee, I would say.

1555 First, we would like to welcome Mr. Mike Walls, who is
1556 the Vice President of Regulatory and Technical Affairs with
1557 the American Chemistry Council. Your full statement is in
1558 the record. You have 5 minutes, and you are recognized.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1559 ^STATEMENTS OF MICHAEL P. WALLS, VICE PRESIDENT OF REGULATORY
1560 AND TECHNICAL AFFAIRS, AMERICAN CHEMISTRY COUNCIL; DR. BETH
1561 BOSLEY, PRESIDENT, BORON SPECIALTIES, LLC, ON BEHALF OF THE
1562 SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES; JENNIFER
1563 THOMAS, SENIOR DIRECTOR, FEDERAL GOVERNMENT AFFAIRS, ALLIANCE
1564 OF AUTOMOBILE MANUFACTURERS; AND ANDY IGREJAS, DIRECTOR,
1565 SAFER CHEMICALS, HEALTHY FAMILIES

|

1566 STATEMENT OF MICHAEL P. WALLS

1567 } Mr. {Walls.} Good morning, Mr. Shimkus, Mr. Tonko, and
1568 members of the--

1569 Mr. {Shimkus.} And just if you could pull that a little
1570 bit closer.

1571 Mr. {Walls.} How is that? I don't want to break
1572 anybody's eardrums.

1573 Thank you again for the invitation to be here today. I
1574 am very happy to testify today in support of the bipartisan
1575 discussion draft.

1576 ACC strongly supports efforts to reform TSCA. Over the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1577 years, problems with implementation of the current statute
1578 have eroded public confidence in the federal regulatory
1579 system, contributed to misperceptions about the safety of
1580 chemicals, and created uncertainty throughout interstate
1581 commerce.

1582 The discussion draft is a significant milestone in the
1583 TSCA reform debate. For the first time, there is now
1584 bipartisan reform measures before each House of Congress, and
1585 while the debate over TSCA reform certainly doesn't end with
1586 this hearing, there is now a very real opportunity to achieve
1587 TSCA reform this year, and we at ACC are very encouraged by
1588 the very positive comments that members of this subcommittee
1589 have made both on the process and the substance of the draft.

1590 Now, in 2009, ACC published a set of 10 fundamental
1591 principles for TSCA reform. The discussion draft, like S.
1592 697, which is pending in the Senate, fully addresses all our
1593 principles. The draft addresses key issues and shortcomings
1594 in TSCA, and among the most important elements are that the
1595 draft requires that EPA evaluate risks only on the basis of
1596 health and environmental considerations. That was a key
1597 problem that has hampered implementation of the current Act

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1598 to date.

1599 Under the draft, cost and benefit considerations are
1600 relevant only in deciding what regulatory option EPA will
1601 impose to control risks. We believe the draft strengthens
1602 EPA's authority to mandate the generation of new information
1603 on chemicals. The draft also protects sensitive commercial
1604 information from disclosure while requiring appropriate
1605 upfront substantiation of those claims.

1606 The draft also balances the interests of the state and
1607 federal governments by promoting a robust, uniform national
1608 chemical regulatory system.

1609 As the subcommittee continues its discussion, some
1610 elements of the draft do require some additional
1611 clarifications. We think there is a need for additional
1612 detail and direction to EPA on the manufacturer risk
1613 initiated--sorry--the manufacturer-initiated risk evaluation
1614 process. I think you heard comments to that effect from Mr.
1615 Jones. We think it is particularly important that Congress
1616 provide clear direction and clearly articulate its
1617 expectations for that process, and at a minimum, EPA should
1618 be required to promulgate rules or appropriate guidance so

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1619 that all stakeholders understand how that process can produce
1620 risk evaluations that are timely, of high quality and are
1621 reliable.

1622 We also think it is necessary to clarify the interplay
1623 between section 6A and 6B and the presence or absence of an
1624 appropriate risk management rule. This was one of the
1625 elements Mr. Jones mentioned at the conclusion of his
1626 testimony.

1627 ACC also believes that EPA must have access to
1628 appropriate resources to implement a reformed TSCA. Under
1629 the draft, TSCA fee revenue is deposited to the general
1630 Treasury. We believe those funds need to be returned to EPA.

1631 The draft also allows state governments to adopt
1632 regulations identical to those promulgated by EPA in certain
1633 cases. It would be helpful if the degree to which states may
1634 depart from the federal approach in enforcing those
1635 regulations, if at all, should be clarified.

1636 Again, the bipartisan discussion draft is a significant
1637 step toward achieving TSCA reform this year. We look forward
1638 to working with all members of this subcommittee to ensure
1639 that TSCA reform builds confidence in the U.S. chemical

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1640 regulatory system, protects health and the enforcement from
1641 significant risks, and meets the commercial and competitive
1642 interests of the U.S. chemical industry and the national
1643 economy.

1644 Thank you again for the opportunity to testify. I am
1645 happy to respond to questions.

1646 [The prepared statement of Mr. Walls follows:]

1647 ***** INSERT 2 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1648 Mr. {Shimkus.} Thank you.

1649 Next I would like to turn to Dr. Beth Bosley, President
1650 of Boron Specialties, on behalf of the Society of Chemical
1651 Manufacturers and Affiliates. She has testified before.
1652 Welcome back, and you are recognized for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1653 STATEMENT OF BETH BOSLEY

1654 } Ms. {Bosley.} Thanks very much. Good morning, Chairman
1655 Shimkus and Ranking Member Tonko, and everyone on the
1656 subcommittee, and thanks also for having me back to
1657 Washington to discuss TSCA, one of my favorite subjects. It
1658 has been really refreshing to hear so much positive
1659 statements being put forth by both the Democrats and
1660 Republicans on this issue, and we really applaud all the
1661 efforts to modernize TSCA. It covers such a wide variety of
1662 chemicals and applications, and it really impacts a huge
1663 swath of our economy, so it is really important, and given
1664 the range of interested parties, it is remarkable how much
1665 alignment has been achieved. It is a very complicated
1666 statute, and you have worked pretty hard not to make it more
1667 complicated, so I applaud that as well.

1668 I would just like to highlight a few things that I think
1669 are important in the discussion draft. The safety standard,
1670 I think it corrects--as we have already heard today, it
1671 corrects the fundamental flaw in the current TSCA that

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1672 requires you to take cost into account. In this case,
1673 protection of human health and the environment is really the
1674 only driver for the safety standard, and that is a great
1675 improvement. EPA will make very different decisions under
1676 section 6 than it has before, and it will allow policy and
1677 emerging science to inform protective determinations
1678 regarding these chemicals.

1679 For new chemicals, I have talked quite a bit I think
1680 here before that I think the new chemicals process works very
1681 well, and I would like to remain basically as it is. It is
1682 one of the more important parts of the statute. It drives
1683 our environment, drives protection of our environment and our
1684 economy. Experience has taught us that new chemicals can be
1685 greener, and of course, we must continue to innovate because
1686 we live in a global economy now. If we want to promote
1687 innovation and develop greener chemistries, we really must
1688 remain--section 5 must really remain efficient, predictable
1689 and affordable.

1690 We are also interested in timely access to the market,
1691 and the 90-day review window has proven sufficient in most
1692 cases. In some cases, EPA has to suspend or give itself

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1693 another 90 days but in fact EPA often completes its review
1694 after day 22, which is really very early. It depends on how
1695 much information they are given but after day 22 is often.
1696 We would certainly like to be able to go to market after day
1697 22 as well.

1698 One area that TSCA hasn't worked, and we have heard
1699 about this a number of times already this morning, is with
1700 existing chemicals, but I think the discussion draft goes a
1701 long way to really solve the problems with existing
1702 chemicals. It can ask for data under section 4 really
1703 whenever it thinks it is necessary to conduct the risk
1704 evaluation. It doesn't have to make a finding, and that is a
1705 really get improvement.

1706 We do support a more comprehensive review of existing
1707 chemicals, and since there is no detailed screening process
1708 outlined in the bill, we are assuming EPA would go forward
1709 with its work plan chemicals as it has to date.

1710 We do also support deadlines for this review. I am not
1711 sure how long it takes but I would say EPA probably has a
1712 good estimate of how long existing chemicals take to review,
1713 and we know that deadlines work well in new chemicals, so

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1714 they should work well in existing chemicals, but the
1715 deadlines and the workload really has to be achievable.

1716 Under section 8 for the reporting requirements, one of
1717 the most important factors we see there is an inventory reset
1718 that as we have heard already today, again, there is over
1719 80,000 chemicals on the inventory but only 7,700 were
1720 reported on in the most recent CDR. That is a big disparity
1721 between what is in commerce and what is not in commerce.

1722 Currently as a manufacturer, also I report on exposures
1723 of chemicals to my employees but then I also have to estimate
1724 exposures to my customers' employees, and that is pretty hard
1725 for me to do, especially as a small business, so I would
1726 think process of reporting would be very important to add to
1727 this--requiring process of reporting would be very important
1728 language to add.

1729 Confidential business information is really important
1730 for all U.S. manufacturers but especially small businesses
1731 like mine. CBI allows us to pursue research and market
1732 development without advertising to the world exactly what we
1733 are doing. Even so, we really appreciate that we must
1734 proceed with as much transparency as possible, and I think

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1735 the re-substantiation after 10 years is an excellent addition
1736 to the current draft.

1737 Resources and fees, as we have all heard, EPA needs more
1738 resources and getting those fees to EPA instead of the
1739 Treasury is really important. I also appreciate, as you
1740 might imagine, that you have given the provision for small
1741 business reduced fees, and I wholeheartedly support that.

1742 So in general, just very much supportive of the bill and
1743 we think it fixes a lot of the problems with the current TSCA
1744 statute, and I am sure other issues will be raised but we
1745 look forward to working through them with you.

1746 [The prepared statement of Ms. Bosley follows:]

1747 ***** INSERT 3 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1748 Mr. {Shimkus.} Thank you very much.

1749 Now I would like to recognize Ms. Jennifer Thomas,

1750 Director of Federal Government Affairs with the Alliance of

1751 Automobile Manufacturers, again, another returnee. Welcome,

1752 and you have 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1753 ^STATEMENT OF JENNIFER THOMAS

1754 } Ms. {Thomas.} Thank you, Chairman Shimkus, Ranking
1755 Member Tonko. My name is Jennifer Thomas, and I am here on
1756 behalf of the Alliance of Automobile Manufacturers, which is
1757 a trade association of 12 automakers, and together they
1758 account for approximately 75 to 80 percent of all new vehicle
1759 sales here in the United States. The last time I was before
1760 this committee, I was beamed in from Europe, so I am very
1761 happy to be here in this person this time, so thank you for
1762 giving me the opportunity to share our views on the draft
1763 TSCA Modernization Act of 2015.

1764 We commend Chairman Shimkus, Chairman Upton, and Ranking
1765 Member Pallone for their bipartisan efforts to reform TSCA
1766 for the first time since it was enacted in 1976.

1767 Automakers work diligently to identify and reduce
1768 substances of concern in automobiles. We have eliminated the
1769 use of mercury switches and lead wheel weights. We continue
1770 to phase out the use of the flame retardant deca, and we are
1771 eliminating copper from brake pads.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1772 Autos are also one of the most recycled consumer
1773 products. Nearly 90 percent of a vehicle's material content
1774 is recycled or reused.

1775 But clearly there is more work to do to protect the
1776 public and environment from harmful chemical substances, and
1777 we want to be part of the solution. We welcome this
1778 discussion draft and believe it will enhance EPA's ability to
1779 more effectively regulate potentially harmful chemicals while
1780 providing industry a clear and consistent regulatory
1781 environment.

1782 Let me take a moment to highlight some specific areas of
1783 interest to our industry. First, we support the manner in
1784 which this draft seeks to regulate chemicals and articles.
1785 This approach is consistent with existing EPA policy, which
1786 has traditionally recognized the complexity of regulating
1787 chemicals and articles by exempting them from most TSCA
1788 requirements. We understand the potential need to regulate
1789 articles in certain circumstances but this should be based on
1790 risk of exposure to the chemical in question. For example,
1791 there is a clear difference between the risk of exposure to a
1792 chemical substance in a baby bottle versus an engine

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1793 component underneath the hood of a car.

1794 Secondly, we believe that vehicles should be serviced
1795 with parts as produced, meaning those service parts used the
1796 material that were acceptable when the vehicle was designed,
1797 certified and warrantied. Replacement part demand is very
1798 small. It is generally 1 to 5 percent of all vehicle parts,
1799 and it declines over time as a vehicle fleet is retired. Btu
1800 since the average age of a vehicle on the road today is 11
1801 years, replacement parts must be available for many years so
1802 that those vehicles can be serviced and maintained.

1803 There is often some confusion of how vehicle replacement
1804 parts are produced, so let me briefly explain this model.
1805 Automakers typically put a marginal supply of those parts in
1806 stock while the vehicle is still in production, and to the
1807 extent that customers need replacement parts beyond that
1808 initial stock, there is a production-on-demand market, and
1809 suppliers continue to produce them using the same materials,
1810 the same production process, and the same engineering
1811 specifications as for the original vehicle. So while
1812 replacement parts might theoretically be able to be
1813 redesigned for vehicles no longer in production, there are

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1814 technical and logistical barriers that often make such
1815 redesign infeasible if not impossible.

1816 I would also note that similar laws regulating chemical
1817 substances have examined this issue and have opted to exempt
1818 replacement parts.

1819 Finally, we appreciate this draft's simplified approach
1820 to state preemption, which ensures that any EPA final
1821 determination will preempt state chemical regulations.
1822 However, we do recommend that the committee also consider
1823 suspending any new state action while EPA decides a chemical
1824 substance is a candidate for a risk evaluation. We are aware
1825 of the concern expressed about the passage of time while EPA
1826 considers regulatory action and are supportive of expedited
1827 time frames for EPA action.

1828 Thank you again for inviting me to be here and discuss
1829 this important issue with you today. Congress is on the cusp
1830 of reforming TSCA for the first time in nearly 40 years, and
1831 we strongly believe that the final bipartisan product will
1832 more effectively regulate harmful chemicals in a way that
1833 protects the health and safety of all Americans while
1834 providing industry the certainty and the clarity that it

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1835 needs. We look forward to working with you as this draft
1836 moves through the legislative process.

1837 I thank you again, and I would be happy to answer any of
1838 your questions.

1839 [The prepared statement of Ms. Thomas follows:]

1840 ***** INSERT 4 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1841 Mr. {Shimkus.} Thank you very much.

1842 The chair now recognizes Mr. Andy Igrejas, Director of
1843 Safer Chemicals, Healthy Families. Welcome back. You are
1844 recognized for 5 minutes.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1845 STATEMENT OF ANDY IGREJAS

1846 } Mr. {Igrejas.} Thank you very much, Mr. Chairman and
1847 Mr. Tonko. I am pleased to be here as like the other
1848 witnesses are.

1849 Safer Chemicals, Healthy Families is a coalition of 450
1850 organizations and businesses. It ranges from the Learning
1851 Disabilities Association, the Steelworkers Union, large
1852 health providers like Dignity Health, and the major national
1853 environmental organizations.

1854 We all came together to reform TSCA in 2009, and we
1855 definitely want to have it happen sooner than later, and we
1856 are glad to work with the committee toward that end.

1857 I want to highlight what we see as positive in the
1858 draft, what is missing, and some ideas for how to move
1859 forward. I want to also say up front that we think the more
1860 targeted approach you have taken does hold a lot of promise.
1861 There is a lot that it potentially solves and points the way
1862 forward, and also to identify some of the elements that are
1863 in there that we support.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1864 The absence of a complicated prioritization scheme we
1865 think is wise. It avoids the downside of the low-priority
1866 loophole that a lot of us are concerned about. You also
1867 heard from EPA that they already have prioritization criteria
1868 they have gone through that had public input, et cetera.

1869 The approach to preemption by preserving more of TSCA's
1870 existing preemption, you avoid the controversy of the void or
1871 the suspension whereby states are blocked just because EPA is
1872 looking at something, and we appreciate that. The draft also
1873 doesn't roll back EPA's authority on products or imports, so
1874 we think you have threaded the needle on the issue of
1875 products and don't take away authority on some of these other
1876 areas. It doesn't make it easy to require toxicity testing.
1877 It does remove the least-burdensome requirement, which was an
1878 issue in the asbestos decision, and vulnerable populations
1879 are addressed though there is some clarification potentially
1880 needed around the rulemakings.

1881 I want to focus on the issue of cost and see if I can
1882 add some value. It was talked about a lot. We basically
1883 agreed with where EPA came down on this, that we don't see
1884 that issue as solved in this draft, and to try to put it

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1885 simply, I think in our vision, you want the risk evaluations
1886 to clearly identify the risk including the vulnerable
1887 populations and you want the rulemaking to have to protect
1888 against that risk very clearly. And then the cost
1889 considerations including cost-effectiveness comes into play
1890 with how EPA does that, which can mean longer time frames for
1891 implementing some particularly costly piece of the risk
1892 management. It can include choosing a more cost-effective
1893 way of addressing the risk over another way. But you don't
1894 want it to be a limitation on whether the risk is addressed
1895 at all, and that is the key distinction that we still see as
1896 potentially not solved. So it literally comes down to, will
1897 you have a risk hanging out there that EPA has identified and
1898 at the end we will be able to tell the story that the public
1899 is now protected from that risk and have that be true, or we
1900 potentially have the story that EPA winds up saying we
1901 actually didn't protect against the risk because a court
1902 found that we couldn't prove that the cancer cases and the
1903 hospital visits, the lost work, et cetera, outweighed the
1904 costs to the companies to move to the safer alternative.
1905 That is the difference that this hinges on, and so I am not

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1906 sure if we have a difference of intent or of interpretation
1907 of the language, but that is the key thing we would like to
1908 see solved is that the risk management has to protect against
1909 the risk.

1910 We also would agree with what has been said about the
1911 imbalance between industry assessments and the assessments
1912 that EPA would undertake under its own power under the draft.
1913 Really, the industry assessments are the only thing driving
1914 EPA activity under this draft. They have to agree to these
1915 requests and they have to undertake them, and on the flip
1916 side, they have to go through some hoops before they can
1917 undertake an assessment, and that creates an imbalance that
1918 we think could lead to them looking more at the chemicals
1919 that are already being managed well or that are already safe
1920 that have a lot of data instead of the ones that are causing
1921 problems out in the real world right now. And so we think if
1922 you got rid of those extra barriers put in place--this issue
1923 came up of 20 chemicals a year, a requirement perhaps to do
1924 that. That is a nice round number. Maybe giving them a
1925 deadline to complete work on the chemicals that have been
1926 talked about, the 90 work plan chemicals, then we are on the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1927 way to driving some EPA action on the chemicals in addition
1928 to having this industry-initiated assessments.

1929 We agree with what has been said about fees. I have
1930 mentioned some other issues in more detail in the written
1931 testimony around the science provisions in the bill. We
1932 think that you could take--if you are going with less is
1933 more, you can go all the way and not direct EPA to take a
1934 position on some of these scientific questions, but if you
1935 are going to do that, there are places in the bill where what
1936 you are calling for is stuff that the National Academy of
1937 Sciences has actually said EPA shouldn't do and there are
1938 some things the National Academies have said EPA should do
1939 that aren't in there, and so I would say pull back or go
1940 further with what the National Academies would like to do.

1941 Persistent bioaccumulative toxins--these are the
1942 chemicals that are like PCBs. One of the only success
1943 stories of the original TSCA, there is a limited number of
1944 them, chemicals that are like that, identifying them early
1945 and requiring action.

1946 So I will stop there but I will just say that we think
1947 all the issues that we have identified are things that could

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1948 be solved in the draft. We wouldn't support the draft in its
1949 current form. But with the changes that we have talked
1950 about, it could be getting in shape where you would have a
1951 genuine public health achievement here.

1952 [The prepared statement of Mr. Igrejas follows:]

1953 ***** INSERT 5 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

1954 Mr. {Shimkus.} I thank you for your opening statement,
1955 and I will turn to myself for the start of the first round of
1956 questions and recognize myself for 5 minutes.

1957 Mr. Walls, under section 6 of the House discussion
1958 draft, EPA must determine that a substance presents or will
1959 present in the absence of risk management measures and
1960 unreasonable risk of injury to health or the environment. Do
1961 you believe the discussion draft establishes a workable
1962 process for evaluating risk and identifying necessary risk
1963 management measures?

1964 Mr. {Walls.} Yes.

1965 Mr. {Shimkus.} Do you believe the discussion draft
1966 provides clear direction to EPA to consider only health and
1967 environment considerations in evaluating the risk of chemical
1968 substances?

1969 Mr. {Walls.} Yes.

1970 Mr. {Shimkus.} And then Dr. Bosley, do you agree with
1971 the bill's provision that breaks out risk evaluation,
1972 analysis of hazard and exposure as a separate question from
1973 the details of how to restrict a chemical by rulemaking?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1974 Ms. {Bosley.} Yes, I do.

1975 Mr. {Shimkus.} You have previously testified that
1976 Congress should include deadlines in TSCA. The updated
1977 discussion draft contains enforceable deadlines. Does the
1978 way that the discussion draft handles this matter satisfy
1979 you?

1980 Ms. {Bosley.} It does. I would like to see clearer
1981 deadlines that can be achieved by EPA.

1982 Mr. {Shimkus.} Are you concerned that deadlines might
1983 force EPA into making decisions to meet a deadline?

1984 Ms. {Bosley.} I am sorry. What was--

1985 Mr. {Shimkus.} Do you think--well, the deadline issue,
1986 which is obviously a debatable question, would force them to
1987 make a quicker decision because of the deadline versus the
1988 science I guess is a better way to put it. Do you think the
1989 deadlines will force them to make bad--

1990 Ms. {Bosley.} A bad call?

1991 Mr. {Shimkus.} Yeah.

1992 Ms. {Bosley.} I don't think so. The scientists and
1993 engineers at the EPA are very talented, and I think given
1994 what we have seen with new chemicals, they are able to make

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1995 decisions in a very timely manner, and I think with the
1996 correct resources for existing chemicals, I think it all
1997 hinges on that as to how quickly they can address, so with
1998 correct resources, they should be able to--

1999 Mr. {Shimkus.} What about the debate from the business
2000 perspective and the issue of litigation on missing a deadline
2001 or the like?

2002 Ms. {Bosley.} Yeah. So I guess I would give--if it
2003 were me to write the bill, I would give EPA the ability to
2004 say look, this happened and so we need this much more time,
2005 we need another 3 months. So I would give them that ability.
2006 We wouldn't want that to go on for years and years but I
2007 would give them the ability to say well, there is this
2008 unforeseen circumstance and we need a little more time.

2009 Mr. {Shimkus.} The discussion draft permits a
2010 manufacturer to request EPA to conduct a risk evaluation of a
2011 chemical substance. Do you agree that this process can help
2012 EPA accelerate their review of existing chemicals in
2013 commerce?

2014 Ms. {Bosley.} I should think it would, yes.

2015 Mr. {Shimkus.} In your business, do you conduct a basic

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2016 risk evaluation of your chemical products and could that
2017 information inform EPA's review of a substance?

2018 Ms. {Bosley.} We do. We don't do a reaction in the lab
2019 without performing a risk evaluation beforehand.

2020 Mr. {Shimkus.} So it kind of addresses some of the
2021 questions we had to Mr. Jones on definitive timelines, and I
2022 guess to you and then I will go to Mr. Walls, talk about what
2023 would industry do if they are going to pay a fee to have a
2024 chemical reviewed? Would you think that there would be then
2025 a partnership that the sectors would be trying to work
2026 together or do you think they would just do that without
2027 providing information?

2028 Ms. {Bosley.} Oh, no, I would think that they would
2029 work together.

2030 Mr. {Shimkus.} Because that would help you expedite the
2031 system. You could check your--

2032 Ms. {Bosley.} In my case, for a small business, I would
2033 suspect we would have less to add than maybe a larger
2034 business, because I don't have any toxicologists on staff for
2035 instance. So I would rely on EPA toxicologists. So it may
2036 differ between the actual business and the actual

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2037 circumstance how much information would be given but we would
2038 always try to participate very heavily with EPA.

2039 Mr. {Shimkus.} And Mr. Walls?

2040 Mr. {Walls.} Mr. Shimkus, I think what has been the
2041 hallmark of section 5 right now, the new chemical review
2042 provision, has been that it has promoted a dialog between the
2043 industry and EPA. I would see the same sort of circumstance
2044 applying here in the manufacturer-initiated process.

2045 Mr. {Shimkus.} And that again back to you, Mr. Walls
2046 and Dr. Bosley, and in this process under new chemicals, are
2047 you confident that confidential business information as you
2048 are going through this process with the EPA is currently
2049 being protected? Obviously that is a concern that we try to
2050 address a little bit.

2051 Mr. {Walls.} EPA has very rigorous controls to protect
2052 confidential information, yes.

2053 Ms. {Bosley.} I am confident all of our information is
2054 protected.

2055 Mr. {Shimkus.} Great. I think that is all I have, so
2056 with that--and Mr. Igrejas, we look forward to continuing to
2057 work with you because obviously we are moving forward. There

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2058 is some bipartisan interest, and we want to continue to be
2059 open, so let's keep working together.

2060 With that, I yield back my time and turn to the ranking
2061 member, Mr. Tonko.

2062 Mr. {Tonko.} Thank you, Mr. Chair, and thank you again
2063 to all the members of the panel. Your testimony is obviously
2064 very helpful, and we appreciate your participation.

2065 I would like to follow up on the earlier questions I had
2066 of the first panel member, and under the draft, manufacturers
2067 would have unlimited ability to require EPA to conduct risk
2068 evaluations, and there is no required number of EPA-initiated
2069 risk evaluations.

2070 Mr. Igrejas, do you find that to be a concern?

2071 Mr. {Igrejas.} We do. I would share the concern that
2072 Mr. Jones raised, that they really don't have the ability to-
2073 -the discretion to turn down the request and then they have
2074 to complete it under an expedited time frame. I imagine that
2075 those risk evaluations would be valuable to a number of
2076 companies. There are a number of companies who have
2077 developed data and they would bring that forward. And even
2078 if that is all on the up and up, in other words, even if EPA

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2079 agrees and we would agree looking at the data, if that winds
2080 up being most of what they do, you are really not dealing
2081 with the chemicals that are causing a problem for public
2082 health and the environment right now. So even if you take
2083 the process at the most positive view of it--but I think
2084 there is another element too which is as far as I can tell,
2085 the burden of proof would still be on EPA, so they have to
2086 undertake this evaluation but then the burden of proof is
2087 still on them if they find an unreasonable risk to prove with
2088 substantial evidence, et cetera, et cetera. So it is not
2089 that--they are not--they would be doing it a little bit under
2090 the gun in that sense. It is not like the drug burden of
2091 proof that we have.

2092 Mr. {Tonko.} And Mr. Jones spoke about the need for
2093 clarification to ensure that determinations as a risk must be
2094 acted on would not include cost considerations. Do you agree
2095 that EPA's determinations of whether a chemical substance
2096 needs risk management should be made without cost
2097 considerations?

2098 Mr. {Igrejas.} We would agree with what he said, that
2099 they should identify the risk cleanly, health only, is this

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2100 causing an unreasonable amount of risk, cancer, learning
2101 disabilities, birth defects, et cetera, and then the rule
2102 should be required to adequately protect against the risk,
2103 and then the cost considerations should be sort of behind
2104 that line, how you do that, how quickly can we phase in
2105 alternatives, how quickly can we impose these restrictions.
2106 That is where the role of cost should come in. And the
2107 draft, we would agree with him that it is a judgment call and
2108 we are concerned that a court could find that the old
2109 balancing still applies. As we know from the asbestos
2110 decision, that was where you had risks that were so severe,
2111 you had an unusual level of quantifiableness to the health
2112 cost of asbestosis and mesothelioma, and the court still find
2113 that EPA couldn't prove that those quantifiable costs
2114 outweighed the benefits that asbestos brought to the economy.
2115 So it is a very--it is a big issue that has to be gotten
2116 right.

2117 Mr. {Tonko.} So I am hearing a little clarification
2118 needed in the language of the draft.

2119 What about our other panelists in that regard to the
2120 cost language?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2121 Ms. {Bosley.} Oh, yeah, I think that clarification
2122 there to give EPA guidance would be very helpful. We
2123 wouldn't want it to end up in the courts as well.

2124 Mr. {Walls.} Mr. Tonko, I think the discussion draft
2125 reflects a desire to ensure that EPA continues to have the
2126 discretion, a considerable amount of discretion in managing
2127 the process, et cetera. I don't think that the language in
2128 and of itself mandates that EPA adopt a process that raises
2129 the very same problems we have under current law. I think
2130 the intent is clear to do something different if it takes an
2131 additional clarification to get there. I hesitate--

2132 Mr. {Tonko.} If left as is, does it invite additional
2133 litigation?

2134 Mr. {Walls.} It might, but I think the clear intention
2135 here is that, you know, EPA ought to be taking a very
2136 reasonable approach in looking at what are the costs and
2137 efficiencies related to the regulatory options under
2138 discussion.

2139 Mr. {Tonko.} But I think we can agree that we all want
2140 to avoid any threat of additional litigation.

2141 Ms. Thomas?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2142 Ms. {Thomas.} I would agree with Mr. Walls, and just
2143 add that, you know, as an end user of chemicals, we strongly
2144 believe that cost should be a factor in the risk management
2145 process.

2146 Mr. {Tonko.} And if we could turn to the use of
2147 science, Mr. Igrejas, do you have concerns about the
2148 requirements to use the weight of the scientific evidence as
2149 defined in this draft?

2150 Mr. {Igrejas.} Yes, we do. Even though that phrase
2151 sounds innocuous, the National Academy of Sciences weighed in
2152 a report that Congress requested saying that the phrase was
2153 ambiguous and were concerned that it could cause some
2154 needless delays and potentially litigation hooks over what
2155 kind of information was included and referred to be EPA in an
2156 assessment.

2157 Mr. {Tonko.} Thank you. With that, I yield back, Mr.
2158 Chair.

2159 Mr. {Shimkus.} The gentleman's time is expired. The
2160 chair now recognizes the vice chair of the subcommittee, Mr.
2161 Harper, for 5 minutes.

2162 Mr. {Harper.} Thank you, Mr. Chairman, and thanks to

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2163 each of you for being here.

2164 Ms. Thomas, if I may ask you a few questions, what is
2165 the typical lead time from, say, the design to the time that
2166 a new car is going to show up on the showroom floor?

2167 Ms. {Thomas.} Thank you for your question, and, you
2168 know, it varies amongst automakers but generally lead time is
2169 5 to 7 years for a new production model. It is obviously
2170 longer for advanced technologies like electric vehicles. But
2171 that goes back to the articles debate and why, if EPA were to
2172 take action on a chemical substance in an article there
2173 should be, you know, lead time should be considered in that
2174 process.

2175 Mr. {Harper.} So when EPA is looking at what they are
2176 going to do in a situation, that is something you believe
2177 they should take into account is that significant lead time
2178 on what they are going to try to do?

2179 Ms. {Thomas.} Absolutely, because we need that time to
2180 obviously make the necessary changes and suitable
2181 alternatives should also be available.

2182 Mr. {Harper.} What are some practical examples from
2183 your members that help illustrate why you are seeking these

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2184 changes to TSCA?

2185 Ms. {Thomas.} So, you know, our top priority is one
2186 single national program for chemical management, and that it
2187 be implemented at the federal level. You know, a patchwork
2188 of inconsistent, conflicting state requirements just imposes
2189 a huge burden on complex durable-goods manufacturers like
2190 automakers. We manufacture vehicles to meet customer needs
2191 and to be sold in all 50 states, and inconsistent
2192 requirements, like, for example, there is--California and
2193 Washington State have brake friction standards to eliminate
2194 heavy metals and asbestos, and as much as they have tried to
2195 harmonize those regulations, there is still inconsistencies
2196 that we require a lot of resources and significant time
2197 obviously.

2198 Mr. {Harper.} So you can't have 50 different cars--the
2199 same car designed 50 different ways to sell in each state?

2200 Ms. {Thomas.} No, that would be quite challenging.

2201 Mr. {Harper.} Although sometimes you feel like that is
2202 what you might have to do.

2203 Please explain the technical, economic and logistical
2204 barriers that often make such redesigned replacement parts

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2205 infeasible if not perhaps impossible to achieve.

2206 Ms. {Thomas.} Sure. So like I indicated, there is a
2207 lot of confusion around this area. You know, we are not
2208 talking about all automobile parts, and we certainly don't
2209 believe that they should be exempt from TSCA requirements.
2210 We are talking about a small universe of parts, 1 to 5
2211 percent of vehicle production parts, and it is critical that
2212 those parts are needed to servicing and maintaining the
2213 existing fleet and, you know, the average age of a car is 11
2214 years old. We are making vehicles that last longer these
2215 days and so we have to be able to repair them and service
2216 them and so that is why that exemption is necessary.

2217 Mr. {Harper.} Thank you very much.

2218 Ms. Bosley, you have long been an advocate for
2219 maintaining section 5 and ensuring strong CBI protections.
2220 Does this updated discussion draft appropriately handle those
2221 sections to your satisfaction?

2222 Ms. {Bosley.} It does. We are very happy with
2223 maintaining the CBI with substantiation, and we are also
2224 happy to re-substantiate or not after a certain amount of
2225 years. Section 5 works very well. The deadlines are

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2226 adequate, and EPA can always extend if they need it, so we
2227 are very happy with section 5.

2228 Mr. {Harper.} Do you believe that generic names and
2229 unique chemical qualifiers or identifiers will provide the
2230 public concrete enough information about your chemical
2231 without giving away your intellectual property?

2232 Ms. {Bosley.} I think so. I think that manufacturers
2233 work with EPA to provide robust generic chemical names that
2234 might identify the portion of the molecule that is causing
2235 the concern or the hazard, and that is where we need to get
2236 to.

2237 Mr. {Harper.} Thank you, and I yield back the balance
2238 of my time.

2239 Mr. {Shimkus.} The gentleman yields back his time. The
2240 chair recognizes the ranking member of the full committee,
2241 Mr. Pallone, for 5 minutes.

2242 Mr. {Pallone.} Thank you, Mr. Chairman.

2243 As I discussed with the first panel, I see some areas
2244 for improvement but I also think there are a lot of strong
2245 points in the chairman's discussion draft, so let me start
2246 with Mr. Igrejas.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2247 I am particularly interested in your analysis that
2248 leaving the unreasonable-risk language in place along with
2249 the heightened standard of judicial review could perpetuate
2250 the problems EPA has faced in regulating dangerous chemicals.
2251 So do you think an important measure of any TSCA reform
2252 proposal is whether it empowers EPA to regulate known
2253 dangerous chemicals like asbestos, for example?

2254 Mr. {Igrejas.} Certainly. I think that is the main
2255 lesson from the asbestos decision.

2256 Mr. {Pallone.} Okay. Do you think it is important that
2257 any TSCA reform proposal provide for expedited action to
2258 manage the risks from chemicals that are persistent,
2259 bioaccumulative and toxic?

2260 Mr. {Igrejas.} Absolutely.

2261 Mr. {Pallone.} And why is this expedited action
2262 important for those chemicals?

2263 Mr. {Igrejas.} The lesson from TSCA's action on
2264 polychlorinated biphenyls, which is something TSCA originally
2265 did, is that those qualities taken together mean the chemical
2266 is around for a longer time and the risk winds up compounding
2267 because it builds up in the food chain. So the levels go up

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2268 for the end user, for people, over time and so you need to
2269 identify them earlier and take more aggressive action to
2270 restrict them earlier even to see the public health
2271 improvements 20 years later, and that is the story of PCBs.

2272 Mr. {Pallone.} Well, going back to PCBs, do you think
2273 that naming those chemicals in the statute helped move risk
2274 management forward, and would you support something similar
2275 for PBT chemicals?

2276 Mr. {Igrejas.} Well, we certainly would. We have
2277 supported that in the past. That is the simplest way of
2278 having them in the draft. You could also put in criteria for
2279 PBTs and require EPA to do the identification but naming this
2280 is fastest.

2281 Mr. {Pallone.} And I hope that we can work with the
2282 chairman as we move forward to include authorities for, you
2283 know, the way you suggested. I believe the draft shows the
2284 chairman's intent to ensure that the problems identified in
2285 Corrosion Proof Fittings are addressed, and that is an intent
2286 I share.

2287 I just wanted to, if I could, in the time I have left,
2288 if I could just call attention to some of the strengths in

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2289 this draft, which reflect points of strong agreement between
2290 stakeholders, and I just wanted to go down the line, you
2291 know, and as much as possible just answer yes or no, and I
2292 ask each of you to answer each of these questions.

2293 Do you support removing the least-burdensome language
2294 that has been an obstacle to EPA action under section 6? Mr.
2295 Walls?

2296 Mr. {Walls.} Yes.

2297 Mr. {Bosley.} Yes.

2298 Ms. {Thomas.} Yes.

2299 Mr. {Igrejas.} Yes.

2300 Mr. {Pallone.} Is the reporter able to get that? All
2301 right.

2302 Do you support giving EPA authority to require testing
2303 through orders, not just rulemaking? Mr. Walls?

2304 Mr. {Walls.} Yes.

2305 Mr. {Bosley.} Yes.

2306 Ms. {Thomas.} Yes.

2307 Mr. {Igrejas.} Yes.

2308 Mr. {Pallone.} Okay. I don't want to go too fast. Do
2309 you all support upfront substantiation of future CBI claims?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2310 Mr. {Walls.} Yes.

2311 Mr. {Bosley.} Yes.

2312 Ms. {Thomas.} Yes.

2313 Mr. {Igrejas.} Yes.

2314 Mr. {Pallone.} Okay. Do you all support explicit
2315 protections for vulnerable populations?

2316 Mr. {Walls.} Yes. I think the discussion draft
2317 appropriately acknowledges the need to address potentially
2318 exposed populations.

2319 Mr. {Pallone.} Dr. Bosley?

2320 Mr. {Bosley.} I do as well.

2321 Ms. {Thomas.} Yes, we do.

2322 Mr. {Igrejas.} Yes.

2323 Mr. {Pallone.} Okay. Do you all see these changes in
2324 the draft as valuable?

2325 Mr. {Walls.} Yes, although I wouldn't necessarily
2326 agree, Mr. Pallone, with Mr. Igrejas's comments regarding
2327 asbestos and PBTs because the discussion draft limits in no
2328 way EPA's discretion to identify true priorities. But other
2329 than that, yes, we support changes.

2330 Mr. {Pallone.} Dr. Bosley?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2331 Mr. {Bosley.} We support as well.

2332 Mr. {Pallone.} Ms. Thomas?

2333 Ms. {Thomas.} We support as well.

2334 Mr. {Igrejas.} Yes.

2335 Mr. {Pallone.} Okay. And well, again, I got through

2336 this fairly quickly. I guess when you ask yes or no

2337 questions, it is easier to get through everything quickly.

2338 So I just want to again thank the chairman for working

2339 with us as we move forward to get this done. Thanks again.

2340 I yield back.

2341 Mr. {Shimkus.} The gentleman yields back his time. The

2342 chair now recognizes the gentleman from Oregon, Mr. Schrader,

2343 5 minutes.

2344 Mr. {Schrader.} I pass, Mr. Chairman.

2345 Mr. {Shimkus.} The gentleman passes, and the chair

2346 recognizes the gentleman from California, Mr. McNerney, for 5

2347 minutes.

2348 Mr. {McNerney.} Well, thank you, Mr. Chairman. I just

2349 want to say I appreciate your bipartisan work in getting this

2350 draft ready.

2351 Mr. {Shimkus.} Don't let that information out.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2352 Mr. {McNerney.} Okay. I will be careful not to.

2353 Mr. Igrejas, I am going to ask about the catch-22
2354 provision here. I don't think that has been asked yet.

2355 The ``may present unreasonable risk'', could you explain
2356 why that is a catch-22 and what we can do about that in the
2357 draft?

2358 Mr. {Igrejas.} Sure. I think the lesson of TSCA, and
2359 because of the approach in this draft, I think it got a lot
2360 of us looking back at original TSCA more, and you read it,
2361 and there are a lot of things that sound reasonable, they
2362 sound like they should have worked, and it just turned out
2363 that when a court got into them and EPA anticipating that,
2364 they didn't. They really turned out to be significant
2365 barriers to EPA acting, and I think this would be in this
2366 category. On its face, it sounds like before EPA should get
2367 started, shouldn't they decided well, this might be something
2368 that is a problem, but the history I think of this statute
2369 and of EPA interpreting is that it could trip them up
2370 substantially. If they really have to show that it may
2371 before they undertake the evaluation to see if it does, it

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2372 seems unnecessary in the spirit of the more striped-down
2373 approach in expediting them taking action.

2374 Mr. {McNerney.} Okay. Now, the heightened standard of
2375 judicial review, EPA actions taken under TSCA must be
2376 supported by substantial evidence in the rulemaking record,
2377 and that is a substantially higher--well, that is
2378 significantly higher than the ``arbitrary and capricious''
2379 standard that is normally used for EPA rules. Could you
2380 comment on how that could be improved in the TSCA?

2381 Mr. {Igrejas.} We think taking it out would be the
2382 improvement in having ``arbitrary and capricious'' apply to
2383 this statute as well. One of the things I think is lost is,
2384 it is not just that the court threw out the EPA rulemaking on
2385 asbestos but that because of substantial evidence, it took
2386 EPA 10 years to put together that record. I think it was a
2387 40,000-page record. And so it has an impact on how much
2388 time--how much EPA feels it has to put under its feet in
2389 order to go forth and make a rulemaking in addition to the
2390 risk of something getting thrown out of court. So I feel it
2391 being removed would put it in line with other environmental
2392 laws.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2393 Mr. {McNerney.} Well, my understanding is, the
2394 ``supported by substantial evidence in the rulemaking
2395 record'' is what prevented the rules on asbestos from being
2396 implemented.

2397 Mr. {Igrejas.} That is right.

2398 Mr. {McNerney.} And that is clearly, you know, a
2399 disadvantage.

2400 Mr. {Igrejas.} It was the third leg of the stool, so to
2401 speak, in preventing EPA from taking action on asbestos.

2402 Mr. {McNerney.} Okay. Thank you, Mr. Chairman. I
2403 yield back.

2404 Mr. {Shimkus.} The gentleman yields back his time.

2405 Seeing no other members present, I want to thank the
2406 panel for coming. It was a pretty good hearing. I think
2407 there are things that we want to continue to discuss. I did
2408 announce a date for a subcommittee mark, and the only thing I
2409 will say too is, as we move forward, we don't have to get it
2410 perfect right the first bite. We have subcommittee, we have
2411 full committee. Then hopefully the Senate will move
2412 something. We go to conference. There is going to be a lot
2413 of opportunities. But I appreciate the positive comments

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

2414 from all my colleagues. I understand the issues that they
2415 have concerns on. We look forward to really having an
2416 opportunity to get this thing done, and we look for your
2417 input to be able to do that.

2418 So I will dismiss the second panel, and I will ask
2419 unanimous consent that all members of the subcommittee have 5
2420 legislative days to submit opening statements for the record.

2421 I also ask unanimous consent that the following letters
2422 to the subcommittee regarding the discussion draft at our
2423 hearing today be included in the record. The letters are
2424 from the American Cleaning Institute, the Environmental
2425 Working Group, the Bipartisan Policy Center, Society of
2426 Toxicologists, the American Alliance for Justice, and a
2427 statement by Dr. Paul Lock. Without objection, so ordered.

2428 [The information follows:]

2429 ***** COMMITTEE INSERT *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

|

2430 Mr. {Shimkus.} And I will adjourn the hearing.

2431 [Whereupon, at 12:15 p.m., the Subcommittee was

2432 adjourned.]