

**Testimony of
Anna Fendley, MPH
United Steelworkers
before the
Subcommittee on Environment and the Economy
on
the “Chemicals in Commerce Act of 2014”
March 12, 2014
Washington, DC**

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, thank you for holding today’s hearing on the Chemicals in Commerce Act (CICA) discussion draft and for the opportunity to testify. My name is Anna Fendley. I am here on behalf of the 850,000 members of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW).

We are the largest industrial union in North America and represent the majority of unionized chemical workers in the United States who make plastics, fertilizers, pesticides, synthetic rubber, pharmaceuticals, paints, pigments, solvents and thousands of organic and inorganic chemicals. We also represent hundreds of thousands of men and women whose workplaces use and store large quantities of industrial chemicals. We therefore have a very significant stake in the economic health of the chemical industry and all industries that use chemicals where workers suffer higher exposures than other segments of the population.

Our members, and indeed all workers, have a huge stake in chemical safety. We are the first to be exposed and suffer the highest exposures as the producers of new and old chemicals. For many years workers have been recognized as canaries in the coal mine in respect to toxic chemicals. Miners used to bring canaries underground in the mines before the invention of modern testing equipment. If the bird died, workers knew something was in the air and they exited the mine. Today, we often understand the hazards of a chemical through epidemiologic studies that count the death or disease attributed to exposure. Most of these studies are done on workers. Our chemical safety laws should prevent workers from becoming sick and dying due to their workplace chemical exposures.

The Toxic Substances Control Act (TSCA) is the only major environmental law that has not been updated since it was originally passed in 1976. As witnesses in past hearings before this

subcommittee have stated, TSCA is woefully out of date and ineffective. Some of the shortcomings that adversely impact workers include:

- The safety standard under TSCA is not solely health-based. It includes a cost-benefit component that has prevented the Environmental Protection Agency (EPA) from making clear statements about a chemical's safety and prevented needed regulations.
- Under current law TSCA does not explicitly require protection for those who are more vulnerable based upon their aggregate or cumulative exposure or their biology, including workers, pregnant women, children, the elderly, and other disproportionately affected communities.
- TSCA does not require new chemicals to be tested for safety. EPA must demonstrate that a chemical may pose a risk before it can be tested for safety. This is an impossible Catch-22 with regard to a new chemical.
- EPA is limited in its ability to require testing on existing chemicals because, like new chemicals, EPA must show that a chemical poses a risk before it can be tested for safety. Under TSCA, EPA must initiate formal rulemaking to require testing which is an arduous process.
- Health and safety information has, in practice, been protected under TSCA's provisions for confidential business information (CBI). Public disclosure of this information is crucial to preventing worker and consumer exposure to harmful chemicals.

Our union has been advocating for chemicals policy reform in the United States for many years. A system for testing and restricting harmful chemicals is critically important to health and consumer confidence. Many governments around the world have enacted chemical laws that are more protective than TSCA. The European Union has adopted the REACH program (Registration, Evaluation Authorization and Restriction of Chemicals), which is designed to assure that chemicals and products made with chemicals are safe for workers to manufacture and for the public to use. Other countries that have implemented stronger laws include Japan, South Korea, and China. Unless the United States passes more protective chemical safety laws, manufacturers in the United States may be unable to export to parts of the world with more protective laws, and consumers could ultimately come to trust products from other parts of the world more than those made domestically. Members of our union rely on the jobs in the chemical industry and in the industries that use chemicals, and we support reform because we

know that it will make American manufacturing more globally competitive. However, while this issue of chemical industry competitiveness and consumer confidence is an important consideration for reform, protecting public health must be the primary goal.

The USW is a member of the Safer Chemicals, Healthy Families Coalition, which includes over 450 organizations working to protect Americans from toxic chemicals. Our union also co-founded the BlueGreen Alliance, which is a coalition of ten labor unions and four environmental groups building a cleaner, fairer and more competitive American economy. With our partners in the BlueGreen Alliance, we developed and accepted principles for TSCA. These principles include:

1. **Take Immediate Action on the Worst Chemicals:** TSCA should ensure that EPA can take immediate action to test and regulate the chemicals that pose the greatest threat to workers and the public.
2. **Prove Safety and Provide that Information to the Public:** Chemical manufacturers should be required to demonstrate the safety of their products and provide information about health and environmental hazards to workers and the public. Claims of confidential business information should not include information about the health and environmental effects of a chemical.
3. **Give EPA the Power to Protect:** TSCA reform should provide EPA with the clear authority to establish health and safety standards and obtain information to make those decisions using the most up-to-date science available. Implementation of the law should be adequately funded.
4. **Protect Those at Greatest Risk, Including Workers:** TSCA should explicitly protect those who are most vulnerable due to biology or aggregate or cumulative exposure including workers, children, pregnant women, people of color, low-income communities, and other groups.
5. **Promote Problem Solving Rather than Problem Shifting:** TSCA reform should prioritize the use of green chemistry and engineering that create inherently safer products and processes.
6. **Involve Workers, Communities and the Public:** TSCA reform must ensure that these groups have the right to know, whistleblower protections, the right to court action, and that companies disclose ingredients.

7. **Improve Coordination Between and Innovation Inside Government Agencies:** The EPA should have the authority to work with agencies that have the responsibility to protect against chemical exposures including the Occupational Safety and Health Administration, the Food and Drug Administration, and the Consumer Product Safety Commission. Additionally, the states' ability to regulate chemicals above and beyond federal law should be maintained.
8. **Invest in a Green Jobs Future and Support the Transition to That Future:** Investment should be made to help workers and companies grow and innovate in an economy made up of safer chemicals that are more environmentally and economically sustainable.

Our union has appreciated that this Subcommittee has held so many hearings on TSCA reform during the 113th Congress. However, we are disappointed that the drafters of the CICA discussion draft did not include expert witnesses' valuable recommendations for TSCA reform to fix the problems in the original law and create a system to protect public health and the environment. The CICA would merely amend, not reform, TSCA and would result in a less protective, less functional federal system for assessing and restricting industrial chemicals. CICA is a step backwards, not a step forward. The remainder of this testimony will highlight some of the shortcomings of the CICA:

1. Safety Standard

TSCA's safety standard requires that EPA determine whether a chemical poses an "unreasonable risk," which incorporates both a health and cost-benefit analysis. When EPA is regulating a chemical that does not meet the safety standard, it must impose the "least burdensome" regulation.

One often-cited example of the ineffectiveness of the law is EPA's attempted ban of asbestos. Asbestos is a known human carcinogen that has caused debilitating illness and eventual death for hundreds of thousands of workers who were exposed on the job. It is banned in other countries around the world. EPA banned most uses of asbestos in 1989 after spending ten years studying the issue and developing a plan. The ban was overturned by a federal court in 1991 because EPA had failed to establish that asbestos posed an "unreasonable risk," and that it had chosen the "least burdensome" method for restricting use of the

substance, as required by TSCA. As a result, asbestos is still in commercial use in the United States. EPA has not tried to ban a substance since the ruling on asbestos 23 years ago.

TSCA reform needs to include a health-only safety standard. Neither CICA nor the Chemical Safety Improvement Act (CSIA) in the Senate would fix TSCA's problematic safety standard because neither includes a health-only safety standard.

CICA retains the highly problematic "unreasonable risk" standard by neglecting to include a definition of the safety standard that specifies the use of health-only considerations. A slight change updates the language throughout the text from "unreasonable risk of injury to health or the environment" to "unreasonable risk of harm to human health or the environment under the intended conditions of use." However, this language change is negligible and will not result in a change that would provide adequate protection to public health, particularly because the CICA narrows the application of the unreasonable risk standard only to the intended conditions of use.

Additionally, although the draft does not retain the language of the "least burdensome" requirement for regulating chemicals, it recreates the requirement in Section 6(f)(4). That section requires the Administrator to determine that requirements or restrictions are proportional to the risks of the chemical substance that are addressed in the safety determination, will result in net benefits, and are cost-effective in ensuring that the chemical will meet the safety standard. CICA's recreation of "least burdensome" also requires that EPA only impose requirements or restrictions after EPA determines that technologically and economically feasible alternatives are available and likely to be used as a substitute. These provisions place an impossibly high burden on EPA and do not fix the problems in existing TSCA that have prevented the agency from imposing restrictions on chemicals.

2. Prioritization

Included among our BlueGreen Alliance principles for TSCA reform is the concept of EPA prioritizing and taking action on the worst chemicals first. This is a pragmatic response to the 62,000 chemicals that were grandfathered in when TSCA was first enacted and the additional 20,000 or more chemicals that have gone on the market since that time.

However, the prioritization schemes laid out in the CICA and the CSIA would both result in chemicals falling through the cracks due to considerations of cost versus benefits or being prioritized without adequate information. Again, as written, neither bill qualifies as forward-moving reform.

Section 6(a) of CICA requires the Administrator to prioritize chemicals. A chemical must be listed as high priority if it has the potential for high hazard and high exposure. It may be listed as high priority if it only has either high hazard or high exposure; and a chemical can be given a low priority designation if it is likely to meet the safety standard. Under CICA, if a chemical is designated low priority, then it will expressly not be further evaluated or be subject to a safety determination even though EPA may not have sufficient information to make an informed determination of the chemical's safety and its designation as low priority may be based on current costs versus benefits. The factors that must be considered for prioritization include some reasonable items such as hazard and exposure potential and specific uses and exposures. However, other factors for consideration fall into a flawed model including the volume of a chemical substance manufactured or processed in the United States when a substance with only high hazard and not high exposure (or volume) may, but is not required to be considered high priority. Flawed logic is also used to designate a chemical as low priority due to existing federal and state laws, which would then be preempted if a chemical is designated low priority.

3. Testing Authority

EPA must be able to get the information it needs from manufacturers and processors in order to make a safety determination. One of the flaws of current TSCA is that the burden is entirely on EPA to prove that a chemical substance is harmful before it can require testing from a company to show whether that chemical meets the safety standard. TSCA reform should shift the burden from EPA to industry having to prove that a chemical is safe. CICA would not allow EPA to easily require the development of the information it needs.

Section 4(a) of the bill does give EPA the authority to require information, but not for purposes of prioritization which is the first step in determining whether a chemical substance is likely to meet the safety standard (low priority) or not (high priority). Section 4 does not shift

the burden of proof from EPA to industry because EPA must provide a detailed justification for requiring data using order authority.

4. New Chemicals

The new chemicals program under TSCA is the part of the program that allows EPA to review information about a chemical prior to it going on the market. The CICA would weaken the existing provisions in TSCA for oversight of new chemicals. Real reform would require that companies be required to provide the data EPA needs to assess a chemical's safety and that new chemicals be shown to meet a health-only safety standard before they go on the market as a way to protect health and improve confidence in the safety of new chemicals.

Section 5 of CICA makes it nearly impossible for EPA to require companies to submit health and safety information for new chemicals before they go on the market. EPA must complete a review of the premanufacture notice and make a safety determination (using the "unreasonable risk" standard) within 90 days or the company can put the product on the market and states are preempted from acting on the chemical. Manufacturers are not required to provide safety data for the chemical, and EPA does not have the ability to compel testing before the chemical goes on the market at the end of the 90 day review period. Additionally, there are a number of problematic exemptions in Section 5(f) that manufacturers and processors can claim to avoid providing information to EPA. The exemptions would, however, allow for problematic worker exposure to potentially harmful chemicals.

5. State Action

State action in the area of chemicals regulation has been the driving force for protections during the last 40 years due to an ineffective federal system. State laws and regulations are an important safeguard for the residents of each state and can help account for exposures or circumstances unique to that state.

The preemption language in the Senate bill, CSIA, overreaches by taking away states' rights and preventing state action on chemicals. Unbelievably, the CICA goes further and includes an even more unacceptable level of preemption. Both bills would preempt state law before EPA

takes final action on a chemical and could preempt state law due to a lack of information about a chemical rather than an affirmative determination of safety.

Section 17 of CICA preempts and prevents states from protecting their citizens by prohibiting states from requiring the development or submission of information about a chemical substance and by prohibiting, restricting, or reporting the manufacture, distribution, or use of a chemical substance for any reason. In CICA these provisions extend to chemical substances and to mixtures and articles. As previously mentioned regarding prioritization, a low priority designation preempts state action, but that low priority designation may be made due to state protections. Additionally, CICA would preempt state action on any chemical substance that enters commerce through the new chemicals program even if that chemical enters commerce due to the expiration of the review period rather than an affirmative determination of safety.

6. Vulnerable Populations

Protecting the most vulnerable among us is of utmost importance in any TSCA reform bill. Often called vulnerable populations, these are people who are more susceptible to adverse health effects caused by exposure to a chemical either due to increased biological susceptibility or increased aggregate or cumulative exposure. Workers, the canaries in the coal mine, fall into the latter category and generally have the highest exposures in the population. Prioritization, safety assessments, safety determinations, and restrictions on the use of chemicals must include considerations of workers and other vulnerable populations like children, pregnant women, the elderly, and other vulnerable populations.

Neither CICA nor the introduced CSIA adequately protect these vulnerable populations because they do not require EPA to consider and protect these groups.

CICA, which uses the term “potentially exposed subpopulation,” does include a definition, but allows for EPA to determine which groups (workers, infants, children, pregnant women, etc.) are appropriate to consider rather than considering all of them. Although there is a definition, “potentially exposed subpopulations” are only mentioned one other time in the draft. That mention is in Section 6(c)(3) which requires EPA, in the safety determination

process, to “analyze exposures to the chemical substance for the specific uses that are significant to the risk of harm and subsets of exposure (including information on potentially exposed subpopulations)...” This is inadequate. EPA would not be required to analyze all potential exposures under the intended conditions of use, but only the specific uses that are significant to the risk of harm

CICA does not require the exposures of potentially exposed subpopulations or vulnerable populations to be considered during the prioritization process. Unlike the safety determination, potentially exposed subpopulations are not expressly mentioned as one of the factors for assigning priorities. Therefore, protection of vulnerable populations is at the mercy of the cost-benefit analysis required for both prioritization and the safety determination.

7. Confidential Business Information

Provisions in TSCA that protect confidential business information (CBI) are important to competition and innovation in the industry. However, CBI protections have the potential for abuse and should never include safety information about a chemical substance. Both CICA and CSIA as introduced expand the ability of industry to hide information and have problematic clauses that grandfather previous claims of protection of information. Section 14(e) of the CICA does not require resubstantiation of CBI claims made during the nearly 40 year implementation of the current law. Real reform would make more information about the safety and use of chemicals available to workers and the public and would prevent abuse of CBI claims while protecting information that is legitimate CBI.

8. Deadlines and Resources

Ultimately TSCA reform will never work if the agency is not provided with clear, enforceable deadlines that ensure the program moves forward in assessing chemicals and adequate resources to move the program forward. The two go hand-in-hand and are both essential. Neither the CICA nor the CSIA incorporated mandatory deadlines or a funding mechanism for the program even though a wide variety of stakeholders have underscored their importance.

CICA includes a requirement that the Administrator prioritize all active chemical substances “as soon as feasible.” This is not a deadline and leaves the agency without a specified timeline for prioritizing chemicals, making safety determinations, and restricting chemicals that do not meet the safety standard. The only other deadline in the bill is that the agency must complete policies, procedures, and guidance as prescribed by the Act. Unfortunately this one deadline will not ensure that EPA assesses or regulates chemicals in a timely way.

Resources are also a critically important aspect of TSCA reform that is not mentioned in either the CICA or the CSIA. Congress must make sure that EPA is able to carry out TSCA reform by providing adequate funding via appropriations and user fees.

In closing, the United Steelworkers union strongly supports working on TSCA reform during the 113th Congress with the goal of developing meaningful legislation that qualifies as actual reform. However, the CICA would amend the law and set us back from the status quo and from other parts of the world that are assessing and restricting harmful chemicals. The House of Representatives needs to begin a new effort that incorporates these and other recommendations that would protect worker and public health. TSCA reform must give EPA the necessary authority and resources to get the information the agency needs, make safety assessments and determinations, and restrict the use of chemicals that do not meet a health-only safety standard. We look forward to working with the subcommittee and other stakeholders in developing legislation that does that. Thank you again for the opportunity to be here today.

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USW is the largest industrial union in North America and represent 850,000 workers whose workplaces use and store large quantities of industrial chemicals including the majority of unionized chemical workers.

The Toxic Substances Control Act (TSCA) is the only major environmental law that has not been updated since it was originally passed in 1976. It is woefully out of date and ineffective. USW strongly supports TSCA reform and is a member of the Safer Chemicals, Healthy Families coalition and the BlueGreen Alliance, which has developed principles for TSCA reform.

The Chemicals in Commerce Act (CICA) would merely amend, not reform, TSCA and would result in a less protective, less functional federal system for assessing and restricting industrial chemicals. CICA is a step backwards, not a step forward for these reasons:

1. **Safety Standard:** CICA retains the highly problematic “unreasonable risk” standard and recreates the “least burdensome” requirement for regulating chemicals.
2. **Prioritization:** CICA would enact a prioritization schemes that would result in chemicals falling through the cracks due to considerations of cost versus benefits or being prioritized without adequate information.
3. **Testing Authority:** TSCA reform should shift the burden from EPA to industry having to prove that a chemical is safe. CICA would not allow EPA to easily require the development of the information it needs.
4. **New Chemicals:** The CICA would weaken the existing provisions in TSCA for oversight of new chemicals by making it nearly impossible for EPA to require the information it needs to make a safety determination and by allowing new chemicals to go on the market if EPA’s review timeline expires.
5. **State Action:** CICA includes an unacceptable level of preemption. It could preempt state law due to a lack of information about a chemical rather than an affirmative determination of safety.
6. **Vulnerable Populations:** CICA does not adequately protect those at high risk of illness due to biological susceptibility or high exposure.
7. **Confidential Business Information:** CICA expands the ability of industry to claim CBI and has problematic clauses that grandfather previous claims of protection of information.
8. **Deadlines and Resources:** CICA does not include clear and firm deadlines or adequate resources for EPA to carry out reform.

The House of Representatives needs to begin a new effort to ensure that TSCA reform gives EPA the necessary authority and resources to get the information the agency needs, make safety assessments and determinations, and restrict the use of chemicals that do not meet a health-only safety standard.