Before the United States
Environmental Protection Agency

TSCA Inventory Update Rule
Docket EPA-HQ-OPPT-2009-0187

Comments of the Chemical Users Coalition

On August 13, 2010, the U.S. Environmental Protection Agency ("EPA") proposed modification to its Inventory Update Reporting rule ("IUR"), which collects information on chemical substances for purposes of the Toxic Substances Control Act ("TSCA").[1] The Chemical Users Coalition ("CUC") appreciates this opportunity to offer these comments on this proposed rule.

The CUC represents a group of companies from diverse industries that are interested in chemical management policy from the perspective of those who use, rather than manufacture, chemical substances.[2] CUC believes in the importance of aligning protection of health and the environment with the pursuit of technological innovation, two goals that can be and must be made compatible if our society is to achieve sustainable economic growth. Aligning these goals is particularly important in the area of chemical management policy, which necessarily involves issues about how core technologies and products should be adapted to address emerging information about health and environmental risk.

Over the last several years, there has been substantial discussion about the need for reform of the TSCA statute, and EPA has also been pursuing new directions in its regulatory programs under the existing TSCA. We understand that the modifications to the IUR in this proposed rule are intended to support EPA's new vision for the existing chemical program. Specifically, we understand that the information EPA collects under the IUR will guide decisions on priorities for further risk assessment and risk management regarding chemicals currently in commerce.

CUC members are primarily processors and users of chemical substances. Thus, we are interested in addressing the question EPA posed in the preamble to the proposed rule concerning the role of processors in assembling the appropriate information for chemical management policymaking. As companies that operate downstream of the primary chemical manufacturing companies, we are also interested in EPA's focus on improving the quality of data on chemical uses and exposures. In some cases, our members also would have direct reporting obligations

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[1] 75 Fed. Reg. 49656 (August 13, 2010).

[2] CUC members include a range of downstream companies, including Intel Corporation, Proctor & Gamble Company, American Honda Motor Company, Lockheed Martin Corporation, PPG Industries and Hewlett-Packard Company.

under the IUR, mainly when we are treated as "manufacturers" under TSCA because we are importing chemical substances or mixtures into the U.S. from foreign chemical suppliers.

Our comments are structured as follows:

1. We begin by addressing the question posed in the preamble about the role of chemical processors in providing information about chemical use and exposure.
2. We then offer our perspective on how the IUR and other EPA actions should be brought together in a more effective strategy for assembling use and exposure information.
3. We close with more specific comments on elements of the rule that we think can be improved.

Considerations to Evaluate for Processor Reporting

CUC recognizes that EPA needs accurate information on chemical use and exposure in order to pursue its mission. Good exposure information better informs chemical prioritizations and improves the quality of risk assessments on specific materials. Chemical use information is also essential if EPA is to develop cost-effective risk management strategies that steer a course toward technological changes that are protective of health and the environment.

In the preamble to the proposed rule, EPA asked for comment on whether processors should be required to provide processing and use information. Before identifying who should be reporting, it is important to clarify what categories of data are needed. In that regard, it is particularly important to distinguish screening information that is appropriate for broad priority setting from information that is needed for in-depth risk assessment and risk management for particular chemical substances. Broad IUR-type screening tools, which are appropriate for prioritization efforts, must be designed to capture information that is generally available and understood among broad audiences in the reporting community. When EPA wants to obtain more specific information about uses and exposures to chemical substances, the Agency will have greatest success if it applies targeted information collection strategies supported by a range of TSCA statutory authorities that build upon the networks of knowledge and information-sharing in specific industries.

Particularly where EPA is pursuing more in-depth information about specific chemicals, there will be situations where it is most reasonable to collect use and exposure information directly from the processors (and even users) of those chemicals. In many cases, processors will have a deeper understanding of these matters than chemical suppliers. Processors and users are often in a position to provide more specific data and to explain the context for better understanding of the data.

In addition, processors and users will often be in a better position to articulate and support the reasons why particular information qualifies as Confidential Business Information ("CBI"), which is protected under TSCA and other federal statutes. Their knowledge of the business context, as well as what information is known and not known within their industry, can provide the best available information for addressing the CBI status of particular information. In those situations, it would not make sense to force processor and user companies to disclose sensitive

business information to their suppliers so that the "TSCA manufacturers" could present the CBI claims for the information to the Agency.

At the same time there are countervailing considerations that must be evaluated before concluding that processors should be included in reporting of screening level information related to processing and use of chemicals. An important factor to weigh is the fact that the processor and user community in most industries is often quite large. There are many contexts where the universe of manufacturers for a specific chemical may involve only a handful of companies, while the universe of processors and users for that chemical may include hundreds or thousands of distinct companies or sites. Depending on the information and business context, it may be more efficient to collect the information of interest from the chemical manufacturers.

It should also be recognized that the companies in the processor and user community are less likely to be familiar with the conventions and terminology that have grown up around the TSCA program. For example, EPA's definitions and policies that distinguish regulatory terms like "substance", "mixture", "impurity", "byproduct" and "article" are complex and often do not align with common uses of those terms in many industries. Downstream processors and users who have a good grasp of exposures to the chemicals they receive from suppliers and how to manage those risks could easily be baffled by an EPA reporting framework that uses TSCA terms, categories and protocols. At a minimum, EPA would need to appreciate and address the potentially extensive training needs of processors and users before imposing broad reporting obligations on these parties. In the alternative, EPA might also conclude, depending on the context, that it is more efficient to collect information from chemical manufacturers who are more likely to understand TSCA terms and conventions.

It should also be recognized that there are scenarios where downstream uses of a chemical follow patterns that are well known with exposures that are understood. In such scenarios, it would not make sense to impose a reporting burden on a broad universe of downstream companies or sites to obtain information that would not be significantly different from what might be obtained from a few manufacturers or distributors. The transaction costs for both the reporters, who may not be familiar with TSCA reporting protocols, and for EPA would not be worth such an undertaking.

Another fundamental consideration is whether downstream processors and users have been provided with chemical-specific information by their suppliers. In some cases specific chemicals in a mixture are present in low volumes and thus are not routinely reported on a Material Safety Data Sheet ("MSDS"). In other situations suppliers view the specific components of a chemical mixture as CBI, and thus they are unwilling to provide the information to customers. These situations can become complicated if there is a long chain of distribution for a particular chemical substance. A chemical user seeking the identity of specific chemicals in a mixture may need to proceed through several layers of chemical suppliers to identify the ultimate CBI claimant. In these situations the downstream company may face substantial transaction costs and still fail to receive access to chemical-specific information from upstream chemical manufacturers.

It should be noted that the inability to obtain chemical-specific information from suppliers does not necessarily impair the downstream company's ability to manage the chemical safely.

Through effective hazard communication, as may be provided by a well-prepared MSDS, the company may be adequately served for purposes of occupational protections and product stewardship without knowing the specific chemical formula of each material it receives.

Principles to Guide EPA Approaches to Processor and User Reporting

Based on the factors noted above, CUC believes that there are certain principles that should guide EPA when deciding whether collecting use and exposure information directly from processors and users is the optimal approach for meeting an information need. These principles are as follows:

1. Focus on Exposure-related Information for Screening Purposes

When EPA is screening chemicals for priority setting, it is important for the Agency to focus on product and use characteristics that have a strong link with how workers or the public might be exposed to chemical substances. This is the type of information that would have the clearest value for priority setting and is less likely to raise complex CBI questions. In some cases, and the existing IUR is an example of this, EPA has required reporting of technological and functional information about how chemicals are used. To some extent, these requirements have been justified by EPA as a tool to assemble information about potential chemical substitution for particular applications. The reality of chemical substitution in particular applications, however, requires assessment of a much broader set of data than can be captured in screening-level information collection exercises such as the IUR. In addition, this kind of information can raise important CBI concerns for the submitters of the information. For these reasons, EPA should focus on exposure-related information when asking for screening information from processors and users.

2. Limit Obligations to Reasonably Available Data

As noted earlier in these comments, some processors and users may not have access to chemical-specific information from suppliers. While downstream companies may have some ability to work out arrangements with suppliers to obtain access to CBI information, that flexibility is limited and the transaction costs to obtain access to such information may be high. EPA should design data collection strategies that recognize these limits, including options such as reporting by chemical categories or utilizing threshold volumes from MSDS or other hazard communication materials. EPA should also be clear about what level of effort processors and users need to exercise to obtain information that is not routinely provided by suppliers.

3. Provide Adequate CBI Protections

Information on the uses of and exposures to chemicals, particularly for more in-depth assessments, is often closely linked to production processes and product designs that are unique to specific companies. These processes and designs are usually prime targets of competitive

intelligence. Thus, it is important for EPA to recognize that competitive intelligence experts in an industry will employ any publicly disclosed information on chemical use and exposure to inform their "mosaic" picture of competitor operations. In this context, it is important for EPA to provide protections for key "puzzle pieces" of information that allow experts to tie together specific companies, technologies, sites and products. EPA will also need to provide adequate criteria and effective processes to allow chemical processors and users to explain and support CBI claims.

4. Make Best Use of Existing Information

Over the last several years, chemical processors and users have been involved in multiple efforts to assemble use and exposure information. A leading example of such information collection exercises is arising in the implementation of the European Union's Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH") program. In that context, chemical processors and users of chemicals are working with their suppliers to develop reports, dossiers and other documents that are submitted to European authorities for REACH implementation. To the extent possible, chemical processors and users should be able to rely on information developed for regulatory authorities in other jurisdictions to satisfy any EPA information needs.

5. Pursue Information Collection Strategies Adapted to Industry-specific Networks

The universe of chemical processors and users is quite diverse, and the networks for distributing chemicals in particular industries vary in complexity. A highly successful information collection strategy in one industry may be a failure in another industry. EPA should recognize these differences when deciding when information is best collected at the manufacturer, processor or user level. EPA should utilize creative strategies, such as tiering data collections between manufacturers and processors, in order to collect the best data efficiently. EPA should also design targeted, industry-specific information collection strategies that recognize the relative expertise and capabilities of companies at different points in the chain of commerce. Broad-based reporting that would apply to chemical processors and users in multiple industries will rarely offer the right balance between value and burden.

CUC Perspective on the Role of the IUR in Understanding Chemical Use and Exposure

In consideration of the principles noted above, CUC believes that EPA should view the IUR as a useful, but limited, tool in the Agency's overall strategy for assembling information for prioritization of chemicals for further risk assessment and risk management. The IUR should be seen as a screening tool that assembles information reasonably available to chemical manufacturers. Its greatest value is in assembling information about the identity and volumes of chemicals that are in commerce in the U.S. It also can provide screening information that EPA thinks is relevant to assessing chemical manufacturing sites.

Because of its focus on chemical manufacturer reporting, the IUR has less value in characterizing chemical use and exposure in downstream operations. As noted earlier in these comments, in situations where downstream uses are well-known and associated exposures are understood, manufacturers may have relevant information that is comparable to what is known

by downstream processors and users. For those situations IUR reporters can provide useful information at a screening level. In many other contexts, particularly where the chain of chemical distribution is long, where product manufacturing and design is complex, or where constant innovation is an industry hallmark, chemical manufacturers are not reliable sources of information about specific chemical uses and exposures.

Recognizing these limitations, CUC recommends that EPA reconsider its current strategy for use of the IUR in the TSCA existing chemical program. The Agency needs to adopt a more nimble and multi-faceted approach for collecting chemical use and exposure information from a range of parties. It should not rely so heavily on IUR reporting as the primary source of information for this purpose.

As a threshold matter, EPA must recognize that the IUR is a "one-size-fits-all" information reporting requirement that will only be effective for broad prioritization purposes. Expecting such a blunt tool to capture the highly complex networks for chemical distribution and use in the American economy will not succeed. Thus, the IUR should be limited to collecting information about downstream processing and use of chemicals that is (1) relevant to Agency prioritization activities and (2) consistently and reliably within the knowledge base of most chemical manufacturers.

In looking at the current IUR and the proposed amendments, CUC believes that two elements of the current reporting framework are consistent with those criteria. The reporting on industrial processing and use operations, at proposed 40 CFR § 711.15(b)(4)(i)(A), provides some insights into potential downstream exposure and uses broadly stated categories for which chemical manufacturers are likely to have, or be able to obtain, the information. In addition, CUC believes that chemical manufacturers should be able to address their distribution of chemicals to the broad industry sectors identified in proposed 40 CFR § 711.15(b)(4)(i)(B), and this information provides an appropriate starting point for examination of use and exposure information by EPA when more in-depth risk assessment and risk management is appropriate for priority chemicals.[3]

Beyond these two areas, we believe that the types of information addressed in IUR on chemical processing and use are best pursued through targeted inquiries that are specific to particular chemicals, uses and exposures. It may be that some manufacturers could address these questions adequately for many chemicals. It is our view, however, that the wide range of chemical suppliers who serve our companies would include suppliers that do not have the knowledge base to consistently and reliably address the other information identified in the remaining sections of 40 CFR § 711.15(b)(4).

As noted above, CUC believes that EPA should consider additional approaches for obtaining chemical use and exposure information besides the IUR. We favor targeted approaches that will arise when EPA identifies concerns about specific chemicals in particular applications. The agenda for such inquiries will come from multiple sources. Certainly the IUR data, with the changes recommended above, will inform this agenda. In addition, EPA will presumably be

[3] CUC believes that the specific industry sectors identified in the proposed rule are reasonable for general screening purposes.

responsive to the constant flow of information it receives on chemical hazards, biomonitoring results, exposure incidents, risk assessments, environmental monitoring data and other information.

Once EPA formulates an agenda for the TSCA program based on these multiple sources of information, the Agency should formulate specific strategies to identify and obtain information on the relevant chemical uses and exposures using a multi-prong approach. Certainly EPA has a set of statutory tools that can be invoked as necessary. EPA can take regulatory action under Section 8 of TSCA to require data submissions, an approach that seems appropriate where the universe of relevant parties is not clearly known. In situations where specific relevant parties are known, EPA can also issue administrative orders under Section 11(c) of TSCA. There also may be situations where a Significant New Use Rule ("SNUR") under Section 5 of TSCA might be appropriate.

While these authorities provide legal support for EPA action as needed, we hope EPA will consider adopting a proactive strategy for engaging the various actors in the value chain of particular chemicals to develop collaborative, industry-specific strategies for the collection of relevant information. In such a context, the key actors that have the appropriate information can step outside their formal TSCA labels (i.e., manufacturer, importer, processor, distributor, user) and develop strategies that clarify EPA's information need, assemble the necessary information, sort out sensitive CBI questions and provide the information on a timeline that is more efficient than what might be achieved through more ponderous mechanisms, such as the IUR.

By analogy, EPA might consider developing a process that draws from the best attributes of the Enforceable Consent Agreement ("ECA") process that EPA has adopted for the collection of hazard data, in lieu of using Section 4 rules.[4] The ECA process provides a useful model because it has several attributes that contribute to effectiveness:

a. Process discipline, with identified steps and specific deadlines;
b. Stakeholder involvement; and
c. Backing by existing regulatory authorities.

Should EPA be interested in pursuing this option, CUC would be happy to participate in discussions of this approach with EPA and other interested parties.

Specific Comments on the Proposed Rule

While CUC believes that EPA should broadly reconsider the role of the IUR in Agency strategy for collecting information on chemical use and exposure, we also want to offer the following specific recommendations regarding the proposed modifications to the existing rule:

1. EPA should allow companies more time for implementation of this rule

This proposal expands the scope of IUR reporting significantly, requiring more companies to submit more information. While CUC members are generally processors and users of chemicals,

[4] EPA has recently issued a rule intended to streamline this process. 75 Fed. Reg. 56472 (September 16, 2010).

there are situations (e.g., when they import chemical substances or mixtures) when the IUR obligations are applicable to them.

This rule is being proposed at a very late stage in the normal cycle of IUR reporting, and EPA did not engage in the pre-proposal stakeholder involvement that is typical of many major rulemakings at the Agency.[5] Moreover, EPA's expressed plans for issuing the rule in final form would mean that a clear picture of what is expected for IUR reporting would emerge essentially on the brink of the report submission period.

While some of the information required under the proposal overlaps with data that companies generally maintain, it is not necessarily the case that companies would keep the information in the same format that EPA has selected for TSCA purposes. In addition, companies have established systems for extracting information for management purposes, including environmental management and product stewardship, from a much larger body of routine paper and electronic files that make up the records and communication networks of their businesses. When EPA makes a change in its reporting obligations, a company needs to undertake two tasks: (1) ensure that the specific information of interest is being collected, and (2) establish or re-design an internal system (usually involving procedure changes and software modifications) to assemble the needed information in the format and on the schedule appropriate for reporting.

Companies can take some of these steps after a reporting rule is proposed. At the same time, experience indicates that practical issues affecting the scope and form of reporting will arise during the comment period on EPA reporting rules. To its credit, EPA is often responsive to comments of this nature. As a result, companies need to wait until such rules are issued in final form before "locking in" their systems for data collection. EPA needs to allow sufficient time for this process to occur if it hopes to receive high quality information.

EPA should consider maintaining the current structure of the IUR for purposes of the reports to be filed in 2011. Then, the Agency could develop a phase-in approach for the following years. As an example, EPA could require companies to assemble the new information for years 2012 and 2013 with report submission occurring in 2014. The subsequent cycle could then shift to EPA's proposed four-year cycle, with the reporting years being 2014 through 2017 and report submission occurring in 2018.

2. EPA should clarify the scope of reporting on exports

EPA has proposed, in new § 711.15 (3)(iv), that manufacturers report the volume of a chemical substance exported from the manufacturing site. The intended purpose of this provision is "to better identify the proportion of the production volume accounted for by the use reporting, given that downstream reporting is not required for exported chemical substances."[6]

Some chemicals are manufactured in the context of formulating a mixture, and such mixtures are often subjected to further processing at the site of manufacture. A common example of this

[5] Our understanding is that the first public notice that signaled the scope of this rule occurred in the December 2009 version of the Unified Regulatory Agenda.
[6] 75 Fed. Reg. 49667 (August 13, 2010).

situation would involve the production of a cleaning product. This situation would not involve production of distinct chemical substance that is then exported in bulk form.

EPA should clarify what situations it expects manufacturers to identify as exports of chemical substances, particularly for situations where the "manufacture" is occurring in operations that primarily involve processing. Such clarifications would help prevent a scenario where companies feel obligated to double-count chemicals in both an export and processing category. It could also provide EPA with a clearer picture of the general profile of substances identified as exports under the IUR.

3. EPA should provide practical limits for reporting of imported regulated chemicals

EPA has proposed, in new § 711.8(b) that a company importing a chemical substance that is subject to restrictions under Sections 5 or 6 of TSCA would need to file an IUR report for that chemical if it is imported at any volume. This provision needs to be modified in consideration of practical situations that many processors and users of chemicals will face.

A processor or user of chemicals becomes a "manufacturer" of a chemical substance under TSCA when it imports that substance into the U.S. This long-standing TSCA principle, however, does not change the fact that processors and users that import chemical substances are not the actual manufacturers of these substances. They remain dependent on information from the chemical manufacturers, most often the Material Safety Data Sheet ("MSDS") prepared to meet Occupational Safety and Health Administration requirements. The MSDS form, however, would not include a chemical substance that is present in a mixture below 1% (for non-carcinogens) or 0.1% (for carcinogens).[7] It is also possible that the MSDS will mask the names of specific chemicals due to trade secret concerns of the supplier.

In addition, there are no legal requirements, including the MSDS regulations, obligating a chemical manufacturer to notify downstream processors and users that its products contain chemical substances subject to chemical-specific obligations under Section 5 or 6 of TSCA. It is not a common practice for chemical companies to provide such a notification voluntarily.

Thus, a processor who imports a TSCA-regulated chemical substance, and thus would be responsible for filing an IUR report for any amount of such substance, may not receive effective notice from its suppliers that such an obligation exists. It would not be practical for a processor to attempt to research the issue on its own. In many cases, particularly for chemical substances regulated under SNURs, the only identification of the regulated chemical substance provided by EPA is a generic name accompanied by a PMN number or TSCA Accession number. This type of information is not typically included on the MSDS forms that processors receive from suppliers.

Accordingly, CUC recommends that EPA consider two modifications to the proposed rule to address this situation:

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[7] 20 CFR § 1910.1200(g)(2)(i).

a. EPA should incorporate into the IUR regulations the low-volume exemptions for chemical substances in mixtures that are currently part of the MSDS regulations; and

b. EPA should provide a general exemption for situations in which an importer, who is not the actual manufacturer of a regulated chemical substance, has not been notified by the manufacturer or other parties that the substance, mixture or article it is importing is subject to any regulatory requirement identified in proposed § 711.8(b).

4. EPA should assure the security of the IUR data

CUC fully supports electronic reporting of the IUR data, as well as EPA's parallel efforts to adopt electronic reporting in other aspects of TSCA transactions. At the same time, it is important to emphasize that TSCA data are often more sensitive from a business perspective than other categories of environmental data. It is particularly important that the security of TSCA data be maintained.

To achieve effective security, all elements of an electronic reporting system need special attention. This includes the integrity of the encryption technology employed by the Agency. It also includes effective protection of the new portals into EPA information systems created by electronic reporting.

It is not entirely clear to the submitters of TSCA information what steps EPA has taken to assure the security of its systems. In the case of the e-IURweb software, there is a further concern that EPA has not tested its operational effectiveness for the large universe of IUR reporters, who will certainly be operating from multiple computer platforms. Within the limits of what can be explained without compromising the security of those systems, it would be useful for EPA to provide an explanation of the steps it has taken to assure system security and to confirm the operational effectiveness of the e-IURweb software. In particular, it would be valuable to know how EPA plans, on an ongoing basis, to continue to test the integrity of its system and make appropriate upgrades to security measures. The techniques for cyber intrusion are constantly evolving and no system can maintain its defenses against attack without ongoing testing and adjustment.

5. EPA should not pressure chemical suppliers to guess at processing and use information

The preamble to the proposed rule makes it clear that EPA would like to obtain more information on processing and use of chemicals. As described earlier in these comments, CUC believes that this objective would be best served by a multi-faceted strategy that is not so dependent on obtaining that information from chemical manufacturers through the IUR.

CUC is concerned about several steps EPA has taken in the proposal that suggest EPA's intent to press manufacturers for more information about their customers. Where that information is part of broad industry knowledge or involves data specifically in the hands of the manufacturers, this may be reasonable. EPA should not, however, push manufacturers to submit unreliable "guesses" about customer information in order to satisfy IUR obligations. Such a strategy is

fundamentally unfair to downstream companies and serves no useful public policy purpose. Several aspects of the proposed rule raise this concern.

The proposal lowers the chemical volume threshold from 300,000 pounds to 25,000 pounds for submission of processing and use information on a chemical. That change will, of course, bring into the reporting universe a larger universe of reporters. It will also require reporting in the context of much smaller business relationships between suppliers and customers. As a result, it is less likely that the suppliers being brought into IUR reporting obligations would have a deep understanding of the operations of their customers. Except where the chemical is for a critical but low-volume use, a supplier/customer relationship involving a small chemical volume does not generally provide a strong business reason, for either the supplier or customer, to share extensive information about the customer's product uses, work practices or markets.

The proposed rule would also change the current reporting standard for processing and use information, which now requires manufacturers to report "readily obtainable" information. Under the proposal, EPA would require information that is "known to or reasonably ascertainable by" the manufacturers. This standard is defined to include "all information that a reasonable person similarly situated might be expected to possess, control, or know."[8] This is a standard that is difficult to interpret, and EPA has not provided clear guidance on what steps manufacturers need to take to answer the questions posed in the IUR.

Facing this ambiguous standard and a clear signal that EPA expects manufacturers to have some information on all of the processing and use data elements, we believe that some chemical suppliers will decide that the best compliance strategy from their perspective is to submit best guesses about the information, rather than admit that they do not know. CUC members are concerned that this pattern of behavior will lead to a distorted picture of chemical use and exposure in downstream activities.

This risk becomes even more acute when EPA expands the universe of processing and use information to be reported. A particular example of this concern is the proposed addition, at new § 711.15(b)(4)(ii)(F), to require reporting of "the number of commercial workers reasonably likely to be exposed to each reportable chemical substance." Based on the definition of "commercial use" in the proposed regulations, this would appear to cover workers "in a commercial enterprise providing saleable goods or services." Such a definition encompasses all manner of retail stores, business offices, health care facilities and universities. Companies in the chemical manufacturing sector would not have the necessary information (e.g., employment figures, work practices) regarding these kinds of commercial establishments to provide reliable information. We see this requirement as an invitation to submit guesses to EPA and further distort the real profile of public exposure to chemicals from downstream products.

CUC recommends that EPA retain the "readily obtainable" standard in light of its decision to lower the reporting threshold to 25,000 pounds and thereby bring a much larger universe of reporters into processing and use reporting. If EPA continues to believe that companies are not reporting information that is available, the Agency should engage the reporting community and evaluate how companies are deciding when they have reportable information. CUC believes that

[8] *See* 40 CFR § 710.43.

step should precede a decision to shift to the inherently ambiguous "known to or reasonably ascertainable by" standard. In addition, CUC does not believe that chemical suppliers should be estimating chemical exposures in commercial establishments, a topic on which they are unlikely to have reliable information.

6. EPA should modify its CBI claim framework to protect downstream companies

In new § 711.30, EPA has proposed a new framework for the protection of CBI in IUR submissions. A centerpiece of this new framework is the obligation to provide upfront substantiation of CBI claims at the time that IUR information is submitted to EPA. CUC is supportive of this approach as a reasonable means of assuring that CBI claims are carefully considered before they are made.

CUC is concerned, however, about the way that EPA has structured the criteria and process for CBI claims concerning processing and use information. Specifically, the criteria for substantiating a claim, and thus the questions posed in new § 711.30(d), are focused on whether disclosure of the processing and use information will harm the competitive position of the party submitting the IUR report – the chemical manufacturer. Yet the real sensitivity for much of the processing and use information will reside with the downstream customers of the chemical manufacturer.

In many commercial settings, there are non-disclosure agreements between chemical suppliers and customers that commit both parties to maintain confidentiality about information that is shared between companies. In this setting, chemical suppliers understand that certain information about downstream operations is proprietary, but they do not necessarily know the business rationale for that claim nor do they know what measures the customer has taken to protect its CBI.

Under these circumstances, the chemical supplier would normally be inclined to assert a CBI claim on behalf of its customers. Yet the proposed standard requires the manufacturer to assert the claim based on how disclosure affects its competitive position, not the position of the downstream customer. In addition, the downstream customer would have superior information to support such a claim in the context of its own business position.

To address this problem, CUC recommends the following changes in § 711.30(d):

a. The criteria and related questions should include a consideration of how disclosure of processing and use information would harm the competitive position of the processors and users to whom the chemical substance is distributed.

b. The process should allow for separate, confidential filings by downstream processors and users in support of an upfront substantiation by a chemical manufacturer.

c. If the chemical manufacturer submits an upfront substantiation on its own and EPA decides to deny the CBI claim, an opportunity should be afforded to downstream processors and users of the chemical substance to supplement the record in support of the claim and obtain

consideration of such new information before a final decision is made. (This alternative is needed to address the situation where a supplier did not consult its customers before filing a claim.)

The CUC appreciates this opportunity to comment on EPA's general strategy for collection of chemical use and exposure information and on the proposed modifications to the IUR.

On Behalf of the Chemical Users Coalition

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