



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

This document has been electronically
approved and signed.

BALLOT VOTE SHEET

Date: February 1, 2017

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Mary T. Boyle, General Counsel
Patricia H. Adkins, Executive Director

FROM : Patricia M. Pollitzer, Assistant General Counsel

SUBJECT : *Federal Register* Notice Removing Safety Standard for Magnet Sets from the
Code of Federal Regulations

BALLOT VOTE DATE: Tuesday, February 7, 2017

The Commission has previously issued a final rule, "Safety Standard for Magnet Sets," (magnet set rule) under the authority of the Consumer Product Safety Act. 79 Fed. Reg. 59962 (Oct. 3, 2014). The U.S. Court of Appeals for the Tenth Circuit issued an opinion vacating and remanding the magnet set rule to the Commission. Accordingly, the Office of the General Counsel is providing the Commission with a draft *Federal Register* notice that would remove the magnet set rule from the Code of Federal Regulations.

Please indicate your vote on the following options:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

Signature

Date

- II. Approve publication of the attached document in the *Federal Register*, with changes (please specify changes):

Signature

Date

- III. Do not approve publication of the attached document in the *Federal Register*.

Signature

Date

- IV. Take other action (please specify):

Signature

Date

Attachment: Draft *Federal Register* notice, titled, "Safety Standard for Magnet Sets; Removal of Final Rule Vacated by Court"

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2012-0050]

16 CFR Part 1240

Safety Standard for Magnet Sets; Removal of Final Rule Vacated by Court

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: This final rule removes from the Code of Federal Regulations the final rule published on October 3, 2014, titled, “Safety Standard for Magnet Sets.” This action responds to a decision of the U.S. Court of Appeals for the Tenth Circuit that vacated the rule.

DATES: The action is effective on **[insert date of publication in the FEDERAL REGISTER]**. However, the court order had legal effect immediately upon its filing on November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814-4408, Room 820; telephone: 301-504-7923; email: tstevenson@cpsc.gov .

SUPPLEMENTARY INFORMATION:

On October 3, 2014, the Consumer Product Safety Commission (CPSC or Commission) published a final rule titled, “Safety Standard for Magnet Sets” (magnet set rule) under the authority of the Consumer Product Safety Act. 79 FR 59962. The rule established requirements for magnet sets and individual magnets that are intended or

marketed to be used with or as magnet sets. As defined in the rule, “magnet sets” are aggregations of separable magnetic objects that are marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. Under the rule, if a magnet set contains a magnet that fits within the CPSC’s small parts cylinder, each magnet in the magnet set must have a flux index of $50 \text{ kG}^2 \text{ mm}^2$ or less; an individual magnet that is marketed or intended for use as part of a magnet set also must meet these requirements. The rule provided that the flux index is determined by the method described in ASTM F963-11, Standard Consumer Safety Specification for Toy Safety.

On December 2, 2014, Zen Magnets, LLC (Zen) filed a petition in the U.S. Court of Appeals for the Tenth Circuit challenging the magnet set rule. The Tenth Circuit concluded that the Commission’s rule provided incomplete and inadequately explained findings. The court vacated and remanded the rule to the Commission. *Zen Magnets, LLC v. Consumer Product Safety Comm’n*, No.14-9610 (10th Cir. Nov. 22, 2016). Consistent with that decision, this rule removes the magnet set rule at 16 CFR part 1240 and reserves that part.

This rule is not subject to the requirement to provide notice and an opportunity for public comment because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* This rule is an administrative step that implements the court’s order vacating the magnet rule. Additionally, because this rule implements a court order already in effect, the Commission has good cause to waive the 30-day effective date under 5 U.S.C. 553(d)(3).

List of Subjects

16 CFR Part 1240

Consumer protection, Imports, Incorporation by reference, Infants and children,
Law enforcement, Safety.

For the reasons stated above, the Commission amends Title 16 CFR chapter II as follows:

PART 1240 – [Reserved]

- Remove and reserve part 1240.

Dated: _____

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission