



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Acting Chairman Robert S. Adler
 Commissioner Elliot F. Kaye
 Commissioner Dana Baiocco
 Commissioner Peter A. Feldman

ITEM:

Federal Register Notice Seeking Public Comments on Petition Requesting Rulemaking on
Commercially Bred Dogs Sold to Consumers
Briefing package dated July 21, 2021, OS No. 0074

DECISION:

The Commission voted 1-1-2 on the matter, and because no majority was reached, no action will be taken to publish a Federal Register notice seeking public comments regarding the petition from the Humane Society of the United States and the Humane Society Legislative Fund. The petition requests that the Commission initiate a rulemaking to adopt a mandatory safety standard to require warnings of the risk to people of contracting *Campylobacter* infection, or campylobacteriosis, from contact with commercially bred dogs sold to consumers online or in retail stores.

Acting Chairman Adler voted to approve publication of the draft *Federal Register* notice to invite public comments on the petition. Acting Chairman Adler issued a statement with his vote.

Commissioner Baiocco voted to not approve publication of the draft *Federal Register* notice to invite public comments on the petition.

Commissioners Kaye and Feldman voted to take other action as follows: "Determine that the request does not satisfy the criteria for docketing a petition set forth in 16 C.F.R. §§ 1051.5(a) and 1051.6(a) because the request addresses a topic outside the jurisdiction of the Commission."

For the Commission:

Alberta E. Mills
Secretary

* Ballot vote due July 27, 2021
Attachment: Statement from Acting Chairman Adler



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

ACTING CHAIRMAN ROBERT ADLER

**STATEMENT OF ACTING CHAIRMAN ROBERT ADLER
ON
PETITION REQUESTING RULEMAKING ON COMMERCIALY BRED DOGS SOLD TO CONSUMERS**

July 27, 2021

On February 17, 2021, the Humane Society of the United States and the Humane Society Legislative Fund submitted a petition requesting that the CPSC initiate a rulemaking under sections 7 and 9 of the Consumer Product Safety Act (CPSA) to write a mandatory standard to require warnings of the risk to people of contracting *Campylobacter* infections, or campylobacteriosis, from contact with commercially bred dogs sold to consumers online or in retail stores.

Among the petitioners' allegations is the claim that campylobacteriosis is an infectious disease that can cause serious injury or death and that it poses a hidden hazard to consumers. I note that the Centers for Disease Control and Prevention (CDC) has cautioned that this disease is of particular concern because it has become extremely resistant to antibiotics. In fact, as I understand it, a recent CDC report declared campylobacteriosis outbreaks a serious threat to public health.

Although living pet animals sold through retail outlets don't necessarily come immediately to mind when one looks at the definition of a "consumer product" under section 3(a)(5) of CPSA, I am persuaded that the words of the statute are broad enough to include these pets.¹

In making this point, I remind everyone that having jurisdiction does not mean that CPSC necessarily has the resources to enact a rule within the near future. Alas, our jurisdiction is broad and our resources are meager – although I continue to hold out hope that Congress will heed our plea for additional funding. That said, establishing jurisdiction is a separate issue from setting priorities for rulemaking.

¹ I was at the Commission when we determined that we had jurisdiction over the hazard of salmonella arising from pet turtles. I thought our reasoning was sound then, and I think it remains so today. As I understand it, the Commission has also determined that the agency has jurisdiction over other non-food living items such as non-edible plants and seeds. Of course, once an animal or plant is used as food, CPSC has no jurisdiction.

I have one additional thought about the petition. Because it seeks only a warning label, I think a good argument might be made that section 27(e) of the Consumer Product Safety Act² might apply, thereby avoiding the time-consuming and onerous provisions in sections 7 and 9 of CPSCA.

A potential glitch might be that section 27(e) applies only to “manufacturers” of consumer products. One might claim that it’s bit of a stretch to consider breeders of pet dogs to be manufacturers, but I would argue as follows. The definition of the term “manufactured” at section 3(a)(10) of CPSCA³ states that the term means to “manufacture, *produce*, or assemble.” [emphasis added]. Surely, breeders produce pets through breeding them.⁴ Moreover, if the term manufacturer cannot be used in the context of the pet industry, we would have the anomalous situation of an industry that has distributors and retailers, but absolutely no manufacturers. That defies common sense.

Accordingly, I vote to approve the publication of a *Federal Register* notice that permits the public to submit comments on the petition with the hope that an inquiry might be made regarding the appropriateness of using section 27(e) as the agency’s regulatory approach rather than sections 7 and 9.

² 15 USC § 2076(e). This section of the law authorizes the Commission to require performance and technical data related to safety and performance as required to carry out the purposes of the act, including providing such information to prospective purchasers. Through the years, CPSC has used this section to require warning labels to consumers for chlorofluorocarbon-containing products, CB base station antennas, cellulose insulation, coal and woodburning stoves, and portable generators. See generally 16 CFR Part 1401 et seq.

³ 15 USC § 2052(a)(10).

⁴ Additionally, I would not be surprised to find that some in the pet industry also import puppies, which fits within the clear definition of a manufacturer.