



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814**

COMMISSIONER NANCY A. NORD

**Statement on the Commission's decision to publish
the Notice of Proposed Rulemaking on a
Safety Standard for Magnet Sets**

August 27, 2012

I voted to publish the Notice of Proposed Rulemaking on a Safety Standard for Magnet Sets because I believe that rulemaking is the appropriate way to address hazards that may be posed by this product. The hazard pattern described in the NPR deserves the attention and study of the Commission and the public through the rulemaking process. My vote was not without reservations, however, because I am not convinced that the proposal before us—which amounts to a ban on all magnet sets sold today—best reduces or eliminates the hazard while minimizing disruption to manufacturing and commerce as required under our statute.¹

In particular, the proposed standard proceeds on the belief that warnings do not work for this relatively new product because (it is assumed) warnings are and will be ignored or otherwise not communicated effectively. But in the absence of a robust and comprehensive program to educate and warn about this hazard, it is unclear that warnings will be ineffective and our conclusion that such is the case is speculative. And applying this principle broadly would eviscerate many of the safety standards that the Commission (and Congress) have deemed acceptable. The long-term policy implications stemming from the rationale for the proposed ban on other products subject to warnings have not been explored but are presented by this rulemaking.

I am also concerned that the proposed ban may be overly broad. There are two hazard patterns here: one involving young children and the other involving older children and teenagers. A tailored approach might adequately reduce the risk associated with magnet sets but not eliminate the product from the marketplace. In addition, the proposed standard—particularly as amended by the majority—includes products that have not been demonstrated to pose the same risk. Overinclusive rules needlessly strangle commerce and innovation, and should be avoided. I hope that the comments in response to this NPR will help resolve these concerns, particularly by proposing less-

¹ See Consumer Product Safety Act § 9(f)(1)(D), 15 U.S.C. § 2058(f)(1)(D).

burdensome alternatives and by providing data that sheds light on how best to address the different hazard patterns before us.

Despite my concerns about the proposed standard, I voted for this to be put to the public because this is the right way to pursue the regulatory process when a significant hazard involving a class of products is brought to the attention of the Commission. When the Commission believes that a hazard is so imminent that it cannot wait for the results of rulemaking, we have statutory authority to act. In this case, however, instead of using that authority, we have brought compliance actions against certain companies and asked others to withdraw the products from the market in an attempt to reach the entire market. This amounts to back-door rulemaking. Approaching the hazard through the front door—that is, through the rulemaking process—is more appropriate. In this way, we do not take formal or informal actions that reach conclusions about a potential hazard before the Commission has all the relevant evidence and all affected stakeholders have the opportunity to be heard.

Congress created the Commission’s regulatory procedures to allow for open and transparent rulemaking, and to ensure that the Commission has the right scientific, medical, and economic analysis before making decisions. That process must not be short-circuited. Thus, I look forward to examining this matter further—and as quickly as possible—once the public has weighed in and we have more data.