

October 30, 2000

Enforcement and Compliance Docket and Information Center (ECDIC)  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Room 4033  
Mail Code 2201A  
Washington, D.C. 20460

**ELIMINATION OF SPECIAL TREATMENT FOR CATEGORY OF  
CONFIDENTIAL BUSINESS INFORMATION: REPROPOSAL  
CONSUMERS UNION COMMENTS TO EPA DOCKET EC-1999-015**

These comments are submitted on behalf of Consumers Union of United States, Inc.,<sup>1</sup> regarding the U.S. Environmental Protection Agency (EPA)'s proposal to amend its regulations to eliminate the special treatment of a category of confidential business information (CBI), which includes comments received from businesses that substantiate their claims of confidentiality for previously submitted information.

Currently, under 40 CFR § 2.205(c), EPA will automatically treat a CBI substantiation marked as confidential as CBI if the information in the substantiation is not otherwise possessed by EPA. In the Federal Register notice announcing its new proposal (dated August 30, 2000), EPA states that it “believes it is unlikely that EPA could defend its original basis for providing automatic protection of CBI substantiations.” The current regulation, in simple terms, provides confidentiality protections not authorized by the Freedom of Information Act (FOIA).

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<sup>1</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finances and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union’s income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union’s own product testing, *Consumer Reports* regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union’s publications carry no advertising and receive no commercial support.

However, EPA's proposal for changing 40 CFR § 2.205(c) eliminates these inappropriate confidentiality protections *only* for documents to be submitted to the agency in the future. Under this proposal, any document already submitted to the agency under 40 CFR § 2.205(c) will continue to have confidentiality protections that are legally indefensible.

Public right-to-know is a crucial principle protected by FOIA, and one that provides essential information to consumers. EPA must insure that 40 CFR § 2.205(c) meets the standards established by FOIA. Therefore, we believe that EPA should withdraw 40 CFR § 2.205(c) so that all CBI substantiations, regardless of when they were submitted to EPA, are treated in exactly the same manner as other types of CBI.

Thank you for your consideration of our comments.

Sincerely,

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