

properly claimed CBI and is continually involved in exploring ways to better protect such information. In this light, these amendments reflect the Agency's efforts to assure that information it protects qualifies for that protection under the established legal standards. The new IURA requirements will help assure that EPA's system of information protection is limited to valid claims.

c. *Production volume ranges.* EPA requested comment on the use of production volume ranges as a mechanism to reduce the number of confidentiality claims by allowing characterizations of site-specific chemical and specific production volume information without releasing CBI. In general, commenters felt that the use of the ranges would not necessarily result in reduced CBI claims. Commenters cited a few examples where production volume would still be claimed CBI, including information reported in ranges. Other commenters suggested using broader ranges.

Despite these comments, the Agency has determined that it is worthwhile to require submitters to consider whether their production volumes, within ranges similar to those used for the original TSCA Inventory, warrant protection as CBI (EPA made adjustments to the original TSCA Inventory ranges by making the ranges consistent with the second reporting threshold of 300,000 lbs., as described in Unit II.F.5.d.). EPA recognizes that some submitters will make CBI claims for both the specific and the ranged production volume information. However, EPA believes that in many cases submitters will allow the release of ranged production volume information. This belief is supported by some industry organizations. For example, in a 1993 letter, a company suggested the use of the original Inventory production volume ranges for non-confidential reporting. While the company did state that "conceivably, a submitter could be able to justify a CBI claim for a range," the conclusion was that many companies would be satisfied with non-confidential reporting (Ref. 11). These conclusions are further supported by EPA's experience with the original TSCA Inventory, where only 35% of production volume values reported were claimed CBI, compared to the typical claim level of 65% for production volumes under IUR.

d. *Disclosing customer confidential information.* A commenter expressed concern that, as a producer of chemical feedstocks, they might inadvertently report customer data and not claim the data as CBI, while their customer reports the same data and does claim the data as CBI.

EPA does not believe that this will be a significant issue. The downstream processing and use information that some submitters will be required to provide under IURA is not tied to customer identities. Submitters will not report where or who their customers are or how much their individual customers produce. In addition, CBI claims can be made as necessary for any information provided on Form U.

2. *Upfront substantiation.*—a. *Authority for substantiation.* A commenter stated that the plant site identity substantiation requirement is not authorized under TSCA. Another commenter felt that requiring upfront substantiation is overly burdensome and an arbitrary exercise of authority. The commenter stated that substantiation should only be required if and when a request for public disclosure is made, and substantial and reasonable need are demonstrated.

Under TSCA section 14(c), "a [confidential] designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe." EPA is continuing to require that those reporting under IURA substantiate their chemical identity CBI claims, and is requiring under these amendments that submitters also substantiate any plant site identity CBI claims. Section 710.58 of the regulatory text requires submitters to substantiate these claims submitted under IUR by providing answers to specified questions. EPA has long required upfront substantiation for specified CBI claims under the authority specified in TSCA (see, e.g., 40 CFR 710.38(c) of the current regulatory text) and will continue to require upfront substantiation where appropriate.

The Agency is adding upfront substantiation requirements for plant site identity information because EPA has observed that, on occasion, plant site information has been claimed as confidential even though, for example, it was revealed in filings required under sections 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. sections 11021 to 11023. EPA believes that many of these CBI claims are inappropriate and that the new substantiation requirement will reduce the occurrence of inappropriate claims. A decrease in the number of CBI claims under the new substantiation requirement would facilitate EPA's ability to make current plant site information available to other Federal agencies and the public because more information submitted under IUR could be released publicly.

Upfront substantiation of CBI claims imposes some additional burden, although this burden is not substantial. EPA's economic analysis for this rule estimates 0.2 to 0.3 hour per plant site reporting under IURA for the incremental costs of reporting all elements of plant site identity information. The burden of upfront substantiation for plant site identity CBI claims is included in this estimate.

b. *Alternate substantiation questions.* One commenter suggested a simplified set of substantiation questions, consisting of two questions: (1) Are the specified data confidential? and, (2) In as much detail as possible, explain why this information should be given CBI protection.

EPA believes that requiring responses to the list of substantiation questions in § 710.58 of the regulatory text is necessary to ensure that information submitted for confidential protection qualifies for that protection. The commenter's proposed questions, while providing the opportunity for a submitter to express its business reasons and preferences regarding the information, do not provide all of the necessary information to definitively evaluate the eligibility of the information for confidential treatment.

3. *Reassertion.* EPA received a number of comments regarding the proposed new CBI reassertion provisions. All of these comments were opposed to the proposed new requirement. Some comments expressed the position that reassertion is overly burdensome and even punitive, requiring submitters to retrace old steps by answering all the original substantiation questions anew. Commenters were concerned that reassertion could possibly require the retention of voluminous old records. Others felt the proposed standards would violate the Agency's obligation under TSCA to protect confidential information and that EPA would exceed its authority if it required the reassertion of CBI claims.

EPA has considered these industry comments, and weighed the concerns expressed against the public's need for access to information on chemicals in commerce in the United States. While the Agency believes the requirement to reassert old claims of CBI is justified as a practical measure to ensure that information withheld meets the legal criteria and that the expressions of concern relating to burden associated with reassertion, appear to be the result of a misunderstanding of the practical aspects of the proposed reassertion requirement, the Agency is not finalizing the proposed reassertion