

ascertainable,” what level of effort is required for each, and the difference in the level of effort required. Commenters also stated that the expectation that submitters will provide data on users outside their control seems to be an unworkable and unrealistic mandate. The reporting standard of TSCA section 8(a)(2) is “reasonably ascertainable,” and commenters stated that this should not be construed to include data that are not in the possession of the person reporting.

“Known to or reasonably ascertainable by” is the current standard for data collection under which IUR operates and is the standard authorized by TSCA section 8(a). “Known to or reasonably ascertainable by” means all information in a person’s possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. The “known to or reasonably ascertainable by” standard is applicable to the information required under § 710.52(c)(1), (c)(2), and (c)(3) of the regulatory text.

“Readily obtainable” is a lesser standard EPA is applying to the reporting of information concerning the processing and use of chemicals subject to IURA (§ 710.52(c)(4) of the regulatory text). The readily obtainable standard is limited to information known by management and supervisory employees of the submitter, and does not require additional effort to collect information on processing or use of chemicals by others not under the control of the submitter. Although the Agency is requiring submitters to provide only information that it knows, EPA believes that in many cases submitters will possess some knowledge concerning use of chemicals sold by the submitter to their customers, even though the submitter does not control its customers’ sites. For example, when a company markets the substances for certain end uses, EPA’s experience with over 30,000 TSCA section 5 PMNs demonstrates that companies generally do know the intended ultimate use, as well as intervening processing steps, of their products. In choosing the readily obtainable standard, the Agency is lessening the burden on submitters compared to the “known to or reasonably ascertainable by” standard, while recognizing that the submitter is supplying data on uses of chemicals that are beyond his or her control. The standard for reporting information on processing and use of chemical substances under IURA is the same as the standard adopted in the PAIR, which was also promulgated under the

authority of TSCA section 8(a). (See 40 CFR 712.7)

#### *E. Confidential Business Information*

The Agency’s intent under these regulations is to achieve balance and ensure that the submitter only claims as confidential that information which is legally entitled to confidential treatment. EPA believes that these amendments will discourage the assertion of invalid CBI claims by focusing submitter’s attention more closely on their decision to make certain claims.

1. *General CBI.*—a. *Reducing the amount of CBI claims.* EPA solicited suggestions from commenters on what could be done to the IUR reporting process and data elements to reduce CBI claims, thereby allowing better public access to the data. Some commenters suggested that EPA is trying to discourage legitimate CBI claims by making assertion of such claims overly burdensome. Some commenters stated that the new data elements that are being added by these amendments raise significant CBI concerns and that IURA can be expected to result in a significant increase in the number of legitimate CBI claims.

EPA agrees that submitters will make CBI claims for the new data elements that are being added by these amendments, most likely resulting in a greater number of CBI claims overall. However, EPA is requiring reporting for most of the new data elements in ranges, a reporting method EPA believes will result in fewer CBI claims compared to reporting discrete numbers. Additionally, EPA is amending the IUR to encourage the assertion of only legally valid CBI claims, and to ensure that CBI claims are well thought out by the submitter. The IURA includes a new requirement to provide upfront substantiation of CBI claims for site identity. This requirement will minimize claims by prompting submitters to perform an initial evaluation of the need for and validity of a CBI claim for plant site identity, an essential data element. These efforts will greatly assist in limiting CBI claims to those that are legitimate.

EPA wishes to clarify that it is not attempting to discourage legitimate confidentiality claims; rather, the Agency intends only to discourage inappropriate claims. This allows the Agency to protect legitimate CBI while also increasing the amount of information available for public use.

EPA has information indicating the existence of inappropriate or no longer valid CBI claims. For instance, when EPA has selectively challenged CBI

claims in the past, many of these claims have been amended by the companies to make the information available to the public. Additionally, OPPT’s administrative record 00125, which contains state CBI data reviews, published articles, industry letters, and other papers discussing CBI issues, provides further indication that inappropriate or no longer valid CBI claims exist. For instance, the Georgia Department of Natural Resources reported in a 1996 CBI Data Review that IUR data identified as confidential was available in other non-confidential data bases (Ref. 37). The administrative record is in the same location as the Docket and is available by following the procedures identified in Unit I.B.1.

Some commenters suggested reducing the number of data elements that will be collected under IURA, perhaps using instead a format such as the one used by OECD for SIDS chemicals, which aggregates information for all manufacturers and thus protects company-specific information. EPA considered alternate reporting formats with different data elements, and has determined that the reporting of site-specific information by the individual sites is the best way to collect the information needed. EPA will continue to perform the aggregating function when providing the public with information that is subject to a site-specific CBI claim. Collecting only national aggregate values would drastically reduce the usefulness of the information to the Agency, even though it may reduce the number of CBI claims. The IUR is used to address both national needs and local issues. For example, IUR production volume information was used to identify the national list of High Production Volume (HPV) chemicals for the Agency’s HPV Challenge Program (see <http://www.epa.gov/opptintr/chemrtk/volchall.htm>). Moreover, site-specific IUR information is used to secure a better overall understanding of activities at individual sites. This information is used for site-specific risk assessments for the use of federal, state and local entities.

b. *Protection of CBI.* Some commenters expressed concern about the Agency’s ability to protect against the inappropriate release of CBI and stated that, under section 14 of TSCA, EPA has a statutory obligation to protect information properly claimed as CBI. These commenters are concerned about past releases of information claimed as confidential, and would like to see the Agency take steps to guarantee greater protection of CBI data.

EPA agrees that it has a statutory obligation to protect information