



UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

MINUTES OF COMMISSION MEETING

Decisional Matter: Final Rule: Safety Standard for Magnets
(Briefing package dated August 17, 2022)

September 7, 2022

Chair Alex Hoehn-Saric convened the September 7, 2022, meeting of the U.S. Consumer Product Safety Commission in open session at 10:00 a.m. The meeting was held remotely. Commissioners Dana Baiocco, Peter A. Feldman, Richard L. Trumka Jr., and Mary T. Boyle were in attendance. The Chair made welcoming remarks and summarized the agenda item for the meeting.

Chair Hoehn-Saric introduced the decisional matter pending before the Commission and introduced staff that were present to address questions from the Commission: Jason Levine, Executive Director; DeWane Ray, Deputy Executive Director; Austin Schlick, General Counsel; Hyun Kim, Attorney, Office of the General Counsel; and Steven Harsanyi, Engineering Psychologist, Division of Human Factors.

Chair Hoehn-Saric advised that each Commissioner would have five minutes to ask questions of staff, followed by consideration of amendments.

The Chair then called for questions for staff. The Commissioners did not have any questions for staff. Chair Hoehn-Saric excused staff and commenced consideration of staff's proposed final rule for a safety standard for magnets.

The Chair then recognized each Commissioner by order of seniority for amendments. Chair Hoehn-Saric, Commissioners Baiocco, Feldman and Trumka did not have any amendments. The Chair recognized Commissioner Boyle for an amendment and stated she could have three minutes to explain her amendment. Commissioner Boyle explained that her amendment would clarify the definition of subject product magnets that are within or out of scope of the magnet rule. In so doing, the amendment would eliminate the two exemptions added to the proposed final rule that were not in the NPR but would not affect the exemption applicable to ASTM F963 for Toys. The amendment would also revise the "*subject product magnet*" definition under section 1262.2(b) to avoid ambiguity regarding in-scope and out-of-scope products.

Chair Hoehn-Saric called for a second and Commissioners Baiocco and Trumka simultaneously seconded the motion. The Commissioners discussed their respective positions and support for the amendment. After the discussion, Chair Hoehn-Saric called for a vote on the amendment. The Commission voted (5-0) to adopt the amendment. The Commission-adopted amendment is attached.

Chair Hoehn-Saric called for any other amendments and, hearing none, moved for a vote on staff's proposed final rule for a safety standard regarding magnets and publication of the same in the *Federal Register (FR)*. Commissioner Boyle seconded the motion. The Commission voted unanimously (5-0) to approve the final rule as amended and publication in the *FR*.

Chair Hoehn-Saric stated that each Commissioner would have up to 10 minutes for closing remarks. The Chair provided his closing remarks and then recognized each Commissioner. Commissioners Baiocco, Feldman, Trumka and Boyle each gave closing remarks.

There being no other business, Chair Hoehn-Saric adjourned the meeting at 10:20 a.m.

For the Commission:

ALBERTA MILLS Digitally signed by ALBERTA MILLS
Date: 2022.09.15 11:38:36 -04'00'

Alberta E. Mills
Secretary

Attachment:

1. Commission Adopted Amendment Proposed by Commissioner Boyle
2. Statement by Chair Hoehn-Saric
3. Statement by Commissioner Trumka
4. Statement by Commissioner Boyle

Commissioner Boyle Amendment to Safety Standard for Magnets Final Rule

Amendment: Strike section 1262.1(c)(ii) and (iii) of the Final Rule and revise section 1262.2(b) as follows:

Subject magnet product means a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets, but does not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes.

Staff shall make conforming changes to the preamble to be published in the *Federal Register*, as necessary.



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

Statement of Chair Alexander Hoehn-Saric on Vote to Issue a Final Rule on Safety Standard for Magnets

September 7, 2022

Today, the Commission voted unanimously to issue a final rule to establish a safety standard for magnets to protect consumers from horrific injuries and deaths caused by tiny, powerful magnets.

When ingested, these magnets can attract to one another, perforating body tissue, and cause acute and long-term health impacts or death. This rule would work to ensure that life-threatening magnets do not find their way into our homes and into the hands of children and teens who can swallow them unintentionally.

While protecting children and families against the hazard of magnet ingestion, this rule directly addresses the three concerns the U.S. Court of Appeals for the Tenth Circuit raised when it struck down the Commission's 2014 magnet sets rule (2014 Rule). See *Zen Magnets, LLC v. CPSC*, 841 F.3d 1141 (10th Cir. 2016).

First, the court faulted the Commission for using a short time frame for its injury analysis, and raised concerns about whether the Commission had made the case that a rule was essential to protect the public. In this rule, the Commission here used the most complete data available, including data for years before, during, and after the effective period of the 2014 Rule. The full data reveal that the estimated number of magnet ingestions treated in U.S. hospital emergency departments was lowest by far during the 2014-2016 period when the 2014 Rule was in effect. The number of children treated in emergency departments rose dramatically after the 2014 Rule was struck down. This data removes any doubt that a product safety rule addressing the magnet ingestion hazard is uniquely effective in reducing injuries and deaths.

Second, the 2016 court decision criticized the Commission for relying too heavily on incidents that only "possibly" involved subject magnets. For this rule, the Commission has developed detailed information on all known magnet ingestion incidents, including both those where the ingested magnets could be identified, and those where the magnets could not be identified. As discussed in the final regulatory analysis accompanying the new rule, the benefits from preventing magnet ingestion injuries far exceed the costs of the rule even when the incidents

involving unidentified magnets are entirely excluded. Many cases characterized as “unidentified” are, in fact, likely to involve subject magnet products, and considering these incidents makes the estimated benefits of the rule even greater.

Finally, the Tenth Circuit previously faulted CPSC for not addressing the utility of magnet sets for scientific and math education, and research. In this proceeding, the Commission specifically asked in the notice of proposed rulemaking how these types of uses should be treated. In response to comments and based on staff’s analysis of the magnet ingestion incident data, the rule’s definition of “subject magnet products” excludes products that are not designed, marketed, or intended to be used for entertainment, jewelry, mental stimulation, stress relief, or a combination of these purposes. In addition, products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes are outside the definition. These changes from the 2014 Rule’s definition ensure that, to the extent the record suggests valuable uses for high-power magnet products that have not been associated with ingestion incidents, those uses can continue.

Pediatricians and pediatric gastroenterologists who see first-hand the health impacts of these magnets have led the way in pushing for mandatory standards. Consumer advocacy organizations and members of Congress – particularly Representatives Cardenas and Schrier as well as Senator Blumenthal – have maintained attention on the dangers of these small and powerful magnets. I appreciate their dedication and efforts to stopping this killer of children.

I also thank my fellow Commissioners and CPSC staff for working to protect the public from the terrible health risks of dangerous magnet products and commit to vigorously enforcing the rule.



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COMMISSIONER RICH TRUMKA JR.

NEW SAFETY STANDARD FOR SMALL, POWERFUL MAGNETS WILL SAVE KIDS FROM LIFE-THREATENING INGESTIONS, AGAIN

SEPTEMBER 7, 2022

It has been a long road since CPSC first corrected the hazard posed by small powerful magnets with a rule issued in 2014. Unfortunately, two judges on the Tenth Circuit Court of Appeals, including current Supreme Court Justice Neil Gorsuch, vacated that critical safety measure. The result was horrifying: the number of children who suffered serious injuries from ingesting magnets nearly doubled, despite aggressive CPSC efforts to recall the most hazardous magnets. The judges created an avoidable tragedy. This is, unfortunately, a case study in how performative gestures to inhibit government regulation can put real-world families through trauma and hardship. They disregarded CPSC expertise and hurt real people—mostly children—in great numbers.

Today, we have corrected this injustice yet again and can now return to keeping dangerous small magnets off the market and out of children’s intestines, where they can cause severe injury and death.

Estimated Number of In-Scope Magnet Ingestions Treated in Hospital Emergency Departments by Period.

Period	Years	Average Annual Injuries
Pre-CPSC Rule	2010 – 2013	2,300
During CPSC Rule	2014 – 2016	1,300
After 10th Circuit Eliminated CPSC Rule	2017 – 2021	2,400



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COMMISSIONER MARY T. BOYLE

Statement of Commissioner Mary T. Boyle on Vote to Issue a Final Rule on Safety Standard for Magnets

September 7, 2022

Today, the Commission voted unanimously to approve a new federal safety standard for small, powerful magnets to protect children from the devastating injuries, and even death, that can occur as a result of ingesting these products. I am pleased that my fellow Commissioners all joined in approving this important rule, and I extend my deep appreciation to the CPSC staff who worked tirelessly not only to bring this rulemaking to fruition but for their dedication to this issue for well over a decade. As a result, lives will be saved and devastating injuries will be avoided.

What we do at CPSC makes a difference. The use of our regulatory authority makes a difference.

And, if there were ever any doubt, the tragic history of magnet injuries to infants, toddlers, and teens over the course of the past 15 years or so surely proves that. The injury trends that occurred before, during, and after the agency's first magnet rulemaking are eye opening. For the period 2010 through 2013, before announcement of the magnet sets rule, CPSC estimated that there were approximately 2300 magnet ingestions treated annually in emergency departments. That number dropped to 1300 from 2014 through 2016, which corresponds to the year the rule was announced and in place. After the rule was vacated, that number shot back up to approximately 2400 from 2017 through 2021.

The rule we adopted today will make a difference. It will make a difference to infants and toddlers who, as we all know, put things in their mouths in the normal course of development. It will make a difference to older children and teens who experiment with piercings. It will make a difference to families who would be devastated by magnet ingestion injuries to their children, which can be lifelong and life altering and even fatal. It will make a difference to a severely

burdened health care system that treats these patients.

Through our action today, we reaffirm our commitment to protecting the most vulnerable among us—children—from this unique hidden hazard. More than a decade ago, CPSC staff identified magnet ingestions as an emerging and urgent issue and presented persuasive data on the need to act. We acted today because the devastating injuries to children demand such action. While I certainly would have preferred that the agency's first magnet rulemaking remain in place, I am gratified that the Commission used its regulatory authority to act today so that, once again, we can see a downward trend in these horrific injuries.