U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

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August 10, 2004

Ms. Carol Pollack-Nelson, Ph.D.
13713 Valley Drive
Rockville, Maryland 20850-5402

Dear Dr. Pollack-Nelson:

The Commission has considered your petition, CP 02-3, requesting that the Commission issue regulations establishing standards for hunting tree stands and banning waist belt restraints (hereafter referred to as safety belts). In evaluating your petition, the Commission considered all of the information you provided; comments on the petition by interested persons; and a package of written materials prepared by the staff, a copy of which was provided to you. Based on its review of these materials, and for the reasons discussed below, the Commission voted to deny the petition.[1]

As you know, the Commission's regulations specify that any person may file a petition requesting that the Commission initiate a proceeding to issue a regulation under any of the statutes administered by the Commission. 16 C.F.R. § 1051.2(a). These regulations also set out factors for the Commission to consider in determining whether to grant or deny a petition. Three of the factors apply to both of your requests: (1) whether the product presents an unreasonable risk of injury; (2) whether a rule is reasonably necessary to eliminate the risk of injury; and (3) whether failure to initiate rulemaking would unreasonably expose the petitioner or other consumers to the risk of injury alleged by the petition. 16 C.F.R. § 1051.9(a). The Commission considers a fourth factor when a petition requests a ban of a product under section 8 of the CPSA. The Commission considers whether the product is being or will be distributed in commerce and whether a feasible product safety standard would adequately protect the public from unreasonable risk. Id. Based on consideration of these factors, the Commission voted to deny the petition.

For the Commission to issue a safety standard under the Consumer Product Safety Act, the Commission must find that the rule is "reasonably necessary to eliminate or reduce an unreasonable risk of injury" associated with the product at issue. 15 U.S.C. § 2058(f)(3)(A). To

[1] Chairman Stratton and Commissioner Gall voted to deny the petition and Commissioner Moore voted to defer. Commissioner Moore issued a statement with his vote, a copy of which is enclosed.

issue a ban, the Commission must find that the product is being or will be distributed in commerce, the product presents an unreasonable risk of injury, and no feasible consumer product safety standard would adequately protect the public. Id. § 2057. Thus, the principal finding that the Commission would have to make before issuing a final rule requiring standards for tree stands and banning safety belts, is that tree stands and safety belts pose an unreasonable risk of injury and that a mandatory standard (in the case of treestands) or a ban (in the case of safety belts) is necessary to address that risk. A determination of unreasonable risk involves balancing the likelihood and severity of injury with any harm that a regulation could impose on manufacturers and consumers. See Southland Mower v. Consumer Product Safety Commission, 619 F. 2d 499 (D.C. Cir. 1980).

Unreasonable risk. When considering whether an unreasonable risk may exist, the Commission considers the likelihood and severity of injuries associated with the product. The Commission determined that existing information does not indicate that tree stands pose an unreasonable risk. That is, there is insufficient information for the Commission to begin a rulemaking proceeding in which it would have to find, by the time it issued a final rule, that existing tree stands pose an unreasonable risk of injury. Most of the incident reports lack sufficient detail to determine if injuries were the result of some mechanical failure of the tree stand (and could therefore possibly be addressed by a mandatory standard). Most reports state only that the incidents were the result of a fall from the tree stand, but the cause of the fall is not reported.

The staff reviewed available incident data. Based on NEISS data, the staff estimated that 6,000 injuries associated with tree stand use were treated in U.S. hospital emergency rooms in 2001. In a majority of these cases the injuries were due to falls from the tree stand, but the cause of the fall was not reported. In only a few cases could the staff determine if a failure occurred to the tree stand. Staff also reviewed data from the Injury or Potential Injury Incident Database ("IPII"), In-Depth Investigation Database ("INDP") and Death Certificate Database. These databases show 137 incidents involving tree stands from 1980 through 2001 (including 62 deaths, 55 injuries, 17 incidents not involving a death or injury, and three incidents in which the outcome is unknown). Of these 137 incidents, 54 mention tree stand failures resulting in six deaths, 40 injuries, and eight incidents without injury. Of the 62 deaths, 53 were a result of the person falling out of the tree stand where the reason for the fall is unknown, 6 mention some type of tree stand failure, and 3 are listed as "other."

Thus, existing data provides little information about the circumstances of falls from tree stands. Without such information, the Commission cannot determine whether failure of tree stands is a cause of these falls.

During the same time period (1980 through 2001), staff reported that there were seven incidents involving hanging or traumatic asphyxiation by a safety belt or harness that resulted in death. In addition, an eighth asphyxiation death, which involved a full body harness, occurred in October 2002. Thus, staff is aware of three deaths that were associated with safety belts, one with a chest harness, one with a full body harness, and three that involved an unknown fall protection device.

Reasonably necessary action. The second factor that the Commission considers under its regulations concerning petitions is whether a rule is "reasonably necessary to eliminate or reduce the risk of injury." 16 C.F.R. § 1051.9(a)(2). With regard to tree stands, existing information is not sufficient for the Commission to determine that a standard is reasonably necessary. Without knowing more about the circumstances of falls from tree stands, the Commission cannot say that a standard is needed to address the falls. If the falls are due to causes other than failures of the tree stands, a standard specifying performance requirements for tree stands would not be needed and would not reduce the risk.

Moreover, an industry group, Treestand Manufacturers Association ("TMA"), and ASTM International have developed standards for tree stands. The staff concluded that these standards for structural integrity, stability, and adherence to the mounting tree provide for adequate testing for the use of tree stands under the maximum rated load. Although the staff expressed some concerns that the standards do not address issues such as dynamic load conditions (e.g., when a hunter is entering, exiting, ascending, or descending a tree stand) and post-fall rescue, the TMA has expressed a willingness to work with CPSC staff and the ASTM subcommittee on these issues.

As for safety belts, the Commission does not believe that mandatory action is reasonably necessary because industry action through voluntary standards has essentially done what your petition requested. TMA voted and approved a standard (TMS 06-02 Standard Test Method for Treestand Fall Arrest System) on January 16, 2003 that requires a fall arrest system (which includes a full body harness) must be included with each tree stand sold from January 1, 2004, in order for the tree stand to be certified by TMA. The standard was published in December 2003 as ASTM F2337.

Unreasonable exposure to risk of injury. The third factor for the Commission to consider is whether the petitioner or other consumers would be unreasonably exposed to the alleged risk of injury if the Commission does not initiate the rulemaking proceeding requested. 16 C.F.R. § 1051.9(a). The Commission concluded that it would likely be difficult to find that tree stands present an unreasonable risk of injury or that a mandatory standard for tree stands is reasonably necessary. The Commission also concluded that existing voluntary standards address your request to not allow the use of safety belts. Thus, it is unlikely that either the petitioner or other consumers would be unreasonably exposed to the risk of injury without Commission action.

Feasible standard for safety belts. A fourth factor the Commission considers when a petition requests a ban is whether a safety standard might be feasible, thus making a ban unnecessary. As discussed above, TMA and ASTM have developed voluntary standards that aim to address the asphyxiation hazard that you identified is possible with safety belts. The Commission concluded that this demonstrates the feasibility of standards that could address the risk and indicates that a Commission ban is not necessary.

Conclusion. The Commission concluded that the information before it is not sufficient to support beginning a rulemaking proceeding to require standards for tree stands

or to ban safety belts. Given the current lack of information about the cause of most falls from tree stands, and the existence of voluntary standards specifying adequate requirements for tree stands, the Commission concluded that initiating a rulemaking proceeding to establish mandatory requirements for tree stands is not warranted. As for safety belts, the Commission concluded that existing TMA and ASTM standards effectively address your request to ban safety belts. Accordingly, Petition CP 02-3 is denied.

Sincerely,

Todd A. Stevenson
Secretary

Enclosure: Statement of Commissioner Thomas H. Moore of July 15, 2004

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE HUNTING TREE STAND PETITION
July 15, 2004

Climbing up into a tree and perching twenty or so feet off of the ground with a loaded gun (or bow and arrow) in hand does not sound like the safest of pastimes. One would expect there to be a number of injuries to hunters who shoot from trees without using a hunting tree stand. One would also expect hunting tree stands not to add to the hunters' danger.

In its November, 1993 issue, *Deer and Deer Hunting* magazine gives a number of safety tips about using hunting tree stands. The last tip reads: "Treat tree stands as you would loaded guns: The minute you stop fearing and respecting them, they'll kill you." I wonder how many hunters equate the potential danger from a tree stand to that of a loaded gun. Not many, I suspect. That statement and several of the safety tips that precede it, make it clear that hunting tree stands, while better than perching on a bare tree limb, present their own risks. Among the other tips: "Practice with your stand and safety gear before using it in the woods, and understand how your stand works. Almost all stands hold by leverage. The farther your weight is from the tree, the more leverage that is applied. However, the farther out you go, the more torque you apply, which can cause the stand to twist. Practice will show you each stands' limitations." And, "Buy comfortable stands. If a stand isn't comfortable, you will fidget and shift your weight, which can lead to trouble."

The clear message is that tree stands are not very forgiving of mistakes or missteps. Climbing and fixed tree stands have to be both light enough to be easily carried up into a tree and sturdy enough to support a grown man with heavy boots, a rifle and other gear. This may be asking too much of what in some cases appears to be little more than a folding metal chair with straps to tie it to a tree trunk.

Our staff has found that tree stand-related injuries tend to be severe, with 26% hospitalized or transferred to another facility. A *Deer and Deer Hunting* magazine survey of its readers, estimated that about one third of hunters will eventually fall out of a tree stand and that one of every 100 hunters who use tree stands or elevated devices will eventually be crippled.

Staff's primary reason for recommending denial of the petition is that they cannot determine from the incident data whether the falls involving tree stands were due to some mechanical failure of the tree stands. It is true that, at this point, we do not have a good handle on the scenarios for these falls. Some will involve steps used to access the tree stand or some other problem unrelated to the stand itself and a certain percentage of stands are home made and, therefore, outside of our jurisdiction. It is also true that a number of voluntary standards have been adopted in the last five years to address many

aspects of tree stand durability and stability. However, our staff still has concerns with parts of these standards.

The information that we do have from various surveys and other sources strongly suggests that many of the falls involving tree stands happen when a hunter is transitioning into or out of the stand. This suggests a possible problem with the design of tree stands. Staff has stated that tree stands should meet dynamic load requirements to simulate this transitioning phase and has indicated that the ASTM standard is not adequate in this regard. The Treestand Manufacturers Association (TMA) disputes staff's concerns with the standard. Staff also felt that the adherence test and the labeling requirement on the stands needed to be improved. Staff's adherence test concerns appear to be an important issue with regard to fall prevention that needs further attention.

No matter how safe tree stands become, there will still be falls, particularly when hunters are climbing up to or down from the stand. Unfortunately most hunters do not avail themselves of the one thing that could help save them in the event of a fall—a fall arrest device. And because of the alleged awkwardness of these devices, hunters are least likely to wear them at the times when they are most in danger. That these devices can present risks of their own may be another reason some hunters are reluctant to use them. The full body harness does seem to present the least risks, but even it can result in the hunter's death if the hunter is suspended for too long and has no means of escape or if he tries to extricate himself from a harness that does not have a self-extraction mechanism. On this point too, staff did not feel that the standard was adequate and asked ASTM for a task force to study self-extraction from a full body harness. While there has been an agreement to form such a task force, a number of discouraging statements made to our staff by members of TMA and ASTM cast doubt on how successful that task force will be.

Also troubling is whether the standard will actually do away with the more dangerous waist belt and chest harness. Other provisions in related ASTM standards still refer to waist belts or chest harnesses as if they were acceptable alternatives. Since the standards only deal with tree stands, there is nothing to prevent waist belts and chest harnesses from continuing to be sold as separate accessories. And, of course, only those tree stand manufacturers who want to go through the TMA certification procedure are likely to abide by the standards' requirements.

I applaud TMA for their efforts to make safer tree stands. They appear to have made many improvements. It is also encouraging to hear that a standardized incident reporting form is being developed. If it is adopted for use in all of the states, we may be able to get a better handle on tree stand incidents. Based on our staff's requests for additional changes to the voluntary standards, there is a way to go yet before I will be comfortable with an outright denial of this petition. I am, therefore, voting to defer action on this petition until such time as concrete action is taken by the voluntary standards groups on the items in our staff's letters of July 31, 2003 and March 19, 2004 and other items identified by staff in the briefing package but not included in those two letters.