



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Thomas H. Moore
 Commissioner Nancy A. Nord
 Commissioner Robert S. Adler
 Commissioner Anne M. Northup

ITEM:

Petition HP 10-2; Request for Regulations on Cadmium
(Briefing package dated August 30, 2011)

DECISION:

The Commission voted (3-2) to take other action on the petition (HP10-2) requesting regulations on cadmium.

(1) Grant the petition and direct staff to begin drafting a Notice of Proposed Rulemaking unless a voluntary standard for cadmium in children's jewelry is published by ASTM within three months of the publication of the Federal Register Notice announcing the outcome of this vote and status of the petition. If a voluntary standard for cadmium in children's jewelry is published by ASTM within this timeframe, then staff is directed to assess the adequacy of the voluntary standard and whether there is substantial compliance with the voluntary standard and based on these assessments make a recommendation on the disposition of this petition within nine months of the publication of the Federal Register Notice announcing the outcome of this vote and the status of the petition.

(2) Grant the petition and direct staff to begin drafting a Notice of Proposed Rulemaking unless a voluntary standard for cadmium in children's toy jewelry is published by ASTM within three months of the publication of the Federal Register Notice announcing the outcome of this vote and status of the petition. If a voluntary standard for cadmium in children's toy jewelry is published by ASTM within this timeframe, then staff is directed to assess the adequacy of the voluntary standard and whether there is substantial compliance with the voluntary standard and based on these assessments make a recommendation on the disposition of this petition within nine months of the publication of the Federal Register Notice announcing the outcome of this vote and the status of the petition.

(3) Direct staff to draft and publish a Federal Register Notice announcing the outcome of this vote and status of the petition.

Chairman Tenenbaum and Commissioners Moore and Adler voted to take this other action. Commissioners Nord and Northup voted to defer the petition (HP10-2) for an additional 6 months and direct staff to continue its participation in the ASTM F15.24 subcommittee to develop a voluntary standard addressing accessible cadmium from children's metal jewelry, as well as continue its participation in the ASTM F15.22 subcommittee to amend the ASTM F963 toy safety standard.

Chairman Tenenbaum and Commissioner Nord issued the attached statements regarding this matter.

For the Commission:



Todd A. Stevenson
Secretary

* Ballot vote due September 6, 2011



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CHAIRMAN INEZ M. TENENBAUM

September 6, 2011

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM
ON THE COMMISSION DECISION TO GRANT THE PETITION REQUESTING
REGULATION OF CADMIUM IN CHILDREN'S JEWELRY UNLESS ACTION IS TAKEN
EXPEDITIOUSLY BY THE ASTM VOLUNTARY STANDARDS SUBCOMMITTEES**

Since January of 2010, I have been abundantly clear with manufacturers, importers, and distributors of children's products that I would not allow cadmium to replace lead as the next children's product safety scare for parents. Cadmium is a toxic heavy metal for which exposure in large amounts can have acute adverse effects on children. Cadmium's primary damage occurs to the kidneys. The effects of cadmium ingestion are cumulative and can lead to chronic effects later in life. It is important to point out, however, that through the proactive approach taken by the U.S. Consumer Product Safety Commission ("CPSC"), we have prevented a wave of children's products containing harmful cadmium from reaching the hands of children in the United States.

In late spring of 2010, the CPSC received a petition ("Petition") filed jointly by the Empire State Consumer Project, the Sierra Club, the Center for Environmental Health, and the Rochesterians Against the Misuse of Pesticides ("Petitioners"). The Petitioners requested that the Commission adopt regulations declaring children's jewelry containing cadmium in greater than trace amounts to be a banned hazardous substance within the meaning of the Federal Hazardous Substance Act ("FHSA"). In a move to establish additional safeguards to protect children from cadmium, I voted today to grant this petition. Through our vote, the Commission has directed CPSC staff to proceed with mandatory rulemakings to regulate the cadmium levels in children's jewelry and in children's toy jewelry, unless ASTM International publishes new and improved voluntary standards within three months of publication of this decision in the *Federal Register*.

On February 16, 2011, the Commission had voted unanimously to defer, for six months, the decision on whether to grant the Petitioners' request and directed staff to work with ASTM International, Inc., a voluntary standards organization, to develop voluntary standards that govern the allowable levels of cadmium in children's jewelry and children's toy jewelry and also to outline appropriate cadmium testing measures. At the end of this six month period, CPSC staff was directed to update the Commission on the status of the work of the ASTM subcommittees tasked with addressing this issue.¹

¹ The ASTM F15.24 subcommittee has been tasked with developing a voluntary standard to address accessible cadmium from children's metal jewelry. The ASTM F15.24 subcommittee is working with the ASTM F15.22 subcommittee for the ASTM F-963 Standard Consumer Safety Specification for Toy Safety (ASTM F-963) to also address toy jewelry. It is important to note that any new cadmium standard incorporated into the ASTM F-963 toy standard through the voluntary standards process will also become a part of the federal toy safety rule, meaning that third party testing and certification to the new cadmium standard would also be mandatory for toys, unless the Commission determines that the new standard does not improve the safety of consumers.

The six month deferral period has ended, and while the children's jewelry and toy subcommittees have made progress in their work to finalize a voluntary standard for cadmium, their work is not complete. Although I appreciate the efforts of ASTM, I cannot ignore the known toxic effects of cadmium on children. It is for that reason that the Commission has made clear by its vote today that we stand ready to begin a mandatory rulemaking seeking to limit the levels of cadmium in children's jewelry and toy jewelry, if the work of the ASTM subcommittees is not completed and published expeditiously.

My concerns about the presence of cadmium in children's product are longstanding. In January 2010, I sent a strong message to foreign regulators attending the Asian-Pacific Economic Cooperation meetings in Hong Kong warning against substituting cadmium and other toxic metals in place of lead:

I would highly encourage all of you to ensure that toy manufacturers and children's product manufacturers in your country are not substituting cadmium, antimony, barium, in place of lead. All of us should be committed to keeping hazardous or toxic levels of heavy metals out of surface coatings and substrates of toys and children's products.

My warning not to substitute cadmium in place of lead was restated to Chinese manufacturers in a February 2010 emergency notice from the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), CPSC's counterpart agency in Beijing. Especially considering the mandated reduction for the lead limits in children's products and toys to 100 parts per million, these warnings for manufacturers to guard against the substitution of cadmium for lead are particularly important.

From January through July of 2010, CPSC monitored the presence of cadmium in children's jewelry and announced five recalls of jewelry that contained high levels of cadmium. In addition to conducting recalls, CPSC enforcement staff, working with U.S. Customs and Border Protection, has turned away potentially dangerous children's jewelry with cadmium at U.S. ports and has conducted marketplace surveillance of children's products for lead and cadmium.

In October of 2010, CPSC staff issued a report on the testing of jewelry and metal to evaluate the potential for chemical exposure in case an item containing cadmium was swallowed by a child. Staff concluded that it had information sufficient to deem cadmium to be toxic under the FHSA due to impacts on multiple organ systems and toxic endpoints. Staff developed acceptable daily intake levels for chronic exposure (i.e., repeated exposures over long periods) and acute exposure (i.e., single exposure or exposures that occur over a limited period of time) and identified the need for the development of appropriate tests to prevent dangerous levels of cadmium exposure to children from jewelry and metal alloys. At that time, I repeated calls for foreign and domestic manufacturers not to use cadmium and, specifically, not to substitute cadmium for lead in children's products.

Now is the time for the Commission's call to keep harmful levels of cadmium out of children's products to be addressed with strong safety standards for toys and children's jewelry. Our children deserve nothing less, caregivers expect nothing less, and I will accept no further delays.



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STATEMENT OF COMMISSIONER NANCY NORD ON THE VOTE FOR PETITION HP 10-2; REQUEST FOR REGULATIONS ON CADMIUM

September 8, 2011

The vote before us concerns a petition to regulate cadmium in both children's jewelry and toy jewelry. The staff thoughtfully recommended that we postpone a decision on the petition for six months, allowing a voluntary standard development process at ASTM International, Inc., to finish and a voluntary standard to be adopted and implemented. I voted to follow our staff's recommendation. I was dismayed that a majority on the Commission overrode the staff and directed them to begin drafting a Notice of Proposed Rulemaking if a voluntary standard for cadmium in children's jewelry and toy jewelry is not completed within three months of the date that our vote is published in the Federal Register. Further, if a voluntary standard is adopted, the staff is directed to complete an assessment of its adequacy within nine months.

The majority's action may seem moot, because the voluntary standard for cadmium is nearly complete. Indeed, it would not be surprising if the voluntary standard were published before the Commission's vote even appears in the Federal Register. Because our staff has been participating in that collaborative process, we can expect that the voluntary standard will reflect our staff's concerns.

My major concern about this action is that the majority is signaling its willingness to short-circuit the voluntary standard development process. Why participate in that process if the Commission circumvents the process before the participants complete their work? Promises of collaboration ring hollow when the majority proceeds by imposing unrealistic deadlines. Our good faith participation in the process will be open to question. Further, the loss of trust that accompanies these sorts of arbitrary actions curtails our effectiveness in working with standards that we *must* defer to (i.e., when the voluntary standards (1) adequately reduce or eliminate risks of harm and (2) are likely to be substantially complied with).

Finally, the majority has not given either the Commission or the staff any indication of where it expects to take resources from for some alternative cadmium rulemaking process. Given our limited resources—and the damage this does to our relationships with the voluntary standards community—this action is poorly considered. The majority's decision may play well with certain special interests, but it undercuts the agency's ability to work constructively to increase safety in the most effective manner.