



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

Record of Commission Action  
Commissioners Voting by Ballot\*

Commissioners Voting: Chairman Ann Brown  
Commissioner Mary Sheila Gall  
Commissioner Thomas H. Moore

ITEM:

Petition HP 00-3 Requesting a Ban of Candle Wicks Containing Lead and of Candles Containing Such Wicks

DECISION:

The Commission voted to grant the petition and approve a Federal Register notice issuing an Advance Notice of Proposed Rulemaking (ANPR) to ban lead-cored candlewicks. Chairman Brown and Commissioner Moore voted to send the ANPR directly to the Office of the Federal Register for publication. Commissioner Gall voted to submit the ANPR to the Office of Management and Budget prior to sending it to the Office of the Federal Register for publication. Separate statements were filed by Chairman Brown, Commissioner Moore and Commissioner Gall, copies attached.

For the Commission:

Sadye E. Dunn  
Secretary

\* Ballot vote due February 16, 2001

**Statement of the Honorable Ann Brown  
In Support of  
Petition and Advance Notice of Proposed Rulemaking  
To Ban Lead-Cored Candle Wicks**

February 13, 2001

I voted today to grant petitions submitted to the Commission, and to issue an Advance Notice of Proposed Rulemaking (ANPR), to ban candlewicks containing lead, and candles containing such wicks. Protecting children from dangers like lead in candlewicks is what Congress created CPSC to do.

With respect to the White House request that CPSC submit its regulations to OMB for review and approval until new leadership is appointed at CPSC, Congress specified that it wanted CPSC removed as far as possible from the influence of partisan politics or political control. Influence in the form of oversight by OMB or a change in political leadership was what Congress wanted CPSC to avoid. Congress told the CPSC to protect consumers from dangerous products – to protect children from the behavioral problems and learning disabilities associated with lead. That is what we are voting today to do.



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STATEMENT OF THE HONORABLE THOMAS H. MOORE IN SUPPORT OF  
GRANTING THE PETITION TO BAN LEAD-CORED CANDLE WICKS AND  
ISSUING AN ADVANCE NOTICE OF PROPOSED RULEMAKING

February 9, 2001

Rather than restate what she has expressed so ably, I simply will agree with Commissioner Gall's reasoning for issuing an advance notice of proposed rulemaking to ban the use of lead in cored candle wicks.

I can not concur, however, on sending the ANPR to the Office of Management and Budget for their review to determine if it impacts "critical health and safety functions of the agency...." While I believe that we must give any President due deference when he makes a request of us, I do not think that the Consumer Product Safety Commission, an independent agency, can comply with this request without seriously eroding the power granted by Congress to the individual Commissioners. We would certainly hope that this (and any of our proposed regulations) would fit under a safety exception, but there is no guarantee that OMB would agree with us. If they did not, the memorandum from the President's Chief of Staff would require that the proposed regulation be held up until a new agency head appointed by President Bush "reviews and approves the regulatory action."

The Consumer Product Safety Commission is not governed by a single administrator. The Chairman of this Commission does not have the authority to review and approve proposed or final regulatory actions. In this regard, the Chairman is like any other commissioner and has one vote as to whether to proceed on a particular matter. I, for one, would not want to delegate my vote on whether to proceed with a regulation to any Chairman, no matter how much I might agree in general with that Chairman's philosophy.

Nor do I think it would be wise from a policy standpoint to give any power over the promulgation of our regulations, even on a temporary basis, to an office of the Executive Branch, in this case the OMB. The Congress, not the President, delegates the powers of independent agencies to them. As such the Congress

is the Consumer Product Safety Commission's true steward and we must be ever mindful of not subjugating the powers Congress has given us to a review by the Executive Branch that was never intended.



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**STATEMENT OF THE HONORABLE MARY SHEILA GALL  
IN SUPPORT OF GRANTING PETITION AND ISSUING  
AN ADVANCE NOTICE OF PROPOSED RULEMAKING TO  
BAN USE OF LEAD-CORED CANDLE WICKS**

February 9, 2001

I voted today to grant a petition submitted to the Commission and to issue an Advance Notice of Proposed Rulemaking (ANPR) to ban lead-cored candlewicks. The deleterious health effects of exposure to lead are well known and documented. While it appears that no specific case of lead poisoning can be tied to exposure to candle fumes, exposure to such fumes is cumulative with other sources of lead exposure. Moreover, exposure to lead from burning candlewicks is through inhalation, and not just ingestion, a mechanism with which many consumers may not be familiar.

Other factors incline me to begin rulemaking in this case. The hazard cannot be avoided by labeling, since the only way to avoid the hazard is to forego burning, the intended use of the product. Nor is there any "home test" by which consumers can determine accurately whether candles have lead-cored wicks. Sophisticated laboratory tests conducted by Commission staff have shown that there is no correlation between the amount of lead in the candlewick and the quantity of lead emissions produced when that candle is burned. A ban, therefore, may be the only mechanism to eliminate this hazard.

The Federal Hazardous Substances Act directs the Commission to defer to voluntary standards where the standard would eliminate or adequately reduce the risk of injury, and where it is likely that there will be substantial compliance with the voluntary standard. There has been a voluntary agreement since 1974 among candle makers in the United States not to use lead wicks in candles. Investigation by the Commission staff has shown that importers of candles have not followed this voluntary agreement, nor has it been followed universally by manufacturers within the United States. The Commission will, during the course of rulemaking, evaluate whether some other voluntary standard could meet the statutory criteria of hazard reduction and substantial compliance.

I also voted to submit the ANPR to the Office of Management and Budget (OMB) prior to sending it to the Office of the Federal Register (OFR) for publication. On January 20, 2001 a memorandum entitled "Regulatory Review Plan" was transmitted to the Heads and Acting Heads of Executive Departments and Agencies on behalf of the President. This memorandum, *inter alia*, directed executive branch agencies to refrain temporarily from transmitting proposed or

final regulations to the OFR. The memorandum permitted agencies to request an exception from OMB in the case of regulations that impact critical health and safety functions of the agency. It encouraged independent agencies, such as the Commission to participate voluntarily in this review.

I recognize that the Commission is not *required* to submit this ANPR to OMB prior to transmitting it to the OFR. But there is no *prohibition* against the Commission cooperating voluntarily with the President's memorandum. The Commission already voluntarily performs actions set forth in executive orders that it is not *required* to perform, such as the preparation of a regulatory agenda. The actions requested by the January 20 memorandum are less burdensome than the preparation of a regulatory agenda, and are, by the express terms of the memorandum, temporary. Moreover, I am certain that OMB will agree that the exception for critical health and safety functions of the Commission will apply to this ANPR and will acquiesce in its publication in the *Federal Register*. Submitting the ANPR to OMB and requesting an exception does not constitute review and approval of the substance of the ANPR; it requires only a determination that it "impacts critical health and safety functions" of the Commission. Thus, the voluntary cooperation by the Commission with the January 20 memo will not undermine or compromise the Commission's independence.