Consumer Federation of America

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Consumer Federation of America

to the U.S. Consumer Product Safety Commission on

"Safety Standard for Magnet Sets, Notice of Proposed Rulemaking,"
Docket No. CPSC–2012-0050

Public Meeting- Opportunity to Make Oral Presentations

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I. Introduction

Chairman Tenenbaum, Commissioners Adler, Nord, Robinson and Buerkle, I appreciate the opportunity to provide comments to you on today on CPSC's Notice of Proposed Rulemaking establishing a safety standard for magnet sets. I am Rachel Weintraub, Legislative Director and Senior Counsel at Consumer Federation of America. Consumer Federation of America or CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

CFA is basing our comments today upon our written submission of comments of November 19, 2012 to the CPSC in response to the open comment period regarding the NPR on a safety standard for magnet sets.[1]

CFA agrees with the CPSC's preliminary determination that there is an unreasonable risk of injury associated with children ingesting high powered magnets that are part of magnet sets. The CPSC and pediatricians and pediatric gastroenterologists from whom we will hear today, have documented the serious medical consequences that occur as a result of a child ingesting such high powered magnets. The unique properties of these magnets cause serious life threatening injuries when a child ingests two or more magnets. These injuries are vastly different from and more serious than those that occur from the ingestion of other small parts.

In the Notice of Proposed Rulemaking, the Commission proposes safety standards for magnet sets. The safety standard proposed would prohibit current magnet sets. The proposed rule would

[1] Safety Standard for Magnet Sets, Notice of Proposed Rulemaking. Federal Register, Vol. 77, No.171, (September 4, 2012).

require magnets that fit into the small parts cylinder to have a flux density of 50 or less or they would be prohibited. We support this proposed standard.

II. Background

CPSC based this proposed rule upon ASTM F 963's provision addressing magnets in toys. We support that reliance, as the ASTM standard appears to have effectively addressed the hazard posed by magnets in toys.

III. Discussion & Recommendations

A. The Risk of Serious Injury caused by Magnets in Magnet Sets

CPSC's proposed rule accurately describes the serious injuries caused by the ingestion of magnets from magnet sets, which can be grave and potentially life threatening.

CPSC has estimated that 1,700 ingestions of magnets from magnet sets were treated in emergency rooms in hospitals across the country from 2009 through 2011 and a survey by the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition, released in October of 2012, estimates that "in the past 10 years, there have been at least 480 cases of high powered magnet ingestions, with 204 of those cases occurring in the past 12 months."[2]

[2] http://www.naspghan.org/user-assets/Documents/pdf/Advocacy/Magnets/NASPGHAN%20Media%20Advisory%20on%20Magnet%20Ingestions.pdf

Thus, numerous serious injuries, many of which required surgical intervention, have been caused by these magnets. We support the CPSC's assessment of the seriousness of these injuries and agree that this data provides evidential support for the promulgation of a proposed rule that effectively addresses this serious hazard.

B. Individual Magnets

We urge the CPSC to include individual magnets that are sold to be used in conjunction with a magnet set as part of the scope of the proposed rule. Individual magnets bought separately would pose the same hazards as those bought as part of magnet sets. Thus, the same standard should apply to these magnets.

C. Flux Density

a. Flux Density of 50

We agree with the CPSC's recommendation in the proposed standard that magnets sold as part of magnet sets and magnets intended to be used as part of magnet sets that are smaller than the choke test tube should have a flux density of 50 or less, or they will be prohibited. First, we applaud the initial test of using the choke test tube to ensure that magnets that can be swallowed would be the focus of this standard. The incident data supports that ingestion is the main route of exposure for these sever magnet injuries. The small size of these magnets not only makes them so potentially harmful but creates similarities of these magnets to candy.

Regarding the flux density, the CPSC should study whether magnets of a flux density of less than 50 could also potentially cause harm. While the flux density of 50, put forth in this proposed standard, was based upon the ASTM toy standard and an analyses of magnet containing toys on the market, we also suggest that the CPSC study other products containing magnets including magnets used as refrigerator magnets, push pins, and jewelry to evaluate whether a flux density of 50 is the appropriate level.

b. Flux Density for Aggregated Magnets

We further urge the CPSC to study whether magnets with a flux density of 50, when aggregated, continue to have a flux density of 50 or whether the aggregation of these magnets increases the flux density and could pose more serious harm.

D. Regulatory Alternatives

a. Warnings are not an Effective Solution

We agree with the CPSC staff that warning labels have never been effective in protecting children from the hazards posed by ingesting magnets from magnet sets. First, warnings are a less effective injury prevention method than changing the product to reduce the hazard. Second, this hazard is hidden, the potential harm is not immediately obvious to purchasers or users of the product and warning labels are less effective when the harm is not clearly known. Third,

warnings have been included on products and those warnings have not curbed injuries and have been entirely ineffective. Since a new label was required in March 2010 on a specific product, reported injuries continued to increase steadily and significantly. Fourth, warning labels do not prevent exposure to this product but rather seek to convey information that would alter a consumers' potentially risky interaction with the product. The more effective way to eliminate or reduce ingestion hazards is to prevent exposure to this foreseeably hazardous product. Finally, since the data shows that children six and younger make up the bulk of the incidents, a warning label would not be effective for reducing incidents affecting that population, which is unable to read and comprehend warnings.

b. Child Proof Containers are not an Effective Solution

We further urge the CPSC not to rely upon child proof containers but rather upon an effective standard to curb the hazards caused by ingestions of these magnets from magnet sets. Given the nature of the use of these magnet sets, it is likely that magnet sets would not remain in their containers. They would be left out of their containers on a table, dresser, or desk in the geometric shape that the consumer created with the magnets. Given the intended use of the product, the benefit of such a child proof container would be extremely limited if effective at all.

c. Bittering Agents

Similary, CFA would not support bittering agents as a solution to this hazard. The most effective way to eliminate or reduce ingestion hazards is to prevent exposure to this foreseeably hazardous

product. Preventing ingestion by making magnets that are smaller than the choke test tube cylinder- less powerful and less dangerous- is the best way to do this. Bittering agents are not the answer: they have not been shown to change children's behavior in different applications. Bittering agents fade over time, may not be detected in the same way by younger children who have less developed and different taste buds. Also, kids put everything in their mouths and a bad taste will not stop the mouthing behavior that leads to these incidents.

E. Costs

The CPSC's cost analysis considers the extensive costs of the injuries to children caused by these magnets in magnet sets. The costs must also consider the ongoing health impacts of injuries to children.

IV. Conclusion

CFA strongly supports the adoption of the Commission's standard as included in the Notice of Proposed Rulemaking for magnet sets. This standard, will effectively limit exposure to the hazards caused by magnet sets currently on the market. Reducing the magnetic force of magnets that can be swallowed is the most robust and successful way to reduce the threat of injury and death to children caused by these magnet sets.