UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE WITH REGARD TO THE "FOR OFFICAL USE ONLY" TREATMENT OF THE BALLOT ON THE TECHNICAL AMENDMENT TO THE FLAMMABILITY STANDARDS FOR CARPETS AND RUGS

October 31, 2006

It is hard to imagine a less controversial proposal than the one before us. It is essentially a housekeeping amendment. In addition, the public briefing package makes it absolutely plain what the proposed rule would say and what sections of our current regulations it would amend. For these reasons, I am at a loss as to why this ballot and the draft Federal Register notice were marked "For Official Use Only" and why they will, therefore, not be made public until after the Commission has voted. The draft of a similar proposed amendment to the carpet and rug standard in 1998 was made public as part of the briefing package when that was sent to the Commission.

The trend of keeping the text of draft Federal Register notices from public view, until after the Commission has voted, is a recent one. The Commission had had a decades-long policy (with rare exceptions) of putting staff drafts of Advance Notices of Proposed Rulemaking (ANPR), Notices of Proposed Rulemaking (NPR) and Final Rules (FR) in our public briefing packages. I am unaware of any problems with that system; it seemed to work quite well. I have never known it to "inhibit candor in the decision-making process." Certainly it has never inhibited mine.

It has been suggested that because certain other federal agencies do not disclose their staff-drafted Federal Register notices until they are voted on, it is, therefore, fine for us to do so. What other agencies do does not concern me as much as why this agency would change its long-standing policy in this regard. That we **can** do it does not explain why we should start doing it now. There seems to be a general trend throughout government of restricting access to more and more documents and I do not think it is a good trend. While I am always willing, based on particular, articulated circumstances, to entertain restricting all or part of a document prior to a Commission vote, a blanket policy of never allowing the public to see the actual language of what the agency is about to vote on until after the vote is taken, is unnecessarily restrictive and is undermined by the fact that the public briefing packages go into great detail about the staff recommendations, and that much of the draft ANPRs, NPRs and FRs are taken verbatim from the public documents in those briefing packages.

Another argument in favor of not disclosing the language upon which the Commission is to vote is that we are going out for comment and the public will have an opportunity to comment on the language during the comment period. That is true in the ANPR and NPR stage, but not at the Final Rule stage. Slight language changes that might not rise to the level of requiring reproposal, may, nevertheless, be of real importance to the affected stakeholders.

Quite apart from keeping information from our stakeholders, not having the draft NPR or FR in the briefing package can sometimes make it more difficult to understand the staff recommendation. Particularly in very complex rulemakings, being able to read the actual text of the staff proposal along with the briefing package material can be crucial to the Commission's understanding of it. I have had issues in the past about the language of a proposed or final rule and was able to ask questions about them in the public briefing. The answers were instructive to both me and the interested parties in the audience. Yes, I could have gotten the answers privately, but the public would have not heard the dialogue on the issue, and that would have been a loss.

The presumption of both the Government in the Sunshine and the Freedom of Information Acts is openness. This Commission has always prided itself on taking that presumption especially seriously and I believe that policy has served our stakeholders well and should not be changed.