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Thank you, Mr. Chairman and Ranking Member Tonko, for the opportunity to testify.

Safer Chemicals, Healthy Families is a coalition of public health, community, parent, and labor organizations as well as small businesses. We came together in 2009 to pursue meaningful and effective reform of the Toxic Substances Control Act and have been working diligently toward that end.

The Discussion Draft takes a narrower approach to TSCA reform that holds some promise. The implicit idea seems to be that by doing less and focusing on the fundamentals, a way forward can be found that enjoys broad support. There is merit in that approach.

However, in our analysis, some of the fundamentals are still missing. I discuss several of them in this testimony. They will need to be addressed for this effort to draw support from the public health and environmental community, including our coalition.

First, I want to make clear what we see as several positive elements of the draft:

In testimony last year we highlighted concerns about the "low priority" category as creating a potential loophole for many chemicals to escape scrutiny based on a murky standard. The Discussion Draft wisely eliminates that category.

Last year, we highlighted the need to protect vulnerable populations. The draft requires risk evaluations to address populations that are disproportionately exposed or susceptible to harm from a chemical.

Last year, we raised concern about when and how states were preempted compared with current law. The Discussion Draft retains key elements of current law including the timing of preemption, the ability of states to co-enforce, a workable waiver provision, and the savings clause.

The draft also allows EPA to require toxicity testing through an administrative order instead of only through the current cumbersome process of a formal rulemaking.

Finally, unlike the Senate bill recently introduced by Senators Udall and Vitter, S.697, the Discussion Draft does not propose to weaken TSCA sections dealing with exports, imports, nomenclature, or regulation of articles.

We appreciate this responsiveness to several concerns we raised in the debate last year.

Key Barrier to EPA Action Remains

Our first concern about the draft is that it does not, in our analysis, fix the fundamental barrier in current law to EPA imposing risk management on an unsafe chemical.

As you know, the death knell for the TSCA program on existing chemicals is widely recognized to be the decision in *Corrosion Proof Fittings,* whereby a federal appellate court struck down EPA's proposed regulation of asbestos.

The court interpreted TSCA as requiring EPA to prove with substantial evidence that the risks of asbestos outweighed its benefits to the economy. It found that EPA failed to do so. It also found that EPA failed to demonstrate it had chosen the "least burdensome" way of addressing asbestos's risks, which TSCA also required.

The draft makes targeted changes that appear designed to address the issues from the court case. It specifies that risk evaluations are to exclude cost and other non-risk factors. It eliminates the "least burdensome" requirement. It also prohibits EPA from finding that a chemical poses no unreasonable risk if it poses such a risk to any potentially exposed or susceptible population. Those are all positive changes.

However, the language in 6(c), including the cost-effectiveness requirement, combined with the baggage of the phrase "unreasonable risk" would, in our interpretation, still outweigh these changes. It would limit EPA's ability to impose risk management to those measures that could pass a cost-benefit and cost-effectiveness test.

While this may seem like a fine point, it is fundamental. Stakeholders broadly agree on a risk-based system for TSCA reform. In such a system, cost considerations should be reserved for the question of *how* to mitigate the risk, not *whether* to mitigate it. As it stands, we believe the draft would allow a major risk – such as a chemical that causes cancer or birth defects – to remain unmitigated if it was deemed too expensive to do so. That is a very different outcome than mitigating the risk in a cost-effective way.

This problem in the bill is fundamental but it could potentially be solved with small changes to the language. The bill needs to ensure the public is protected from the identified risk and that cost-effectiveness analysis is used only to choose among approaches that clearly protect the public.

Imbalance in Assessments

A second fundamental problem is the imbalance between the industry-initiated and EPA-initiated assessments under the bill.

We do not flatly oppose the idea of industry-initiated assessments as proposed in the bill because the chemicals are held to the same standard of safety.

As drafted, however, this provision would likely overpower the public health imperatives of TSCA reform. EPA is required to undertake a risk evaluation if industry requests it. There is no wiggle room. On the flip side, if EPA wants to undertake a risk evaluation of a chemical for its own reasons of public health and safety, it has to make a number of findings to justify the evaluation. There is no cap on the number of industry-initiated evaluations, and no minimum schedule for the EPA-initiated evaluations. Also, EPA is under a much tighter deadline to complete the industry-initiated assessments.

Instead, to provide balance, EPA should have the discretion to turn down an industry request and to initiate its own assessments without having to make multiple findings. There should be a minimum schedule of EPA-initiated risk evaluations to ensure steady progress in public health and environmental protection. EPA should be able to levy fees to fund the assessments it initiates, and not just the fees allowed for the assessments industry initiates.

One way to structure the program would be to give EPA a deadline to complete risk evaluations on the chemicals it has already prioritized using the Work Plan process under current law and then require it to initiate a minimum number of evaluations per year after that. The industry-initiated evaluations should be limited in relation to the EPA ones in any year.

The absence of a complicated prioritization scheme is a key feature that we support in the draft. The changes we propose would ensure steady progress on chemicals to benefit public health and the environment while also providing companies that step forward with the opportunity, if deserved, for the imprimatur of safety.

Persistent and Bioaccumulative Toxic Chemicals

One of TSCA's only clear areas of success was the elimination of the production and distribution of polychlorinated biphenyls (PCBs), which were explicitly named in the law. The chemicals were widely used at the time in electrical transformers. Their high concentration in fish and even in the breast milk of nursing mothers raised public health concerns and drove Congressional action on chemicals.

PCBs were a particular problem because in addition to being toxic, they were also *persistent* – they did not break down in the environment – and *bioaccumulative* – they built up in the food chain. The phase-out of PCBs by TSCA was a clear public health success. The Centers for Disease Control and Prevention has tracked the steady decline of the chemicals in Americans. However, it is a sign of just how problematic these qualities are that almost 40 years after PCBs were banned, people continue to be exposed to the chemicals.

Dozens of other existing chemicals are known or suspected to have these same properties. EPA has the ability to screen for them and routinely does so as part of the new chemicals

program. The lesson of PCBs in original TSCA is that early detection and expedited risk management were needed to realize public health benefits years later. We should apply that lesson to TSCA reform by requiring similar expedited action on chemicals with the same properties as PCBs.

Scope of Preemption

As noted above, we support the Discussion Draft's retention of current TSCA regarding the timing of preemption, co-enforcement, the waiver, and the savings clause. It is important to note, however, that the draft does expand the preemption in current law by eliminating the ability of states to ban a chemical outright if EPA has imposed risk management and by applying preemption to states when EPA has made a finding of "no unreasonable risk."

The draft needs a grandfather clause to preserve the state laws enacted in the intervening years since TSCA passed. These laws have generally become settled matters of public health policy and preserving them would ensure there is no backsliding.

In addition, the preemption appears to apply broadly to any state action on a chemical even if a federal evaluation addressed only one source of exposure to the chemical or one type of hazard. The draft would prohibit a state from taking action on a chemical in a toy, for example, if EPA only examined the use of the chemical in furniture or looked only at acute health effects and not at chronic effects like cancer or reproductive toxicity. Further clarification on the scope of preemption is needed.

Science Policy Prescriptions

The draft contains several provisions that direct how EPA should consider scientific evidence and sets limits on what studies the agency can rely upon in assessing the safety of chemicals. We are concerned that several of these provisions are overly proscriptive – and may improperly tie EPA's hands from considering information important for accurately assessing the potential risks of a substance, as well as create multiple hooks for litigation. In addition, the draft directs EPA to use a concept – "Weight of the Evidence" – that the National Academies of Sciences have specifically rejected. It fails to require approaches – including aggregate assessment – that the National Academies have specifically recommended. If the bill is going to depart from the "less is more" philosophy in the area of science policy, it should adhere to the approaches recommended by our most authoritative scientific body.

Judicial Review Standard

The standard for judicial review under TSCA – "substantial evidence" – departs from virtually every other environmental statute and played a role in the fateful court decision around asbestos. It places a greater evidentiary burden on EPA for its decisions than the more common "arbitrary and capricious" standard. Since a goal of TSCA reform is to ensure EPA can implement necessary risk management for unsafe chemicals, the judicial review standard should finally be changed.

Confidential Business Information
The draft explicitly recognizes the obligation of companies to substantiate claims of confidential business information. This is long overdue. However, in order to respond to widespread concern about abuses and to ensure the availability of public information, EPA should be required to review such claims by a set deadline. And given the large volume of existing chemicals and existing claims, the effect of these changes would be significantly enhanced if they applied substantiation and review to past claims. Under the draft as now written, substantiation would be limited to information submitted after enactment of the new law. Also, we should be sure that EPA is authorized to disclose information to the full range of first responders, state, local and tribal officials, and medical professionals in emergency and public health situations.

Conclusion
We appreciate that the draft addresses several of the concerns we have raised over the course of the TSCA reform debate. Our goal for reform is a clear improvement in public health and environmental protection at the federal level, with no backsliding from rollbacks or undue preemption. The recommendations we've made today would help the legislation achieve that goal. We continue to analyze the legislation and look forward to working with the committee as you consider TSCA modernization.