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United States  
CONSUMER PRODUCT SAFETY COMMISSION  
Washington, D.C. 20207

MEMORANDUM

DATE : May 17, 1999  
TO : ES  
Through: Sadye E. Dunn, Secretary  
FROM : Martha Kosh  
SUBJECT: Notice of Proposed Rulemaking for Bunk Beds

ATTACHED ARE COMMENTS ON THE CH99-2-1

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CH99-2-1	1/5/99	Jack Walsh President & John Lineweaver Exe. Director	The Danny Foundation 12901 Alcosta Blvd. Suite 2-C San Ramon, CA 94583
CH99-2-2	1/19/99	Mary E. Fise General Counsel	Consumer Federation of America 1424 16 <sup>th</sup> St, NW, STE 604 Washington, DC 20036
CH99-2-3	1/19/99	Lynn S. Willliams	8421 NW 76 <sup>th</sup> St Oklamhoma City, OK 73132
CH99-2-4	1/19/99	Prof Staff	The Arkansas Public Policy Panel 103 Wl Capitol, STE 1115 Little Rock, AR 72201
CH99-2-5	1/21/99	Gail Parson Consumer Advocate	Illinois Public Interest Research Group 202 S State St, STE 400 Chicago, IL 60604

Notice of Proposed Rulemaking for Bunk Beds

CH99-2-6	1/27/99	Joe Ziolkowski Chairman	ASTM 100 Bar Harbor Drive West Conshohocken, PA 19428
CH99-2-6a	4/30/99	Joe Ziolkoski	ASTM Address same as above
CH99-2-7	1/28/99	Stephen Brobeck Chairman	The Coalition For Consumer Health and Safety 1424 16 <sup>th</sup> St, NW, STE 604 Washington, DC 20036
CH99-2-8	4/13/99	Douglas Brackett Executive Vice President	American Furniture Manufacturers Association P.O. Box HP-7 High Point, NC 27261
CH99-2-9	5/6/99	Philip Squair Director of Regulatory Affairs	National propane Gas Association 1101 17 <sup>th</sup> St, NW, Suite 1004 Washington, DC 20036
CH99-2-10	5/13/99	Joel Alpert, MD, FAAP President	American Academy of Pediatrics The Homer Building 601 Thirteenth St, NW Suite 400 North Washington, DC 20005
CH99-2-11	5/11/99	Robert Barker Vice President	American Fiber Manufacturers Asso., Inc. 1150 Seventeenth St, NW Suite 310 Washington, DC 20036
CH99-2-12	5/11/99	James Thomas President	ASTM 100 Barr Harbor Dr. W. Conshohocken, PA 19428
CH99-2-13	5/13/99	Joseph Mattingly Director of Government Affairs and General Counsel	The Gas Appliance Manufacturers Association 1901 N. Moore St P.O. Box 9245 Arlington, VA 22209

Notice of Proposed Rulemaking for Bunk Beds

CH99-2-14	5/14/99	Patty Adair Asst Director	American Textile Manufacturers Institute 1130 Connecticut Ave, NW Suite 1200 Washington, DC 20036
CH99-2-15	5/17/99	Debra Rade Senior Vice President	Underwriters Laboratories Incorporated 333 Pfingsten Rd Northbrook, IL 60062
CH99-2-16	5/17/99	Lewis Freeman Vice President	The Society of the Plastics Industry, Inc. 1801 K St, NW, STE 600K Washington, DC 20006
CH99-2-17	5/17/99	Robert Verdisco President	International Mass Retail Association 1700 N. Moore St. Suite 2250 Arlington, VA 22209
CH99-2-18	5/17/99	Karen Hutchison Director of Operations	Portable Power Equipment Manufacturers Association 4340 East West Highway Suite 912 Bethesda, MD 20814
CH99-2-19	5/17/99	Robert Waller Executive Vice President	Juvenile Products Manufacturers Association Incorporated 236 Route 38 West Suite 100 Moorestown, NJ 08057
CH99-2-20	5/17/99	Ron Ritsema Vice President	R.T. London Manufacturing Company



**The Danny Foundation**  
KEEPING BABIES SAFE

January 15, 1999

Thomas Moore, Commissioner  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20814-4408

RE: ANPR – Bunk Beds

Dear Commissioner Moore:

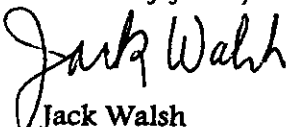
The Danny Foundation urges your support for the Commission to publish a notice of proposed rule making on bunk beds. On March 30, 1998, The Danny Foundation sent a detailed letter to the Office of the Secretary of the Consumer Product Safety Commission stating our support for an advance notice of proposed rule making. A copy of that letter is enclosed.


The Danny Foundation believes that a mandatory rule will increase compliance by bunk bed manufacturers. A mandatory rule will also level the playing field, so to speak, for those manufacturers who are already trying to comply with the present standard with those new manufacturers who try to do the very minimum requirement.

A mandatory rule will enable the Commission to seek civil penalties for violations that would deter other manufacturers from making non-complying beds. A mandatory rule will also help prevent non-complying beds made by foreign manufacturers from entering the United States.

For these reasons and for those reasons elaborated in our letter of March 30, 1998, we urge your support for a notice of proposed rule making for bunk beds.

Sincerely yours,

  
Jack Walsh  
Executive Director

  
John Lineweaver  
President

JW/kf

cc: Board of Directors  
The Danny Foundation

March 30, 1998

Office of the Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207-0001

RE: ANFR - Bunk Beds

Dear Secretary:

The Danny Foundation urges the Consumer Product Safety Commission (CPSC) to proceed with the development of a mandatory standard for Bunk Beds for the following reasons:

1. Compliance and Enforcement Issues:

It is clear from the large number of recalls involving bunk beds that have issued over the years that Compliance/Enforcement efforts are not working for the voluntary standard. This is not surprising given the limited resources of CPSC and the large number of producers and sellers of bunk beds. The ease of entry and exit in the bunk bed business makes enforcement a sometime thing.

Clearly CPSC needs to muster as much assistance as possible for Compliance/Enforcement efforts. Since most bunk beds are imported, using the U.S. Customs Service to deny entry to non-complying bunk beds seems the best approach. For Customs to deny entry requires a mandatory standard.

Similarly, State and Local Officials can be trained and enlisted to enforce compliance, but only, as a practical matter, if there is a mandatory standard.

2. The Public is not aware of this hazard:

Neither the general public nor the parents and caretakers of young children are aware of the risk of injury or death from allowing preschool children to have access to bunk beds. We note that CPSC had done very little to provide information on the risk of injury and death from bunk beds. The sellers and producers of bunk beds, as well as the American Furniture Manufacturing Association (AFMA) have done nothing to educate the public to this risk.

The development of a mandatory standard will provide a public forum for debate on bunk bed hazards and will logically lead to awareness of the serious hazards for non-complying bunk beds.

Office of the Secretary  
March 30, 1998  
Page Two

3. The voluntary standard is seriously flawed:

Three children have died in bunk beds that conformed to the voluntary standard. A 5 year old died in 1994 and an 18 month old died in 1996 when they became entrapped in the unprotected area of the top bunk. A 22 month old child died when the child became entrapped in the bunk bed frame supporting the top bunk. This is an area excluded from spacing requirements of the voluntary standard.

The voluntary standard excludes 15 inches from protection of the guardrails at each end of the guardrail on the top bunk. This permits 60 inches (5 feet) of space on the top bunk for a child to fall and potentially become entrapped. The bottom bunk is basically excluded from the requirements of the voluntary standards, except for the head board and foot board.

To our knowledge, no meetings have been scheduled for the ASTM subcommittee to even begin the process of addressing these obvious hazards by the voluntary standards process.

A mandatory standard will provide a means to correct these flaws.

4. Large numbers of Producers/Sellers of bunk beds:

More than 100 producers of bunk beds have been identified. There are undoubtedly others that have not specifically come to the attention of CPSC because bunk beds are a very easy product to produce with a minimum of start up costs. Producing a functional bunk bed can truly be a "garage operation". In recent years, there has been a proliferation of importers bringing in metal bunk beds.

The Danny Foundation has considerable experience in the development of voluntary standards for cribs and some other juvenile products. The crib and juvenile products industry is quite limited in number of firms, approximately 40, and even with this small number the voluntary standards process is tedious and often divisive. To expect more than 100 different firms to develop a "consensus" is not realistic.

A mandatory standard is necessary because of the very large number of firms involved and the ease of exit and entry into this product line for new or existing businesses.

5. Adult versus Child Beds:

Office of the Secretary  
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Page Three

It is not clear from the incident data provided how many deaths to young children occur involving adult beds, or how many deaths to young children occur involving beds that are not configured as "bunk beds", but would be used by preschool age children. Small single beds and trundle beds could have the same hazards as bunk beds and preschool age children can easily become entrapped and strangle or suffocate in these beds as well as "bunk beds".

Any bed intended for preschool age children should be covered by a mandatory standard and adult bunk beds should as well, since it is predictable that young children will be placed in adult bunk beds when the need occurs.

6. Consumer Product Safety Act versus Hazardous Substances Act:

It is The Danny Foundation recommendation that a single standard should be developed covering adult and child bunk beds, and other beds intended for use by preschool age children. The Consumer Product Safety Act would be the appropriate statute.

7. A "level playing field" is needed:

At least 40 bunk bed manufacturers are members of AMFA and try very hard to comply with the standard. We understand that some of the members have unilaterally addressed the flaws in the voluntary standard by producing bunk beds that have guardrails that protect the entire perimeter of the upper bunk and have reduced spacing accessible to young children from the lower bunk to prevent entrapment.

A mandatory standard will "level the playing field", so to speak, and require all manufacturers/importers and sellers to comply with the standard.

Sincerely yours,

John L. Lineweaver, President  
The Danny Foundation

JLL/kf



## Consumer Federation of America

January 19, 1999

The Honorable Thomas Moore  
Commissioner  
U.S. Consumer Product Safety Commissioner  
4330 East West Highway  
Suite 725  
Bethesda, MD 20814

Dear Commissioner Moore:

Consumer Federation of America (CFA) strongly urges you to vote in favor of the Notice of Proposed Rulemaking on Bunk Beds.

It has been nearly 12 years since CFA petitioned CPSC for a mandatory rule. Following denial of the petition in 1988, CFA actively participated in the voluntary standard development. We have attempted to educate the public about this risk and we have applauded the agency's repeated recalls of unsafe bunk beds. If ever the voluntary route has been given a chance, it is this one. After all this time, the evidence is clear: voluntary attempts in this case have not been sufficient to protect young children.

The bunk bed record that has been built over the last decade speaks loud and clear for a mandatory rule:

o Bunk beds pose an unreasonable risk of injury to children. In 1988, when CFA's petition was denied, at least 72 deaths had occurred. From January 1990 through October 23, 1998, 89 children died in bunk beds. "Near miss" entrapment incidents (59) outnumber entrapment fatalities (57)--- meaning that but for the luck of the child, who was rescued by a parent or caregiver, the number of entrapment fatalities would be more than double current estimates.

o There is a lack of substantial compliance. CFA would argue that under *any* reasonable interpretation of the term "substantial compliance" as contemplated by the Congressional drafters, the threshold statutory requirement for substantial compliance has not been satisfied. Over the last four years, the Commission has witnessed at least 44 different manufacturers of bunk beds in violation of the voluntary standard and necessitating a product recall. CPSC's last examination of such compliance found that nearly 40% of those examined were in violation of the standard.



o As the staff's preliminary regulatory analysis shows, the benefits of the proposed rule more than adequately bear a reasonable relationship to potential costs. The proposed rule is likely to be extremely effective.

Hence, CFA believes that all statutory requirements have been more than amply satisfied and that CPSC should delay no longer in moving this rulemaking forward.

Finally, we agree with the staff recommendation that the Proposed Rule include additional provisions to address openings in the guardrail as well as the bunk end structure. Removing all entrapment areas is necessary to assure that youngsters sleeping in these beds will not be at risk.

Commissioner Moore, I appreciate your time and interest in this critical children's safety issue and I look forward to meeting with you on January 25th. to review these issues in greater detail.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ellen R. Fise".

Mary Ellen R. Fise  
General Counsel

Chairman Brown,

I know that there will be a vote coming up soon on considering a federal bunk bed law. I am asking that you would please vote yes in this very important matter.

If you remember I lost my 3 year old daughter, Whitney Starks, to a defective bunk bed. The manufacturer did not take the time to see if there were any sort of standard to follow.

We as parents need to protect our children by doing everything possible. They are our future. I pray that you will vote yes in this very urgent matter.

Sincerely,

Lynn Starks-Williams

The Arkansas Public Policy Panel  
103 W. Capitol, Suite 1115  
Little Rock, AR 72201-5757

January 19, 1999

The Honorable Thomas Moore  
Commissioner  
U.S. Consumer Product Safety Commissioner  
4330 East West Highway  
Suite 725  
Bethesda, MD 20814

Dear Commissioner Moore:

We are writing to urge you to vote in favor of the Notice of Proposed Rulemaking on bunk beds. We need a bunk bed rule to protect our children and grandchildren. The following data strongly supports the continuation of this life-saving rulemaking.

Deaths and injuries associated with bunk beds continue to occur. In the past year, four deaths have occurred. To date, at least 160 deaths have occurred. Furthermore, there have been at least 59 "near miss" incidents where a child would have died had he/she not been found in time. These incidents, coupled with the more than 30,000 hospital-treated injuries that occur each year, significantly support the need for CPSC action.

Compliance with the voluntary standard is weak. Between November 1994 and September 1997, 41 manufacturers recalled over one-half million bunk beds. Nearly 40% of the manufacturer's bunk beds evaluated in CPSC's recent field investigation were in non-compliance with the bunk bed voluntary standard.

A federal mandatory bunk bed rule will deter the manufacture, sale, distribution and importation of unsafe bunk beds. The threat of civil penalties for violators will deter non-complying manufactures. State and local officials will be able to assist CPSC in enforcement efforts. Additionally, Retailers and distributors who require that the products they purchase meet applicable federal standards will help build the level of compliance. Stopping non-complying beds from entering the country through cooperative efforts with the U.S. Customs Service will also help save lives. Finally, a mandatory rule imposes identification requirements on manufactures that will assist the agency in ongoing efforts to recall unsafe bunk beds.

We agree with the staff recommendation that the current standard should be strengthened to address such series issues as openings in the guardrail and openings in the bunk end structure. Addressing all means of possible entrapment to children should be a goal of the proposed rule.

Bunk beds with entrapment hazards pose a life-threatening risk to the children of this country. We strongly urge you to vote to continue this important rulemaking.

The Arkansas Public Policy Panel

21 9 99



**Illinois Public Interest Research Group**  
202 S. State St., Suite 400, Chicago, IL 60604 (312) 986-8211

January 21, 1999

The Honorable Thomas Moore  
Commissioner  
U.S. Consumer Product Safety Commissioner  
4330 East West Highway  
Suite 725  
Bethesda, MD 20814

Dear Commissioner Moore:

I am writing to respectfully express my concern that you support the Notice of Proposed Rulemaking on bunk beds. The Illinois Public Interest Research Group works to protect consumers from unsafe products and financial marketplace abuses. As an organization with 15,000 members in the state, we are concerned with children's safety and the potential for injury while playing with toys, playing on playgrounds or sleeping in bunk beds. We have published toy safety reports and have worked with the CPSC's Midwest office on Toy Sweeps.

We feel that a federal rule is needed that specifies necessary performance criteria for bunk beds. A rule such as this would deter the manufacture, sale, distribution and transportation of unsafe bunk beds. We also hope that the current standard will be strengthened to address the bunk end structure. The potential of entrapment to children in bunk end openings needs to be addressed.

I look forward to hearing from you on this issue.

Sincerely,

Gail Parson  
Consumer Advocate



100 Barr Harbor Drive ■ West Conshohocken, PA 19428-2959  
Telephone: 610-832-9500 ■ Fax: 610-832-9555 ■ e-mail: service@astm.org ■ Website: www.astm.org

**Committee F15 on CONSUMER PRODUCTS**

*Chairman:* JOHN A. BLAIR, Du Pont Co, Chestnut Run Plaza, PO Box 80713,  
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*First Vice Chairman:* ANNE GRAHAM, 9 Cornwall, Rehoboth Beach, DE 19971, (302) 444-7877  
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*Membership Secretary:* KEITH A. MOWRY, Underwriters Laboratories Inc, 333 Pfingsten Rd,  
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*Staff Manager:* KATHARINE E. MORGAN, (610) 832-9721, EMail: kmorgan@astm.org

CPSC/OFC OF THE SECRETARY  
ASTM 25th Anniversary  
1998 JAN 29  
ASTM F-15

January 27, 1999

Mr. John D. Preston  
Project Manager  
U.S. Consumer Product Safety Commission  
Washington DC 20207

Dear Mr. Preston:

I am writing you in my capacity as Chairman of ASTM Subcommittee F15.30 on Bunk Beds. As you are aware, the U.S. Consumer Product Safety Commission is currently considering whether to issue a mandatory regulation for bunkbeds based, in large part, on the existing ASTM Bunk Bed Standard (ASTM F1427-96).

The purpose of my letter is to formally notify the Commission of my intention, at the earliest possible time, to convene a meeting of the F15.30 Subcommittee to seriously consider any proposed modifications to ASTM F1427-96. Further, I have discussed the procedure for accomplishing this with the ASTM F15 Committee Chairman, and he has agreed to be of assistance.

Please view this letter, as a formal statement of such intention under the provisions of CPSA Sections 9(a)(6) and 9(c)(3), and FHSA Sections 3(f)(6) and 3(i)(2).

I look forward to hearing from you as this matter progresses.

Sincerely,

Joe Ziolkowski  
Chairman, ASTM F15.30

cc: Office of the Secretary, CPSC  
ASTM Subcommittee Members



100 Barr Harbor Drive ■ West Conshohocken, PA 19428-2959  
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### **Committee F15 on CONSUMER PRODUCTS**

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*First Vice Chairman:* ANNE GRAHAM, 9 Cornwall, Rehoboth Beach, DE 19971, (302) 227-7877, FAX: 302-227-7877  
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*Recording Secretary:* SUSAN R. HOWE, Society of the Plastics Ind, Suite 600K, 1801 K Street NW, Washington, DC 20006, (202) 974-5223, FAX: 202-296-7005, EMail: showe@socplas.org  
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*Staff Manager (Juvenile Products):* KATHARINE E. MORGAN, (610) 832-9721, EMail: kmorgan@astm.org  
*Staff Manager (Non-Juvenile Products):* ROBYN ZELNO, (610) 832-9717, EMail: rzelno@astm.org

April 30, 1999

Office of the Secretary  
Consumer Products Safety Commission  
Room 502-D  
4330 East-West Highway  
Bethesda, MD 20207

### **RE: NPR for Bunk Beds**

On behalf of ASTM Subcommittee F15.20 on Bunk Beds, I am submitting written comments in response to the Notice of Public Rulemaking mandating bunk bed performance requirements. As the Commission is aware, Subcommittee F15.30 has developed and maintains ASTM F1427-96, Consumer Safety Specification for Bunk Beds. The 42-member subcommittee, representing a balanced segment of the industry including manufacturers, users, retailers, consumers and representatives of government and academia, has been diligent in reviewing the standard and updating it as needed as new data becomes available.

The subcommittee met on March 24, 1999 in Greensboro, North Carolina to consider the attached revisions to F1427-96. In these sessions, the subcommittee resolved each of the three technical issues identified by CPSC's Project Manager, specifically:

- Modified the current ASTM standard covering any bed whose bottom foundation is 35 inches or more from the floor. The subcommittee extended the standard to any bed whose bottom foundation is 30 or more inches from the floor.
- Eliminated the existing ASTM provision allowing wall-side guardrail to terminate up to 15 inches short of the bed end structures. The subcommittee would allow guardrails to terminate up to 3.5 inches short of the end structure, in order to accommodate beds whose siderails attach to the upper bed foundation rather than the end structure.

- Extended the ASTM spacing requirements that presently govern a portion of the lower bed end structure to the entire lower bed end structure. The CPSC Project Manager and a task force are presently drafting language to more effectively address the entrapment scenario identified by the Commission.

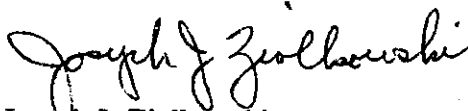
With regard to applying the revised ASTM standard to institutional beds, the subcommittee reviewed April 8, 1999 correspondence from CPSC Project Manager John Preston, as well as an April 8, 1999 communication from Commissioner Mary Sheila Gall. The members of the subcommittee discussed this issue and agreed that revisions to the current exemption for institutional beds would not be undertaken at this time.

These revisions, if approved, would closely align the requirements addressing entrapment with those in the NPR drafted by the CPSC. With ASTM's streamlined procedures, it is possible to ballot these revisions on a tri-current letter ballot to Subcommittee F15.30, Main Committee F15 and the ASTM Society members in May-June. Pending no significant objections, a revised F1427 could be approved as early as July 1999. The subcommittee fully intends to move the balloting process forward in an expedient manner with the support of ASTM staff.

ASTM Subcommittee F15.30 believes that it has the personnel, expertise and logistical resources to monitor and revise this voluntary standard as needed to minimize the risk of injury and death. The participation of the CPSC staff on the F15.30 subcommittee demonstrates the effective working partnership that can exist in ASTM between industry and government. The continuance of that partnership is critical to the success of the voluntary standards system in responding to issues of consumer safety.

**If the Commission elects to proceed with a mandatory standard, ASTM Subcommittee F15.30 encourages them to do so via reference to the ASTM voluntary standard, F1427. Once revised, the standard will contain all the performance requirements outlined by CPSC and it will be carefully monitored for needed changes in the future.**

Sincerely,



Joseph J. Ziolkowski  
Chairman, ASTM Subcommittee F15.30

cc: ASTM F15.30 Subcommittee Members  
ASTM F15 Main Committee Officers

The Coalition For Consumer  
**Health & Safety**

1424 16th Street, N.W.  
Suite 604  
Washington, D.C. 20036  
(202) 387-6121

www.healthandsafety.org

January 28, 1999

Consumer Federation of America,  
Coordinator

The Honorable Ann Brown  
Chairman  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Advocates for Highway and  
Auto Safety  
Allstate Insurance Company  
American Academy of Pediatrics  
American Association of  
Critical-Care Nurses  
American College of  
Emergency Physicians  
American College of Preventive  
Medicine  
American Family Insurance Group  
American Heart Association  
American Insurance Association  
American Lung Association  
Center for Auto Safety  
Center for Science in the  
Public Interest  
The Chubb Corporation  
Consumer Federation of America  
Consumers for Auto Reliability  
and Safety  
CUNA Mutual Insurance Group  
The Danny Foundation  
Drowning Prevention Foundation  
Fireman's Fund Insurance Co.  
Health Insurance Association  
of America  
The Hartford  
Kemper National Insurance  
Companies  
Liberty Mutual Insurance Group  
National Association of  
Community Health Centers  
National Association of  
People with AIDS  
National Consumers League  
National Council of Senior  
Citizens  
National Fire Protection Assn.  
National SAFE KIDS Campaign  
Nationwide Insurance Enterprise  
Prudential Insurance Company  
State Farm Insurance Companies  
The Trauma Foundation  
Travelers Insurance  
Whitman-Walker Clinic

Dear Chairman Brown:

On behalf of the members of the Coalition for Consumer Health and Safety, I am writing to urge the Consumer Product Safety Commission to issue a Notice of Proposed Rulemaking on Bunk Beds.

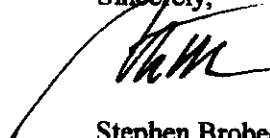
The Coalition for Consumer Health and Safety is a partnership of consumer, health, and insurer groups working together to educate the public and to identify and promote policy solutions to a broad range of health and safety threats. As representatives of American consumers, medical associations, insurance companies and insurance trade associations, we believe that this rule is necessary to protect young children from the risk of entrapment death in bunk beds.

More than 160 children have died in bunk beds, with 89 of these deaths occurring in the last nine years. Although there is a voluntary standard for bunk beds, compliance with that standard has not been sufficient; from November 1994 through September 1997, CPSC recalled over one-half million bunk beds manufactured by 41 different companies.

The Commission first began addressing the issue of bunk bed entrapment in 1986 and since that time non-regulatory measures have been insufficient to reduce adequately the number of deaths to children sleeping in these beds. Publication of a mandatory rule will enable CPSC to increase compliance by retailers and distributors who require that products they sell meet applicable Federal standards. It will also prevent non-complying beds made by foreign manufacturers from entering the U.S. through cooperative efforts with the U.S. Customs Service. In addition, CPSC will be able to seek civil penalties for violations and the identification and recall of non-complying beds will be enhanced by state and local officials who support enforcement efforts by CPSC.

For these reasons, we strongly urge you to protect children by voting in favor of publication of the Notice of Proposed Rulemaking on bunk beds.

Sincerely,



Stephen Brobeck  
Chairman



**NPR FOR BUNK BEDS**

**COMMENTS TO**

**THE UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION**

**FROM THE**

**AMERICAN FURNITURE MANUFACTURERS  
ASSOCIATION**

**APRIL 13, 1999**

**American Furniture Manufacturers Association  
P. O. Box HP-7  
High Point, NC 27261  
336-884-5000**



April 13, 1999

The Honorable Ann Brown  
Chairman  
U.S. Consumer Product Safety Commission  
Washington, DC 20207

Dear Chairman Brown:

AFMA is pleased to provide further comments in response to the Consumer Product Safety Commission's (CPSC) March 3, 1999 Notice of Proposed Rulemaking (NPR) on bunk beds.<sup>1</sup> As we indicated in previous rounds of comments, AFMA and its member companies share the agency's concern about any injuries or deaths associated with these products. We respectfully request that those comments (April 7, 1998 and January 28, 1999) be included with these as part of the permanent record.

AFMA's commitment to safer bunk beds is reflected in our organization's long-time participation in the ASTM standard setting process, and in the near universal compliance of AFMA members with the resulting standard (ASTM F1427-96). We were especially gratified to receive the May 1996 *Chairman's Commendation for Product Safety*, which recognized the continuing progress achieved by industry on this important safety matter.

As part of this rulemaking, CPSC staff has proposed three technical modifications to the current ASTM standard (an additional proposal dealt with the applicability of the ASTM standard to institutional bunk beds, and will be discussed separately). Such changes could be effectuated either through mandatory rulemaking, as the staff has recommended, or by revision of the ASTM standard. We are aware that the ASTM Bunk Bed Subcommittee (ASTM F15.30) met in Greensboro, NC on March 24 to consider these proposals. The panel evidently resolved several of the matters under consideration, and agreed to meet again on April 21 to address the remaining issues.

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<sup>1</sup> *Federal Register (FR)*: March 3, 1999 (Volume 64, Number 41) , Page 10245-10262.

As we have noted throughout the present rulemaking, AFMA will not oppose a mandatory regulation of bunk beds, should the Commission determine that a mandatory rule would assist in averting future deaths and injuries. If the mandatory approach is chosen, we do recommend that sufficient CPSC staff resources be allocated to continue data collection, hazard assessment and expeditious rulemaking where appropriate. The present voluntary standard reflects seven rounds of technical revisions in response to new incident data. These revisions drew upon the expertise, deliberation and problem solving of many talented individuals from the public and private sectors, and in the future it is vital that such cooperative efforts be facilitated by the agency.

In addition, any mandatory standard should provide an appropriate lead time for manufacturers. Finally the Commission proposal to regulate bunk beds produced for institutional use could prove unworkable. Safety specifications and dimensional requirements appropriate for young children are not likely to correspond with the varied performance needs of institutions such as hospitals, prisons and military bases.

### **Substantial Compliance**

The issue of "substantial compliance" with voluntary standards has been addressed in some depth in our prior comments. AFMA would like to commend the Commission for releasing a redacted version of the General Counsel's memorandum on this topic. The proper interpretation of "substantial compliance" is critical to the "Safety Triangle" you envision between government, industry and consumers. Hopefully, the broader input received in response to the Federal Register Notice will be helpful to the Commission in interpreting this provision.

### **Lead Time**

Any voluntary or mandatory standard should provide sufficient lead time for manufacturers to test and reengineer their product lines, and to clear existing product through the distribution pipeline. The following analysis has been reviewed by knowledgeable industry persons, and represents an expeditious and realistic timetable for completing this process:

2 months	Test each unit by the standard testing procedure.
3 months	Re-engineer and build sample units of each requiring modification. Re-test to assure compliance.
2 months	Change specifications, part routings, raw material specifications and weights and cubes.
3 months	Release new specifications to cuttings based on 12-week lead-time.
3 -6 months	Time for manufacturers to turn existing finished units inventory, including slow moving patterns.
2 - 4 months	Time for distributors and retailers to turn inventory through their system.

Accordingly, should the Commission promulgate a mandatory regulation for bunk beds, we respectfully request that the rule provide for an 18-month lead time for compliance.

**Institutional Use**

The March 3, 1999 FR Notice raised for the first time the prospect of regulating beds intended for institutional use. Further, I understand that the CPSC's Project Manager has discussed with the ASTM Bunk Bed Subcommittee the extension of ASTM F1427-96 to all bunk beds, including those used in institutions such as dormitories, prisons and military facilities. These proposals are evidently directed at two entrapment fatalities occurring before 1993 on bunks purchased second-hand from a boarding school and a university. <sup>2</sup>

In Section D of the Federal Register Notice, the agency requested comment on the issue of regulating institutional beds. As you are aware, the term "consumer product" is defined by statute to include items for sale, personal use, or consumption by consumers "in or around a permanent or temporary household or residence, a school, in recreation, or otherwise." <sup>3</sup> As we understand the General Counsel's reasoning, bunk beds purchased by schools would fall within

<sup>2</sup> U.S. Consumer Product Safety Commission, *Options Package for Bunk Beds*, March 17, 1995, p. 6

<sup>3</sup> Consumer Product Safety Act (CPSA) Section 3(a)(1), 15 U.S.C. 2052.

this definition, and a military base or prison could constitute a "temporary household or residence."

Assertion of CPSC authority in this area would depart from past practice. The regulation of public accommodations has traditionally been accomplished through state and municipal building codes. Additionally, institutions contracting for furnishings and other goods generally include in the contract specifications for the product that are appropriate for their particular needs. A university, for example, might be concerned with efficient use of dormitory space and access for the disabled.<sup>4</sup> A military base is likely to demand furnishings that allow rapid egress, while prison officials might be more concerned with preventing hidden contraband.<sup>5</sup> In any case, safety specifications and dimensional requirements appropriate for young children are not likely to correspond with the varied performance needs of these institutions.

### **Conclusion**

AFMA and its member companies remain strongly committed to bunk bed safety. Whether the Commission ultimately decides to promulgate a mandatory regulation, or instead relies upon the ASTM voluntary standards process, we will continue to cooperate fully in these efforts.

Sincerely,



Douglas L. Brackett  
Executive Vice President

cc: Commissioner Mary Sheila Gall  
Commissioner Thomas Moore  
Jeffrey Broome, General Counsel  
Ronald Medford, Asst. Exec. Director  
John D. Preston, Project Manager

---

<sup>4</sup> See, e.g., Texas Tech University, Operating Procedure 61.29 (Furniture, Window, and Wallcoverings: Requests for Interior Design Services), March 28, 1996.

<sup>5</sup> The General Services Administration (GSA) provides specifications for a number of categories of institutional beds for government and military applications. Examples include Special Item Number (SIN) 515-23 (dormitory bunk beds); SIN 5115-26 (wall beds); and SIN 515-4 (loft groups).



National PROPANE GAS Association

1101 17th Street, N.W., Suite 1004 • Washington, DC 20036 • 202/466-7200 • Fax 202/466-7205

May 6, 1999

Ms. Ann Brown, Chairwoman  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

Dear Chairwoman Brown:

The purpose of this letter is to associate the National Propane Gas Association (NPGA) with the comments of the National Association of Manufacturers and the Consumer Product Safety Coalition opposing the recent CPSC staff interpretation of the term "substantial compliance."

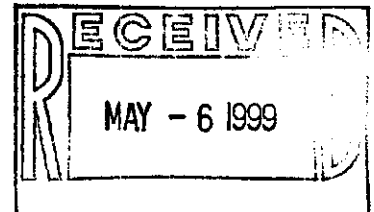
NPGA is the national trade association of the LP-gas (principally propane) industry with a membership of about 3,500 companies, including 37 affiliated state and regional associations representing members in all 50 states. Although the single largest group of NPGA members are retail marketers of propane gas, the membership includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances.

The United States is unique in the world because product safety standards are developed by organizations in the private sector that operate by consensus. This voluntary system, which is open to public sector participation, has led to the highest level of consumer safety in the world. It is flexible to new technologies and methods and ensures that diverse viewpoints are heard. The CPSC staff's new interpretation of the term "substantial compliance" will, if left in place, corrupt the U.S. standards development process by causing standards organizations to write their standards specifically to withstand CPSC review. This will tilt the playing field sharply in favor of government agencies, thus violating the basic principles of the U.S. standards system. NPGA strongly encourages all parties, both in the private and public sectors, to participate in the wide range of standards development activities that exist in the U.S. This approach would have more positive long-term effects than this reinterpretation of the Consumer Product Safety Act.

Thank you for the opportunity to provide our views. Should you have questions or require further information, please don't hesitate to contact me anytime.

Sincerely,

Philip A. Squair  
Director of Regulatory Affairs



# American Academy of Pediatrics



May 13, 1999

CPSC/OFC OF THE SECRETARY  
DEPARTMENT OF INFORMATION

1999 MAY 14 A 9 43

Office of the Secretary  
Consumer Product Safety Commission  
4330 East-West Highway, Room 502  
Bethesda, MD

RE: NPR for Bunk Beds

To Whom It May Concern:

On behalf of the American Academy of Pediatrics and its 55,000 pediatricians, I am writing to support the creation of a mandatory standard to address children's entrapment in bunk beds.

More than 500,000 bunk beds have been recalled by the U.S. Consumer Product Safety Commission since November of 1994, and despite the current voluntary standard, an estimated 50,000 non-conforming bunk beds are sold for residential use in the United States each year. On average, 10 entrapment deaths occur each year, almost all on non-conforming beds.

The American Academy of Pediatrics supports the development of a mandatory standard in order to increase the awareness and sense of urgency among manufacturers; allow the Commission to seek penalties for violations; identify and prevent the sale of non-conforming beds; remove any competitive cost advantage to non-conforming beds; and require manufacturer, distributor, or retailer identification on beds to assist consumers in identifying recalled beds.

The Academy supports the requirement for a continuous guardrail along the entire wall side of the bed, and the requirement that all openings of end structures, and not just those within 9 inches of the sleeping surface of the lower mattress, be designed to preclude entrapment of a young child's head.

Additionally, the Academy supports the definition of "bunk bed" as stated in the proposed rule. The height of the foundation above the floor is the important determinant in entrapment deaths. The definition should not be limited to beds with more than one foundation.

The Academy also believes that the mandatory standard can be strengthened further. Because bunk beds are often placed in the corner of a room, the end structures of the upper bunk should extend at least 5 inches above the mattress along their entire length to prevent children from slipping between the bed and

Reply To:  
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American Academy of Pediatrics  
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#### Executive Committee

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Joseph R. Zanga, MD

The American Academy of Pediatrics is committed to the attainment of optimal physical, mental, and social health for all infants, children, adolescents, and young adults.

Consumer Product Safety Commission

May 13, 1999

page 2

the wall and becoming entrapped. The proposed rule presumably does not require a 5-inch minimum height along the entire length of the end structures to allow for access to a ladder. This is the same reason that a continuous guardrail is not required on one side of the bed. The Commission states in the NPR that "it is possible that having to climb over the guardrail or end structure to get on and off the ladder could increase the incidence of falls." However, closing these gaps may actually decrease the likelihood of falls. Additionally, a gap in the 5 inch minimum barrier for ladder access is not needed in both end structures and on one side of each bed for each bed. One ladder access location per bed is sufficient. Therefore, the mandatory standard should be reworded to state:

"Both guardrails shall be continuous between each of the bed's end structures. The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for the entire distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed. The only exception to this minimum height of 5 inches (130 mm) shall be where one ladder is attached to the bed to allow ladder access to the upper bunk. There shall be no minimum required height of a guardrail or end structure between the two vertical handrails of the attached ladder."

If you have any questions, please do not hesitate to contact Janis Guerney in our Washington office at 202/347-8600.

Sincerely,



Joel J. Alpert, MD, FAAP  
President

JJA/kbf



**AMERICAN  
FIBER MANUFACTURERS  
ASSOCIATION, INC.**

www.fibersource.com

Robert H. Barker  
Vice President

May 11, 1999

Ms. Rockelle Hammond  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, DC 20207-0001

Dear Ms. Hammond:

The American Fiber Manufacturers Association (AFMA) wishes to comment on the issue of substantial compliance raised in the Notice of Proposed Rulemaking for Bunk Beds (Federal Register, 64, 10245; March 3, 1999). AFMA is a trade association representing U. S. companies engaged in the manufacture and sale of man-made fibers. Our member companies account for more than 90% of the domestic production of man-made textile fibers.

AFMA strongly supports the voluntary consensus standards process as conducted by organizations such as the American Society for Testing Materials (ASTM), the American Association of Textile Chemists and Colorists (AATCC), and National Fire Protection Association (NFPA). It is our opinion that the consensus process produces the most appropriate and effective standards. For that reason, AFMA urges the Commission to comply with the spirit of the legislative requirement that the Commission defer to existing voluntary standards whenever there is a reasonable level of industry compliance with these standards. In case of noncompliance with a voluntary standard, the Commission has the ability to determine that a substantial product hazard exists. The Commission has the power of recall even if a federal standard does not exist.

AFMA sees no justification for the Commission to attempt to redefine substantial compliance, as it has in the proposed bunk bed rulemaking. The Commission has reported finding that industry compliance with the voluntary ASTM bunk bed standard is in the range of 90%. By any reasonable definition, this constitutes substantial compliance.

While AFMA member companies do not have a direct interest in the proposed bunk bed rule, we believe that imposition of a mandatory standard when there is as high a level of industry compliance, as there is in this case, would set a dangerous precedent and seriously erode the existing consensus standards system. We urge the Commission to endorse the existing ASTM standard and refrain from promulgating the proposed rule. Valuable Commission resources could be put to better use in areas where no current standards exist, rather than trying to make incremental improvements in voluntary standards.

Sincerely,



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rbarker@afma.org

Acordis Cellulosic Fibers, Inc.  
Acordis Industrial Fibers, Inc.  
Akzo Nobel Industrial Fibers Inc.  
AlliedSignal Inc  
Amoco Fabrics and Fibers Company

BASF Corporation  
Celanese Acetate  
Coolson Fibers, Inc.  
Drake Extrusion  
DuPont Company

Eastman Chemical Company  
FiberVisions  
Intercontinental Polymers, Inc.  
KoSa  
Nan Ya Plastics Corp., America

Solutia Inc.  
Sterling Fibers, Inc.  
Wellman, Inc.



100 Barr Harbor Drive ■ West Conshohocken, PA 19428-2959

Telephone: 610-832-9500 ■ Fax: 610-832-9599 ■ e-mail: [jthomas@astm.org](mailto:jthomas@astm.org) ■ Website: [www.astm.org](http://www.astm.org)

JAMES A. THOMAS, *President*

CPSC/DFC OF THE SECRETARY  
DEPARTMENT OF INFORMATION

1999 MAY 17 P 4: 08

Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East-West Highway  
Bethesda, MD 20814

May 11, 1999

**RE: NPR for Bunk Beds**

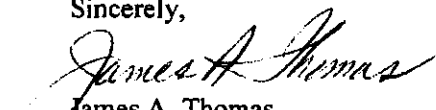
Attached is a response from ASTM Subcommittee F15.30 on Bunk Beds relative to the March 3, 1999 Notice of Proposed Rulemaking for Bunk Beds. This response, approved for submission at the subcommittee's March 24, 1999 meeting, has also been endorsed by the Executive Subcommittee of Committee F15 on Consumer Products.

ASTM takes no position on the need for a mandatory standard for bunk beds. However, if a mandatory standard is implemented, ASTM requests that reference be made to ASTM Standard F1427, Consumer Safety Specification for Bunk Beds, in the rulemaking. The Committee has recently developed revisions to F1427 that are being issued to align F1427 with the proposed mandatory rulemaking. The reference to the standard would be in accord with Public Law 104-113, the National Technology Transfer and Advancement Act, signed by President Clinton in 1996 which directs federal agencies to "use technical standards that are developed or adopted by voluntary consensus bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." This law codifies a working partnership between industry and government eliminating the needless use of government funds and resources in the development, publication and maintenance of standards.

Subcommittee F15.30 has extended significant resources working within ASTM to develop and maintain ASTM F1427 with substantial input from and participation of the CPSC staff. ASTM Committee F15 has developed approximately 30 standards, at the request of the CPSC, designed to enhance public welfare and increase consumer safety. Failure to reference F1427 in the public rulemaking would certainly discourage future initiatives. The committee is uniquely qualified to ensure that the standard remains technically credible and reference to it would satisfy the provisions of Public Law 104-113.

Thank you for considering these comments. I would be pleased to discuss this matter further as the issue is extremely important to ASTM's ability to respond to future standards needs of the CPSC.

Sincerely,

  
James A. Thomas  
President

cc: ASTM F15 Main Committee Officers  
Joe Ziolkowski, F15.30 Chairman



100 Barr Harbor Drive ■ West Conshohocken, PA 19428-2959

Telephone: 610-832-9500 ■ Fax: 610-832-9555 ■ e-mail: service@astm.org ■ Website: www.astm.org

### **Committee F15 on CONSUMER PRODUCTS**

*Chairman:* JOHN A. BLAIR, Du Pont Co, Chestnut Run Plaza, PO Box 80713, Wilmington, DE 19880-0713, (302) 999-3293, FAX: 302-999-2011

*First Vice Chairman:* ANNE GRAHAM, 9 Cornwall, Rehoboth Beach, DE 19971, (302) 227-7877, FAX: 302-227-7877

*Second Vice Chairman:* MARYELLEN R. FISE, Consumer Federation of America, 1203 Captains Ct, Towson, MD 21286, (410) 296-4290, FAX: 410-296-4291, EMail: merf@home.com

*Third Vice Chairman:* ELAINE H. BESSON, EHB Consulting Ltd, 4512 32nd Rd N, Arlington, VA 22207, (703) 533-8408, FAX: 703-536-3749, EMail: e.h.besson@worldnet.att

*Recording Secretary:* SUSAN R. HOWE, Society of the Plastics Ind, Suite 600K, 1801 K Street NW, Washington, DC 20006, (202) 974-5223, FAX: 202-296-7005, EMail: showe@socplas.org

*Membership Secretary:* KEITH A. MOWRY, Underwriters Laboratories Inc, 333 Pfingsten Rd, Northbrook, IL 60062, (847) 272-8800, Ext: 4389, FAX: 847-509-6219, EMail: mowryk@ul.com

*Staff Manager* KATHARINE E. MORGAN, (610) 832-9721, EMail: kmorgan@astm.org

*(Juvenile Products):*

*Staff Manager* ROBYN ZELNO, (610) 832-9717, EMail: rzelno@astm.org

*(Non-Juvenile Products):*

May 11, 1999

Office of the Secretary  
Consumer Product Safety Commission  
Room 502-D  
4330 East-West Highway  
Bethesda, MD 20814

#### **RE: NPR for Bunk Beds**

On behalf of ASTM Subcommittee F15.30 on Bunk Beds, I am submitting written comments in response to the Notice of Public Rulemaking mandating bunk bed performance requirements. As the Commission is aware, Subcommittee F15.30 has developed and maintains ASTM F1427-96, Consumer Safety Specification for Bunk Beds. The 42-member subcommittee, representing a balanced segment of the industry including manufacturers, users, retailers, consumers and representatives of government and academia, has been diligent in reviewing the standard and updating it as needed as new data becomes available.

The subcommittee met on March 24, 1999 in Greensboro, North Carolina to consider the attached revisions to F1427-96. In these sessions, the subcommittee resolved each of the three technical issues identified by CPSC's Project Manager, specifically:

- Modified the current ASTM standard covering any bed whose bottom foundation is 35 inches or more from the floor. The subcommittee extended the standard to any bed whose bottom foundation is 30 or more inches from the floor.
- Eliminated the existing ASTM provision allowing wall-side guardrail to terminate up to 15 inches short of the bed end structures. The subcommittee would allow guardrails to terminate up to 1.5 inches short of the end structure, in order to accommodate beds whose siderails attach to the upper bed foundation rather than the end structure.

- Extended the ASTM spacing requirements that presently govern a portion of the lower bed end structure to the entire lower bed end structure. The CPSC Project Manager and a task force are presently drafting language to more effectively address the entrapment scenario identified by the Commission.

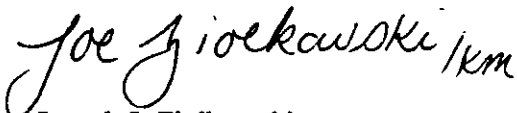
With regard to applying the revised ASTM standard to institutional beds, the subcommittee reviewed April 8, 1999 correspondence from CPSC Project Manager John Preston, as well as an April 8, 1999 communication from Commissioner Mary Sheila Gall. The members of the subcommittee discussed this issue and agreed that revisions to the current exemption for institutional beds would not be undertaken at this time.

These revisions, if approved, would closely align the requirements addressing entrapment with those in the NPR drafted by the CPSC. With ASTM's streamlined procedures, it is possible to ballot these revisions on a tri-current letter ballot to Subcommittee F15.30, Main Committee F15 and the ASTM Society members in May-June. Pending no significant objections, a revised F1427 could be approved as early as July 1999. The subcommittee fully intends to move the balloting process forward in an expedient manner with the support of ASTM staff.

ASTM Subcommittee F15.30 believes that it has the personnel, expertise and logistical resources to monitor and revise this voluntary standard as needed to minimize the risk of injury and death. The participation of the CPSC staff on the F15.30 subcommittee demonstrates the effective working partnership that can exist in ASTM between industry and government. The continuance of that partnership is critical to the success of the voluntary standards system in responding to issues of consumer safety.

**If the Commission elects to proceed with a mandatory standard, ASTM Subcommittee F15.30 encourages them to do so via reference to the ASTM voluntary standard, F1427. Once revised, the standard will contain all the performance requirements outlined by CPSC and it will be carefully monitored for needed changes in the future.**

Sincerely,

Handwritten signature of Joe Ziolkowski in cursive script.

Joseph J. Ziolkowski  
Chairman, ASTM Subcommittee F15.30

cc: ASTM F15.30 Subcommittee Members  
ASTM F15 Main Committee Officers



May 13, 1999

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207-0001

Re: NPR for Bunk Beds:  
Comments of the Gas Appliance  
Manufacturers Association (GAMA)

Dear Sir or Madam:

The Gas Appliance Manufacturers Association (GAMA) is a national trade association of manufacturers of residential and commercial space heating and water heating equipment, components and accessories. GAMA has been an active participant in the development of voluntary national consensus product safety standards under the auspices of the American National Standards Institute (ANSI). GAMA has worked cooperatively with Commission staff on many occasions to address potential product safety risks through the voluntary standards development process.

GAMA has no comments on the substance of, or on the need for, the proposed safety standard for bunk beds. However, in its March 3, 1999, Federal Register notice, the Commission invited public comment on the Commission General Counsel's opinion as to the meaning of "substantial compliance" with a voluntary standard. According to the Commission's Federal Register notice, the "Office of General Counsel has proffered the opinion that substantial compliance does not exist where there is a reasonable basis for concluding that a mandatory rule would achieve a higher degree of compliance." The Commission General Counsel's interpretation of "substantial compliance" has no basis in the statutory language or in the legislative history of the Consumer Product Safety Act, and is plainly inconsistent with Congress' stated preference for voluntary standards over government-mandated standards.

GAMA firmly believes that improving product safety can be accomplished more efficiently and effectively through voluntary industry standards rather than through government standards. GAMA is very concerned that Commission adoption of the General Counsel's interpretation of "substantial compliance" could undermine the infrastructure of the voluntary standards system. The success of the voluntary standards system depends on the willingness of organizations and individuals to devote substantial time and resources to standards development activities. Many in the private sector will be unwilling to volunteer their time and resources to improving product

...Continued

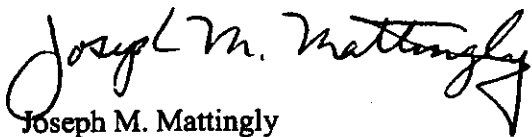


standards if they perceive that the Commission is going to regulate the product in any case.

GAMA is a member of the CPSC Coalition led by the National Association of Manufacturers (NAM). GAMA fully subscribes to and endorses the views presented by Lawrence A. Fineran at the May 6, 1999, public hearing.

GAMA appreciates the opportunity to comment on this issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph M. Mattingly". The signature is written in a cursive style with a large initial "J" and a stylized "M".

Joseph M. Mattingly  
Director of Government Affairs  
and General Counsel

JMM/dc



AMERICAN TEXTILE  
MANUFACTURERS INSTITUTE

May 14, 1999

Ms. Rockelle Hammond  
Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207-0001

Re: NPR for Bunk Beds; Issue of  
Substantial Compliance with  
Voluntary Standards

Dear Ms. Hammond:

The American Textile Manufacturers Institute (ATMI) appreciates the opportunity to comment on the Consumer Product Safety Commission (CPSC) Notice of Proposed Rulemaking for Bunk Beds (*64 Federal Register 10245; March 3, 1999*). ATMI's comments only address the issue of substantial compliance with voluntary standards.

ATMI is the national trade association for the domestic textile industry. Our member companies operate in more than 30 states and account for approximately 80 percent of all textile fibers consumed by mills in the United States.

Our members are committed to the development of voluntary consensus standards for textiles and textile products. ATMI is the administrator for the US Technical Advisory Group (TAG) to ISO Technical Committee 38 – Textiles and for Technical Committee 72 – Textile Machinery, and is a member of the American National Standards Institute (ANSI). ATMI actively participates in and supports voluntary standards development activities within several technical committees of the American Society of Testing and Materials (ASTM), the American Association of Textile Chemists and Colorists (AATCC), and the National Fire Protection Association (NFPA).

We commend the Consumer Product Safety Commission (CPSC) for its participation in voluntary standards development. We understand that the Commission is working closely with ASTM to strengthen the voluntary standard for bunk beds. Our concern is with the precedent set by the Office of General Counsel's interpretation of substantial compliance in the case of the voluntary standard for bunk beds (ASTM F1427-96).



*Ms. Rockelle Hammond*  
*May 14, 1999*  
*page 2 of 2*

The Commission's statute requires the agency to defer to existing voluntary standards instead of initiating a rulemaking when such standards are effective and the industry in question is in substantial compliance. We believe that the current voluntary bunk bed standard meets these terms. The Commission has acknowledged that there is at least a 90 percent rate of compliance with the existing voluntary standard. In addition, the Commission has the statutory authority to take action against noncomplying manufacturers whose products are clearly hazardous.

Furthermore, the Office of Management and Budget (OMB) Circular 119 clearly directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. It also provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the Act.

In consideration of these points, we believe it would be appropriate for the Commission to review its decision on the issue of substantial compliance to ASTM F1427-96 before proceeding with a mandatory standard.

Thank you for the opportunity to comment on this issue. Please call me if you have any questions or need any additional information.

Sincerely,



Patty K. Adair  
Assistant Director,  
Textile Products and Standards





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 Northbrook, Illinois 60062-2096  
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<http://www.ul.com>



May 17, 1999

Office of the Secretary  
 U.S. Consumer Product Safety Commission  
 4330 East-West Hwy., Room 502  
 Bethesda, MD 20814

Subject: Notice of Proposed Rulemaking for Bunk Beds – UL Comments.

Underwriters Laboratories Inc. (UL) submits the following comments for consideration by the U.S. Consumer Product Safety Commission (CPSC) regarding the March 6, 1999 Notice of Proposed Rulemaking for Bunk Beds. UL is an independent, not-for-profit organization dedicated to public health, safety, and protection of the environment. In addition to being an internationally recognized, public safety-based conformity assessment body, UL is a standards development organization, accredited by the American National Standards Institute (ANSI), that has published more than 800 Standards for Safety for the U.S., the majority of which are published as American National Standards.

Safety has been UL's core mission for more than 105 years and, throughout that time, UL has been developing standards and evaluating products for certification. UL values its continuing cooperation with the CPSC and other government and private organizations to achieve the highest level of compliance possible for all appropriate voluntary standards – whether bunk beds or other consumer products are involved. While UL wishes to further extend this cooperation to the CPSC in its safety endeavors, the CPSC is constituted by law and, like all entities, must work within its framework. While safety issues relating to bunk beds are clearly within the CPSC's jurisdiction, UL is concerned the Proposed Rulemaking for Bunk Beds may unintentionally expand the CPSC's statutory direction and authority. Additionally, UL believes that, by adopting the opinion of the CPSC's Office of the General Counsel (OGC), a precedent may be set that, in the long run, although not intended, could weaken an effective and proven process on which all Americans have come to depend.

A not-for-profit organization  
 dedicated to public safety and  
 committed to quality service

**Underwriters Laboratories Inc. \***

CPSC - Page 2

May 17, 1999

We should note that, although UL has not issued a standard for bunk bed, and does not currently test or otherwise evaluate bunk beds for safety, UL is joining other safety, minded organizations in commenting on how best to achieve an appropriate balance between the role of the CPSC and the safety issues presented.

The Consumer Product Safety Act (CPSA) specifies the CPSC's role regarding the initiation of mandatory rules. It states, in particular, that the CPSC:

**"...shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)...in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary consumer product safety standard, that... (i) compliance with such voluntary consumer product safety standard is not likely to result in the elimination or adequate reduction of such risk of injury; or (ii) it is unlikely that there will be substantial compliance with such voluntary consumer product safety standard..." [emphasis added] 15 USC §2058(f) (3)(D).**

Indeed, the CPSC is clearly empowered by Congress to implement a mandatory rule whenever there is not substantial compliance to a voluntary standard. The real threshold issue is: What constitutes "substantial compliance?" In the December 18, 1998 OGC opinion, the CPSC would have jurisdiction to implement a mandatory rule whenever it would achieve a greater compliance rate than would be achieved with the voluntary standard. The OGC's opinion makes the language regarding substantial compliance in the CPSA seem trivial. In a sense, there is potential that any mandatory law will result in greater compliance than with a voluntary process, whether there is 50%, 80%, 90%, or even 99% field compliance. It is implicit from the wording of the CPSA that Congress referred to substantial compliance based on a preference for the efficiency and efficacy of voluntary standards. The enabling law would have to be revised to accommodate the OGC's opinion regarding when the CPSC can implement a mandatory rule.

UL encourages the CPSC to hold a forum outside the bunk bed rulemaking procedure to identify the factors that need to be considered in determining substantial compliance for particular consumer products. This forum would allow all affected parties an opportunity to participate in developing a list of factors that should be considered on a case-by-case basis to determine substantial compliance when a voluntary standard exists.

**Underwriters Laboratories Inc.**

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May 17, 1999

UL hopes that the CPSC will look further for appropriate input from those who are concerned with and/or directly involved in safety to help set the parameters for determining substantial compliance. It may not be simply a matter of percentage of compliance. Many factors may need to be considered and weighed in the balance, such as the nature and severity of the risks and the number of noncompliant manufacturers, as well as the percentage of noncompliant products in the market. The entire matter needs further in-depth consideration. Indeed, the CPSC encourages all standards developing organizations to include all interested parties in the development process, and UL perceives the same need for setting criteria for determining substantial compliance.

UL Standards for Safety are developed under a procedure that provides for participation and comment from the affected public, as well as industry. The procedure takes into consideration a survey of known existing standards and the needs and opinions of a wide variety of interests concerned with the subject matter of the standard. Thus, manufacturers, consumers, academicians, government officials, industrial and commercial users, scientists, inspection authorities, insurance interests, and others provide input to UL in the formulating of UL Standards for Safety, to keep them consonant with social and technological advances.

The U.S. voluntary standards system is an effective, private sector, consensus-based mechanism to develop standards to improve the levels of public health, safety, and protection of the environment in America. UL and many other organizations develop standards to facilitate the design, manufacture, and sale of safe products in the U.S. These standards are uniquely suited to the task and are able to be adapted quickly to changing technologies and product features, as well as societal advances. When this nimble U.S. voluntary process is utilized to develop standards that set the requirements for public health, safety, and protection of the environment by drawing upon all available resources, the most effective standards are developed.

If the mandatory rule for bunk beds becomes a reality, UL recommends that the CPSC work with the voluntary standards developer to revise the standard as may be appropriate, thereby maintaining the effective voluntary standards setting process. We want to completely eliminate death and injuries from noncompliant bunk beds. Nevertheless, our mutual commitment to safety should not overshadow the substantial compliance issue, nor set a precedent that could detract from the effective development and use of voluntary standards in the U.S. UL is not alone in its concern that federal regulation, as proposed by the OGC, will have an adverse effect on the development of voluntary safety standards and U.S. safety in general. In essence, many people and organizations are involved in the development of any standard. This requires substantial effort and economic resources that are, by and large, provided on a contributory basis, and consumers and other volunteers who commit their time may be discouraged if they perceive the fruit of their efforts can be discarded without specific cause.

**Underwriters Laboratories Inc.**

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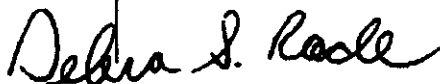
May 17, 1999

UL highly respects the CPSC's commitment to consumer safety and the voluntary standards process. UL will continue to work with the CPSC to develop and revise safety standards with the common goal of reducing the risks associated with consumer products. The CPSC must continue to rely on voluntary standards whenever possible because these standards provide for the most cost-effective, flexible, and nimble means toward our common goal of public safety. UL seeks protection of the integrity of the U.S. voluntary standards system as envisioned by the Congressional intent of the CPSA.

We appreciate the opportunity to provide comments on the Proposed Rulemaking.

Sincerely,

UNDERWRITERS LABORATORIES INC.



DEBRA S. RADE (Ext. 42150) <sup>ab</sup>  
Senior Vice President- Administrative  
Operations & Chief Legal Officer

DSR:jc



The  
Plastics  
Industry  
Trade  
Association

**Lewis R. Freeman, Jr.**  
**Vice President, Government Affairs**

May 17, 1999

Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East-West Highway  
Bethesda, Maryland

Re: NPR for Bunk Beds

Dear Madame Secretary:

I write to express the views of The Society of the Plastics Industry, Inc. (SPI) regarding the Commission's March 24 invitation for comments on "what constitutes substantial compliance with a voluntary standard."

SPI is the principal trade association for the U.S. plastics industry, with more than \$275 billion in annual shipments, over 15,000 companies and 1.3 million employees. Plastics products are subject to literally thousands of different standards in the U.S. alone due to the breadth and diversity of their uses.

We strongly support the Consumer Product Safety Commission's strong, historic reliance on the U.S. voluntary standards as the best way of assuring safe and reliable products for American consumers. A tribute to the success of that system is the fact that there is a movement underway internationally to emulate it.

However, we are concerned that the Commission is considering making modifications in the manner in which it relates to the voluntary standards system. Specifically, we do not believe that there is justification for a rigid, formalistic approach to defining when there is and is not substantial compliance with a voluntary standard. To take such an approach would undermine the integrity of the voluntary standards system. Further, such an approach would require the Commission to promulgate more mandatory standards that it is either capable of doing or can be justified by cause.

The voluntary standards process in this country has served the American consumer well. However, it would not in the consumer's best interest for a federal regulatory agency to create a circumstance that replaces a system that is working well with one that would lead to confusion, confrontation, and potentially undermine U.S. competitiveness. Safety would not ultimately be well served by such an action.

Sincerely,

Cc: Chairman Ann Brown  
Commissioner Mary Sheila Gall  
Commissioner Thomas H. Moore

The Society of the Plastics Industry, Inc.  
1801 K Street, NW, Suite 600K  
Washington, DC 20006-1301  
tel 202.974.5220 • fax 202.296.7218  
lfreeman@socplas.org  
<http://www.plasticsissues.org>



INTERNATIONAL MASS  
RETAIL ASSOCIATION

Robert J. Verdisco  
President

May 17, 1999

Ms. Sadye Dunn  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway, Room 502  
Bethesda, MD 20814

**RE: NPR FOR BUNK BEDS**

Dear Ms. Dunn:

The International Mass Retail Association (IMRA) opposes the U.S. Consumer Product Safety Commission's (CPSC) proposed mandatory bunk bed design standard (64 FR 10245) and the underlying interpretation of "substantial compliance" used to justify the bunk bed rulemaking.

IMRA urges CPSC to review alternative measures to reduce bunk bed entrapment hazards, rather than pursuing a mandatory standard that will likely have no significant impact on the high compliance that already exists in the industry with the voluntary bunk bed design standard (ASTM standard F1427-96).

IMRA represents the mass retail industry--consumers' first choice for price, value and convenience. Its membership includes the fastest growing retailers in the world--discount department stores, home centers, category dominant specialty discounters, dollar stores, warehouse clubs, deep-discount drugstores and off-price stores--and the manufacturers who supply them. IMRA retail members operate more than 106,000 stores and employ millions of American workers. IMRA retail members represent over \$411 billion in annual sales.

**Bunk Bed Mandatory Rule**

Product safety is an important concern to the nation's mass retailers, and for that reason, mass retailers actively strive to comply with all industry-recognized product voluntary standards. Potential liability stemming from products that do not meet widely-recognized voluntary standards also serves as an added incentive for retailers to sell compliant products.

Because of these concerns, most bunk-bed retailers make clear (and also include it in contracts with suppliers) to manufacturers that every bunk bed sold to the retailer must meet the ASTM standard design. The recent CPSC retail-level survey of compliance with the ASTM standard (detailed in the December 1998 bunk bed briefing package) clearly proves that mass retailers sell bunk beds that comply with the ASTM voluntary standard. In fact, every IMRA member company that was inspected for that compliance survey was found to be selling only bunk beds that met the ASTM voluntary standard.

Washington, DC Metropolitan Office

1700 North Moore Street • Suite 2250 • Arlington, VA 22209 • Phone 703.841.2300 • Fax 703.841.1184

As is clearly shown by the agency's own survey, since mass retailers are only selling bunk beds compliant with the voluntary standard, a mandatory standard would not increase compliance amongst the nation's largest retailers.

CPSC staff contends that many bunk bed makers are small, and in some cases, operating out of a home, and are unaware of the current ASTM standard. A mandatory rule, the CPSC staff argues, would alert many of these small firms to the existence of the standard. The staff, however, presents only broad theoretical assumptions to support this belief, and offers no concrete empirical evidence that a mandatory rule would boost small firms' awareness of the standard.

Unless a mandatory standard can be shown to raise compliance by small-scale firms, it will result only in adding burdens on retailers that already sell compliant bunk beds.

In fact, past experience with bunk beds indicates that a mandatory standard could go unnoticed by many small bunk bed-makers. CPSC, in recent years, has conducted several well-publicized recalls of non-ASTM compliant bunk beds. Despite these recalls (which are normally followed by media and industry attention to the product safety standard), CPSC is still finding bunk bed manufacturers that are unaware of the voluntary standard.

If news of the recalls did not reach these firms, or did not make them aware of the ASTM standard, it is unlikely that a mandatory standard will heighten these companies' awareness of a new bunk bed standard. Even if a mandatory rule were approved, CPSC has not detailed how it would publicize the new standard among small-scale bunk bed-makers, or why such publicity and education efforts could not suffice to make small-scale manufacturers more aware of the industry voluntary safety standard.

Rather than taking the drastic step of implementing a mandatory rule, CPSC would be better advised to seek changes in the ASTM standard to address the few entrapment incidents in ASTM-compliant bunk beds. The agency might also examine conducting a stepped-up education campaign aimed to make consumers, retailers and manufacturers more aware of the voluntary standard.

IMRA firmly believes that retailers who take serious good faith efforts to ensure they sell only bunk beds that meet the ASTM standard should not be punished with additional burdens that would follow a mandatory rule. CPSC could better focus its limited resources on identifying, and increasing awareness of the ASTM standard among, small bunk bed manufacturers.

#### **"Substantial Compliance"**

IMRA supports the comments made by the National Association of Manufacturers at the May 6 public hearing on bunk beds and "substantial compliance." IMRA is seriously concerned by a recent CPSC General Counsel's opinion that "substantial compliance" might not be found under a voluntary standard, no matter how high the actual compliance rate, if a mandatory rule could produce a higher rate of compliance.

While Chairman Brown has repeatedly professed her commitment to the use of voluntary standards to enhance product safety, the unwise and unprecedented new interpretation of "substantial compliance" now being considered in this rulemaking would be capable of serious misuse and lead to effective voluntary standards being replaced by mandatory ones.

This interpretation of "substantial compliance" would set a chilling precedent on future voluntary standard-setting efforts. Developing voluntary standards requires large investments of resources and time. The General Counsel's opinion could serve as a disincentive for companies and individuals to undertake and support voluntary standards; they would be less likely to make such investments if CPSC could soon preempt the voluntary measure, no matter how successful, with a mandatory one.

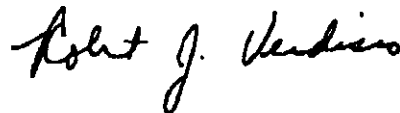
The General Counsel's interpretation of "substantial compliance" could also put at risk many effective voluntary standards already in place. CPSC could find, in almost any situation, that a mandatory standard would result in even slightly higher compliance than under a voluntary measure. While the Chairman has pledged that she does not plan to preempt other voluntary standards, the interpretation would be open to use in the future to replace successful voluntary standards.

The interpretation of "substantial compliance" used in the bunk bed rulemaking also runs counter to Congressional intent. Congress wisely favored effective voluntary standards, allowing them to be supplanted by a mandatory rule only if CPSC could prove that the voluntary measure lacked "substantial compliance." In the case of bunk beds, the existing ASTM compliance has achieved, by the agency's own admission, at least 90% compliance throughout the industry. Congress clearly did not intend the preemption of a voluntary standard so successful in achieving compliance.

Since voluntary standards can be developed far more quickly than mandatory rules, voluntary measures can be more responsive to product hazards. Voluntary standards are also more flexible than mandatory ones, allowing voluntary measures to adopt more easily to the ever-changing forces of the marketplace and technology.

IMRA urges CPSC to not adopt a mandatory bunk bed design standard and to reconsider its recent "substantial compliance" interpretation. If IMRA can be of any further assistance to you, please contact IMRA staff member Brian Axell at (703) 841-2300. Thank you for your attention to this important matter.

Sincerely,



Robert J. Verdisco  
President, IMRA



Portable Power Equipment Manufacturers Association



Sensible Products For A Better Outdoors

May 17, 1999

Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

Dear Sir or Madam:

Enclosed please find five copies of the comments of the Portable Power Equipment Manufacturers Association on the Notice of Proposed Rulemaking for Bunk Beds.

Sincerely,

A handwritten signature in cursive script that reads "Karen Hutchison".

Karen Hutchison  
Director of Operations

Enclosures



Portable Power Equipment Manufacturers Association



Sensible Products For A Better Outdoors

May 17, 1999

Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

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Enclosed please find five copies of the comments of the Portable Power Equipment Manufacturers Association on the Notice of Proposed Rulemaking for Bunk Beds.

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A handwritten signature in cursive script that reads "Karen Hutchison".

Karen Hutchison  
Director of Operations

Enclosures



**COMMENTS OF THE  
PORTABLE POWER EQUIPMENT MANUFACTURERS ASSOCIATION  
TO THE U.S. CONSUMER PRODUCT SAFETY COMMISSION  
ON THE NOTICE OF PROPOSED RULEMAKING FOR BUNK BEDS**

May 17, 1999

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INTRODUCTION

The Portable Power Equipment Manufacturers Association ("PPEMA") respectfully submits these comments to the U.S. Consumer Product Safety Commission ("Commission" or "CPSC") regarding the Commission's interpretation of certain provisions of the 1981 Amendments to the Consumer Product Safety Act ("CPSA") that specify when the CPSC must defer to voluntary standards. The Commission set forth a new interpretation of these provisions in its March 3, 1999 notice of proposed rulemaking to address entrapment hazards posed by bunk beds ("NPRM"). *See 64 Federal Register 10245-262 (1999).*

PPEMA is the national, not-for-profit trade association that represents manufacturers of chain saws, string trimmers, blowers, brushcutters, and similar handheld products. Neither PPEMA nor its members are involved in the bunk bed industry, but many of the products manufactured by PPEMA's members are subject to voluntary standards developed and adopted by the American National Standards Institute ("ANSI") B 175 Committee, for which PPEMA is the Secretariat. These standards include the B 175.1 voluntary safety standard for chain saws, the first voluntary standard to which the Commission deferred pursuant to the 1981 Amendments and which the CPSC Office of General Counsel ("OGC"), in its December 16, 1998 memorandum concerning this matter, distinguished from the CPSC's bunk bed proposal.

PPEMA's comments are limited to CPSC's finding that "substantial compliance [with a voluntary standard] does not exist where a mandatory standard would achieve a higher degree of

compliance,” and related discussion in the NPRM.<sup>1</sup> See proposed § 1213.7(c)(2)(i). As discussed below, this test for determining the existence of “substantial compliance” with a voluntary standard is inconsistent with the language of the 1981 Amendments to the CPSA, and establishes an impractical yardstick that could restrict the Commission’s future ability to issue mandatory rules.

### DISCUSSION

The 1981 Amendments to the CPSA clearly established Congress’ preference for voluntary, instead of mandatory, standards. Pursuant to those amendments, the CPSC “shall not adopt a consumer product safety rule” for a product that is subject to a voluntary standard unless

- (i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or
- (ii) it is unlikely that there will be substantial compliance with such voluntary standard.

15 U.S.C.A. § 2058(f)(3)(D). This provision is jurisdictional in nature and, absent the required findings, precludes the Commission from issuing a mandatory rule.

The Amendments establish a two-step process for the Commission to determine whether it possesses the authority to issue a mandatory rule. The Commission must first make an “adequacy” determination, *i.e.*, decide whether compliance with the voluntary standard will eliminate or adequately reduce the identified risk of injury. If that determination is negative, the inquiry ends and the Commission may proceed with the mandatory rule process without the need to consider whether there is, or will be, substantial compliance with the voluntary standard. If

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<sup>1</sup> PPEMA does not comment on the need or lack thereof for a mandatory bunk bed rule, the effectiveness or non-effectiveness of voluntary and mandatory standards for bunk beds, or whether or not substantial compliance with the voluntary bunk bed standard exists. Likewise, PPEMA does not question the CPSC’s ability to take appropriate action within its statutory powers to reduce risk of injury and death.

the Commission determines that the voluntary standard adequately addresses the identified risk of injury, it must then determine whether there will be substantial compliance with that standard before proceeding with a mandatory rule.

Here, the Commission has preliminarily determined that the voluntary standard for bunk beds does not adequately address the risk of entrapment injuries. *See 64 Federal Register at 10249.* Such a finding makes consideration of the “substantial compliance” issue not only unnecessary, but also irrelevant. Instead of ending the inquiry with its negative determination, however, the Commission proposes to endorse the novel position advanced by the OGC on the issue of substantial compliance. That interpretation is inconsistent with the statutory language and should be rejected.

The OGC argues that “substantial compliance does not exist where there is a reasonable basis for concluding that a mandatory rule would achieve a higher degree of compliance.” *64 Federal Register at 10249.* In making that decision, two important factors “are (1) whether, as complied with, the voluntary standard would achieve the same degree of reduction that a mandatory standard would achieve and (2) that the injury reduction would be achieved in a timely manner.” *Id. See also proposed § 1213.7(c)(2)(i).* This approach is misdirected.

To begin, the two factors cited by the NPRM in making the substantial compliance determination are more relevant to the first step of the statutory process – whether the voluntary standard eliminates or adequately reduces the risk of injury – than whether there exists substantial compliance with the voluntary standard. Whether the voluntary standard will reduce the risk of injury as well as a mandatory standard, and the timeliness of that reduction, are issues that address the effectiveness of the voluntary standard, not the level of compliance with it. Not only does the plain language of the CPSA prohibit the CPSC from collapsing the two-step

process into a single inquiry that is limited to the relative effectiveness of a voluntary standard, but the CPSC's own documents confirm the need for a two-step approach. CPSC accurately described the process in its 1995 Regulatory Reform Initiative Summary Report:

Since 1981, CPSC's statutes have required the agency to make two findings before it can issue a mandatory standard; first, that there is no voluntary standard in place that adequately addresses the risk of injury of concern, and second, if there is such a standard, that there is not significant conformance to that standard.

Indeed, under the statutory formulation it is unnecessary for CPSC to even address whether substantial compliance exists unless it first determines that the voluntary standard will adequately reduce the risk of injury. Because the CPSC has found that the voluntary standard does not adequately reduce the risk of bunk bed entrapment injuries, the consideration of the substantial compliance issue in this matter is unnecessary. Just as the CPSC may not collapse the two-step process into one, the Commission should not reach out to address an issue that is not properly before it.

Likewise, the OGC's suggestion that substantial compliance should be determined by comparing the degree of compliance between a voluntary standard and a mandatory rule also lacks any statutory foundation. The 1981 Amendments to the CPSA provide no indication that such a comparison is necessary or appropriate, but instead simply require the CPSC to determine whether or not compliance with the voluntary standard is substantial. In fact, rather than suggest a comparative approach or a requirement for universal compliance, the CPSA creates a presumption in favor of voluntary standards over mandatory rules by specifically requiring only "substantial compliance" with the voluntary standard. Given this presumption and the absence of any language suggesting a comparative approach, it is clear that CPSC's new test for substantial compliance is directly at odds with congressional intent.

Perhaps most alarmingly, the CPSC appears willing to rely upon anecdotal information, and untested speculation that compliance with a mandatory rule always will be greater than compliance with a voluntary standard, to support its conclusion that substantial compliance with the voluntary bunk bed standard does not exist. For example, the NPRM makes passing reference to the possibility that some manufacturers may be unaware of the voluntary bunk bed standard, or choose to ignore it altogether. It does not follow, however, that these same manufacturers will automatically comply with a mandatory standard. As noted by the NPRM, several of the bunk bed models recently identified by CPSC staff as having serious entrapment hazards were produced by manufacturers that were aware of the voluntary standard, two of whom were characterized as "repeat violators." One manufacturer, moreover, had recalled several of its products in 1995, presumably as a result of CPSC involvement, thus alerting it to the possible consequences of failing to comply. Thus, in contrast to its assumption that a mandatory rule will induce greater compliance, the Commission's limited information on the substantial compliance issue in this matter indicates that knowledge of the applicable standard and the potential consequences of non-compliance are not guarantees of future adherence to the standard.

To support a conclusion that compliance with a mandatory standard will be greater than for a voluntary standard, the CPSC must undertake a thorough analysis of compliance patterns of the regulated industry. This may involve conducting extensive field surveys, evaluating compliance levels for mandatory standards issued by other agencies, examining changes in compliance trends, performing product inspections, and doing other research on an industry-by-industry basis. While these efforts may be both burdensome and cumbersome, obtaining such data would be necessary, under the CPSC's new test, to reasonably justify a conclusion that

substantial compliance with a voluntary standard did not exist. No matter what data CPSC collects, however, the most it can do is project the level of compliance that it anticipates would be achieved with a mandatory standard. In PPEMA's view, such efforts would waste valuable CPSC resources that could be used more productively in other areas, such as development and revision of voluntary standards, monitoring compliance levels with such standards, and continuing its enforcement activities under Section 15 of the CPSA.

Rather than establish a rigid comparison test for determining the existence of substantial compliance with a voluntary product standard, PPEMA suggests that the Commission retain its longstanding approach of evaluating compliance levels on a case-by-case basis, using criteria that will enable it to maintain flexibility and fairness in addressing this issue. Factors that might be included in this evaluation could include the number of documented instances of non-compliance, trends in overall compliance levels, the size, stability and concentration of the industry at issue, the frequency of entrance into and exit from the industry, the influence of enforcement efforts, the ability of industry associations to publicize voluntary standards, and similar considerations. Notably, the NPRM discusses some of these factors, such as the large number of bunk bed manufacturers and the easy entrance into the industry, in discussing whether compliance with a mandatory rule would be greater than compliance with the voluntary standard. While the use of such factors in making a substantial compliance determination is appropriate, their use to compare projected compliance levels for a mandatory rule with actual compliance levels with a voluntary standard is not permitted by the CPSA and, as a practical matter, takes a misguided approach.



## CONCLUSION

For all the foregoing reasons, PPEMA recommends that the CPSC continue its traditional approach of evaluating the existence of substantial compliance with voluntary product standards on a case-by-case basis, and avoid attempting to compare projected compliance levels for mandatory rules with actual compliance levels for voluntary standards.

Chc 19



JPMA

May 17, 1999

**FEDERAL EXPRESS**  
The Honorable Ann Brown  
Chairman  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Re: **Testimony by the CPSC Coalition of the  
National Association of Manufacturers**

Dear Chairman Brown:

This letter is written in support of the testimony of Mr. Larry Fineran of the National Association of Manufacturers on behalf of the CPSC Coalition on May 6, 1999.

As you know, JPMA is the not-for-profit trade association comprised of more than 300 manufacturers of juvenile products which are sold nationally. In 1998, the industry had retail sales of approximately \$4 billion. We are proud of our record of cooperation between the industry and the Commission.

During your leadership of the CPSC, we have cooperated in the development of and revision to a number of important voluntary safety standards including but not limited to ASTM F404 Standard Consumer Safety Specification for High Chairs, ASTM F406 Standard Consumer Safety Specification for Play Yards, ASTM F833 Standard Consumer Safety Specification for Carriages and Strollers, ASTM F966 Standard Consumer Safety Specification for Crib Corner Posts Extensions, ASTM F977 Standard Consumer Safety Specification for Walkers, ASTM F1004 Standard Consumer Safety Specification for Gates and Enclosures, ASTM F1169 Standard Consumer Safety Specification for Full-Size Cribs, ASTM F1235 Standard Consumer Safety Specification for Hook-On Chairs, ASTM F1821 Standard Consumer Safety Specification for Toddler Beds, and ASTM F1822 Standard Consumer Safety Specification for Non-Full-Size Cribs.

We support the NAM testimony because we believe that the Commission should be allowed the upmost flexibility in determining, on a case by case basis, whether mandatory rulemaking or deferral to affective voluntary standards is appropriate. We think the CPSC should avail itself of the resources available through the voluntary standards setting process prior to undertaking costly, time consuming mandatory rulemaking. This enables the CPSC to prioritize and leverage its limited resources.

Very truly yours,

Robert B. Waller Jr., CAE  
Executive Vice President

**Juvenile Products Manufacturers Association, Inc.**

236 Route 38 West • Suite 100 • Moorestown, NJ 08057 • 609-231-8500 • Fax: 609-231-4664

E-mail: [jpma@ahint.com](mailto:jpma@ahint.com) • Web site: <http://www.jpma.org>



37021-20

Author: Ron Ritsema <rritsema@rtlondon.com> at INTERNET-MAIL  
Date: 5/17/99 5:59 PM  
Priority: Normal  
TO: "'cpsc-os@cpsc.gov'" <cpsc-os@cpsc.gov> at internet-mail  
BCC: Todd A. Stevenson at CPSC-HQ1  
Subject: NPR FOR BUNK BEDS

R.T. LONDON COMPANY IS A MANUFACTURER OF COLLEGE DORM FURNITURE.

WE HAVE REVIEWED THE 16 PAGE DOCUMENT ON THE PROPOSED REGULATION FROM THE CONSUMER PRODUCT SAFETY COMMISSION. THE REGULATION IS AN ATTEMPT TO HAVE BUNK BEDS INTENDED FOR CHILDREN AND ADULTS UNDER THE SAME REGULATION. HOWEVER, THE DOCUMENT PROVIDES DATA FOR CHILDREN ONLY. IT PROVIDES NO DATA TO SUPPORT A HIGH RISK FOR ADULTS OR COLLEGE STUDENTS. THE REGULATIONS SHOULD BE WRITTEN SEPARATE FOR CHILDREN AND ADULTS.

INCLUDED IN THE DOCUMENT WERE COST VS BENEFIT COMPARISONS, HOWEVER ALL DATA USED AS RELATED TO CHILDREN.

THE PROPOSED REQUIREMENTS WOULD REQUIRE A CLOSURE RAIL FULL LENGTH ON ONE SIDE AND ALL BUT 15" ON THE OPPOSITE SIDE OF THE BED. THIS EXTENSION OF RAIL IS NEEDED TO PROTECT CHILDREN IN AN ADULT ENVIRONMENT. COLLEGES WOULD NEED TO ADD \$150 - \$200 TO THE COST OF EACH BED. THE STUDENTS MOST LIKELY WOULD SIMPLY REMOVE SUCH SIDE RAILS.

THERE ARE REQUIREMENTS FOR SIZE OF OPENINGS ON HEAD AND FOOTBOARDS TO AVOID ENTRAPMENT OF A CHILD'S HEAD. THIS WOULD ADD \$25 TO A BED AND BE OF NO VALUE IN PROTECTING AN ADULT. THIS AND SIDE RAILS WOULD ADD UP TO \$225 TO A BED OR APPROXIMATELY 0% PRICE INCREASE AND BE OF NO PURPOSE FOR AN ADULT.

IN SUMMARY, THIS PROPOSAL DOES NOTHING FOR ADULTS AND WOULD DRAMATICALLY INCREASE THE COST TO COLLEGES AND UNIVERSITIES. COMMON SENSE AND REALITY ON MANY OF LIFE'S CONSUMER PRODUCTS USED BY ADULTS ARE RESTRICTED FOR CHILDREN FOR VALID REASONS. THERE IS NO DATA OR RATIONALE TO IMPOSE THIS CHILDREN'S REGULATION ON ADULTS.

RON RITSEMA  
V/P - FINANCE