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BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

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Chairwoman Boxer, Ranking Member Senator Vitter, and Members of the Committee, my name is Linda Fisher, and I am Vice President and Chief Sustainability Officer for DuPont. I want to thank you for the opportunity to testify today on the importance of reforming the Toxic Substances Control Act. At DuPont, one of my responsibilities is to oversee our global product stewardship and product regulatory programs which ensure that our products are safe and in compliance with the various product regulatory programs around the world.

DuPont is a broadly diverse 211 year old company. In addition to our agricultural seed and crop protection businesses, we use a wide variety of chemicals to make products for markets that include buildings, transportation, electronic goods and consumer products. We operate in 90 countries around the world under a variety of chemical management regimes. We have 623 employees who work to ensure our compliance with those regulatory regimes and carry out our voluntary efforts to ensure our products are safe at a cost of roughly \$85 million annually.

As you know, I served as the Assistant Administrator of the Office of Pollution Prevention and Toxic Substances at EPA during the Presidency of George H.W. Bush, and then as Deputy Administrator under President George W. Bush, where I had the privilege of working with the talented staff of EPA who administer TSCA. I have had the opportunity to experience TSCA as a government regulator and as a regulated entity, and I must acknowledge it is a difficult statute to implement no matter where you sit.

Three years ago, I was asked to testify before this committee on the need to modernize U.S. chemical management policies. I emphasized then that in the more than three decades since the Toxic Substances Control Act was signed into law, many things had changed rendering the statute outdated, especially in terms of how it treated existing chemicals. Scientific understanding and public awareness of exposure to chemicals have changed significantly since enactment. Countries around the world have adopted and are implementing strong new programs to regulate the manufacture and use of chemicals. Although significant attention is given to REACH, the European product regulatory program which entered into force in 2007, since that time we have seen many regulatory programs springing up around the world in markets as diverse as Canada, China, Korea and Turkey.

And here at home, in the absence of federal legislation to reform TSCA, we continue to see an increasing number of actions by states to regulate chemicals. State-by-state chemical bans, restrictions, phase-outs and substitutions create tremendous uncertainty for businesses seeking to produce safe, reliable products that can be sold nationally and globally. In addition, consumers are demanding safer products and that is

having an impact on the market value chain. Many of our customers are responding to consumer concerns about chemical safety by imposing restrictions on the use of certain chemicals in products. Some have called this “private regulation” and it imposes additional stress and uncertainty in the marketplace, as these private sector limitations seldom have the scientific rigor and transparency that a regulatory process provides.

It is time to reform TSCA. The U.S. needs to be a global leader in chemicals management, and to do that we need a robust national framework for chemicals regulation, one that is predictable and manageable for industry while increasing consumers’ confidence that the chemicals used to make products are safe. The Chemical Safety Improvement Act of 2013 gives us the vehicle to do just that.

I am personally, very grateful that the work begun under the late Senator Lautenberg has continued under your leadership of the committee, Senator Boxer. TSCA is a very important statute, at times forgotten by the Congress, but one that is critical to public safety and to economic innovation in the U.S. I also want to express my appreciation for the work of Senator Vitter, who with Senator Lautenberg introduced the Chemical Safety Improvement Act with a bipartisan group of cosponsors.

Over the years, considerable consensus has developed that several major changes to TSCA are needed in order to ensure that the U.S. has an effective chemical management regime going forward.

First, a modernized TSCA should require EPA to systematically assess existing chemicals. The statute’s original drafters grandfathered existing substances, and placed significant burdens on EPA before it could identify chemical risks and take action. This has generated public concern about whether we know enough about the chemicals that we are exposed to every day.

Second, data gathering tools under TSCA should be less cumbersome and time consuming. A modernized TSCA should include a streamlined approach for EPA to gather the data they need. We believe that chemical producers and our value chain partners need to provide adequate data to allow EPA to assess the safety of chemicals in use and to develop suitable risk management approaches. EPA and companies should leverage existing data and data arising from other programs like REACH first, and then fill data gaps as necessary to complete assessments. For example, some nine thousand dossiers containing useful information have been submitted under REACH. Where more information is required we should strive to minimize animal testing where there are tools to get adequate data through other means.

Third, EPA’s authorities to identify and act on chemicals that pose safety concerns should be streamlined. One of the biggest problems EPA faces in administering the current TSCA is the Agency’s inability to achieve timely risk reductions under Section 6 when faced with the need to reduce or eliminate exposures to a specific chemical. Although well intended by its drafters in 1976, the process under Section 6 has proven next to impossible for the Agency to successfully implement

Fourth, more data should be available to the public while respecting legitimate confidential business information (CBI). Maintaining industry’s ability to preserve CBI and prevent piracy of intellectual property is critical to encouraging the kind of innovation that will lead to safer and safer chemical alternatives. I think everyone agrees that there are some straightforward means to improve the CBI

process in ways that strike the right balance between the public's need for accurate information and the need to continue to incentivize innovation by American businesses.

Fifth, it is important that a modernized TSCA preserve the efficiency of the current PMN process for new chemicals. This is also critical to facilitating innovation, increasingly bringing green chemistry to market and allowing substitution where warranted.

The Chemical Safety Improvement Act effectively addresses each of these issues. First and perhaps most significantly, the Chemical Safety Improvement Act, if enacted, would for the first time direct EPA to systematically evaluate the safety of existing chemicals in use. This represents a significant and warranted change in federal chemical policy. No such requirement is present in the current TSCA.

Second, the bill streamlines EPA's authority to gather the data needed for the Agency to determine whether a chemical is safe for its intended use, including additional testing. EPA's current authorities require extensive findings and rulemakings simply to gather data. First and foremost by requiring EPA to assess and affirmatively determine the safety of existing chemicals, the CSIA creates a powerful motivation for industry to voluntarily bring forward hazard and exposure data associated with their chemicals to ensure those assessments are as well informed as they can be. The CSIA also gives EPA a wide range of tools to collect information, including consent agreements, orders and rulemakings and removes the current requirement that EPA make a risk finding simply to ask for information.

Third, the CSIA streamlines EPA's authorities to identify and act on chemicals that may pose safety concerns in their use. We support the separation of the safety assessment on high-priority substances from the risk management assessment and decisions. We believe the bill wisely leaves the current TSCA safety standard largely in place. The challenge to implementation of Section 6 was never the standard, rather it was encumbrances like the "least burdensome" requirement that have made section 6 unmanageable. The bill addresses this by removing that requirement and provides clear authority for the Agency to require a variety of risk management actions, from labeling to banning specific uses of a chemical. As the bill progresses it will be important to clarify and ensure that the provisions of the revised section 6 avoid the sort of "paralysis by analysis" that has hindered EPA's implementation of the current law.

Fourth, the CSIA ensures that more data will be made available to the public while respecting legitimate confidential business information (CBI). Let me start by pointing out that CBI designation has nothing to do with what information EPA sees – it relates solely to what information is made public, a public that includes not only US citizens and public interest groups but commercial competitors and foreign nations. We appreciate that a lot of thoughtful work has been done by all stakeholders to strike the right balance between the public availability of information and the protection of legitimate trade secrets that is so important to the US innovation economy. Borrowing from Senator Lautenberg's Safe Chemicals Act, the CSIA helpfully clarifies those categories of information which can and cannot receive CBI protections. It raises the bar on the rigor of substantiations of CBI claims. And it expressly provides otherwise CBI information to key interested parties, such as state governments which demonstrate the ability to protect such data.

We understand that many important stakeholders believe this bill needs changes. We have some changes that we would also like to see and that we believe will improve the bill. It is my personal belief that many of these issues can be addressed while still preserving the design, structure and key provisions of CSIA. I hope all interested stakeholders recognize just how much progress this bill represents, and the tremendous opportunity we have to move TSCA reform forward in a bipartisan way this year using this bill as a vehicle.

Madame Chair, we have before us a unique opportunity to pass comprehensive reform of the US chemical management programs, and once again place the US government in a leadership position on this important issue. Rarely does industry ask for EPA to be vested with more power, rarely do many members of the NGO community, the labor community and industry come to Congress supporting an environmental regulatory bill. We do so because the Chemical Safety Improvement Act represents much needed sweeping reform to an outdated and largely ineffective existing chemicals program. I urge you to seize this opportunity.

Again, thank you for the opportunity to share our views with you today. DuPont is committed to working with other stakeholders and with Members of this Committee as the process goes forward.

I look forward to your questions.