



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

MINUTES OF COMMISSION MEETING
February 3, 1999
4330 East West Highway
Bethesda, Maryland

The February 3, 1999, meeting of the U. S. Consumer Product Safety Commission was convened in open session by Chairman Ann Brown. Commissioner Thomas H. Moore was present. Commissioner Mary Sheila Gall was not present.

Agenda Item: Bunk Beds

The Commission considered whether to issue a Notice of Proposed Rulemaking (NPR) to address the hazard of children's entrapment in bunk beds. The Commission was briefed on this matter by the staff at the Commission meeting of January 7, 1999. (Ref: staff briefing package dated December 16, 1998 and a draft Federal Register notice accompanied by a vote sheet dated December 31, 1998.) The Commission also received supplemental information from the staff by memoranda dated January 15 and January 28, 1999, in response to questions raised by Commissioners following the briefing.

Commissioner Moore moved that the Commission make certain changes to the draft Federal Register notice that would elevate the issue of what constitutes substantial compliance with a voluntary standard to a more prominent level in the Federal Register notice, make it clear that the Commission has made no decision on the suggested interpretation of how to measure substantial compliance, and encourage public comment from every industry CPSC regulates. (A list of the proposed changes to the draft Federal Register notice is attached.) Chairman Brown and Commissioner Moore approved the motion by voice vote. Commissioner Gall filed a written concurring vote (copy attached), which was read into the record by Chairman Brown. The proposed changes to the draft Federal Register notice were, therefore, adopted by unanimous vote (3-0).

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Voting then on motion of Chairman Brown, the Commission voted 2-0-1, to publish a Notice of Proposed Rulemaking, as amended by the previous motion made by Commissioner Moore, in the Federal Register for public comment on whether to promulgate a mandatory entrapment standard for bunk beds. Chairman Brown and Commissioner Moore voted in favor. Commissioner Gall filed a written abstention (copy attached), which was read into the record by Chairman Brown.

Chairman Brown, Commissioner Moore, and Commissioner Gall filed separate statements concerning the bunk bed matter, copies of which are attached.

There being no further business on the agenda, Chairman Brown adjourned the meeting.

For the Commission:



Sadye E. Dunn
Secretary

Attachments

**Proposed changes to the bunk bed
FR notice:**

p. 6, last paragraph, second sentence: change "indications that there is inadequate" to "indications there may not be adequate"

pg. 16, first full paragraph, line 1, insert "staff" between "Commission" and "believes."
Line 4, strike "Furthermore," and insert, "Therefore, the staff believes" before "it is reasonable to conclude."

p. 19, first full paragraph: insert period after the word "rule" in the second sentence and strike balance of that sentence. Change next sentence to read: "If the ASTM standard were substantively adequate, the Commission would be required to make a finding on substantial compliance."

p. 19, next paragraph: omit "the Commission thoroughly" and insert "the Office of General Counsel". In next sentence, omit: "The Commission concludes" and insert: "The Office of General Counsel has proffered the opinion"

p. 20, first line: change "Two" to "two" and insert before "two," "The Office of General Counsel maintains that"

p. 20, first full paragraph: change "the Commission concludes" to "the Commission staff concludes" and then begin next sentence with: "Therefore, the staff believes there is ...".

p. 20: add to beginning of next paragraph: The Office of General Counsel further states that ...".

p. 20: Add the following before Section E: "The Commission takes no position on this interpretation of substantial compliance at this time. The Commission encourages all persons who would be affected by such an interpretation to submit comments for the record.

"The Office of Compliance has also enumerated certain other factors which it feels impact the level of conformance with the voluntary standard. These are addressed in Section E below. The Commission reserves judgment on the propriety of considering these factors in measuring substantial compliance and seeks public comments on them. Also note the draft findings with regard to substantial compliance in the text of the proposed rules themselves, which the Commission includes in order to elicit the most effective public comment."

p. 21, 4th line, change "This" to "this" and insert before "this", the following: "The Office of Compliance maintains that".

p. 21, end of 7th line: insert before "it is" the following: "Compliance indicates"

p.21, last paragraph: insert at beginning of first sentence: "Compliance maintains that;" change "A" to "a".

p. 22: second line: change "it" to "Compliance"

p. 22, first full paragraph: change "the Commission" to "Compliance" and strike the period after "needed" as well as the phrase "A mandatory standard" and insert in lieu thereof "and"



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**VOTES BY COMMISSIONER MARY SHEILA GALL
FOR THE DECISION MEETING ON OPTIONS TO ADDRESS THE HAZARDS
OF CHILDREN'S ENTRAPMENT IN BUNK BEDS**

February 3, 1999

1. Motion to amend the Federal Register Notice of Proposed Rulemaking to address hazards of children's entrapment in bunk beds.

I concur with the motion to amend the Federal Register notice with the changes contained in the attached document. These changes include language specifically requesting public comment on the staff's proposed interpretation of substantial compliance. Even though I do not believe that preliminary evidence supports going forward with rulemaking, I believe it is crucial that we have an open, public discussion of this critical issue. I urge interested parties to review this document and provide their comments to the Commission.

2. Motion to publish a Notice of Proposed Rulemaking, as amended by the motion made by Commissioner Moore, in the Federal Register for public comment on whether to promulgate a mandatory entrapment standard for bunk beds.

I vote to abstain from the motion to issue a Notice of Proposed Rulemaking, despite my strong inclination against going forward with this rulemaking proceeding. I do not believe that sufficient evidence has been brought forward to justify a preliminary finding that a final rule regulating bunk beds should be adopted. However, I have grave concern about the staff's narrow and unprecedented interpretation of "substantial compliance"—both with regard to its impact in this proceeding, as well as future implications. I feel strongly that the issue of "substantial compliance" should receive broad public comment before the Commission can adopt an appropriate definition of "substantial compliance". I would thus invite the public to comment on the staff interpretation contained in the Federal Register notice as well as my interpretation contained in my January 7, 1999 statement. I will submit a full statement elaborating on my position for the record.

Attachment



THE CHAIRMAN

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Statement

**The Honorable Ann Brown, Chairman
U.S. Consumer Product Safety Commission
Commission Approval of a Draft Notice of Proposed Rulemaking
to Address Fatal Entrapment Incidents That Occur in Bunk Beds**

February 3, 1999

I voted in favor of issuing a Notice of Proposed Rulemaking to address fatal entrapment incidents that occur in bunk beds. I believe a mandatory rule offers the best opportunity we have to solve the tragic problem before us.

We know what the problem is -- the needless loss of young lives. We know what the solution is -- making bunk beds so that they conform to a simple and straightforward safety standard. It is our responsibility, as this Nation's leading product safety agency, to do everything we can to avoid the needless loss of another child.

I am especially concerned about these young children and their families. These deaths can be prevented, if only the companies who make these beds would follow the safety standard. But for each family that loses a child, their lives will never again be the same. They must live with this pain, every day, for the rest of their lives.

I am reminded of the pain of Lynn Starks-Williams, who lost her daughter, Whitney, on April 24, 1997. Whitney died on a bunk bed that failed to meet the voluntary entrapment standard. The death investigation by our field staff stated:

"On the evening of the incident . . . [a]t approximately 11:30 p.m. the mother carried her daughter up to the bunk bed and placed her in the top bunk . . . At approximately 5:00 a.m. the mother went to wake up her daughter and found her hanging from the top bunk. Her head was caught between the upper guard rail and the upper mattress support rail . . . Her body was rigid when the mother brought her down and called 911."

Ms. Starks-Williams also wrote to Senator Don Nickles of Oklahoma on October 24, 1997:

"My life changed forever . . . Every night I go to bed or close my eyes, I will have the mental picture in my head of finding my daughter hanging from my bed . . ."

During this past year, while the staff continued to identify nonconforming beds, this mother, along with others in her state, worked to pass a law in Oklahoma. Today all bunk beds sold in that state must conform with the ASTM standard. So, there is at least a mandatory standard in Oklahoma thanks to the brave efforts of this grieving mother.

For many years, this agency has made great efforts to prevent the deaths of children in bunk beds. Ten years ago, we worked with industry to develop a voluntary standard for bunk bed manufacturers. And we have worked with industry since that time to improve that standard.

We also have used the media aggressively to get the word out, and we have included bunk beds in our nationally-publicized Recall Roundup for the past two years, and will include bunk beds again this year.

Industry leaders have also worked hard on this problem -- from helping to develop the voluntary standard to achieving increased conformance. We are informed that all of AFMA's members now conform to the standard all of the time. But, not every bunk bed manufacturer is a member of AFMA. In fact, we have found many who are not -- and there are more we don't know about. And many of those are not conforming to the voluntary standard, despite the years and efforts and dollars we have invested in the conformance effort.

I believe a mandatory standard would give us the most effective remaining tool available to us to solve this problem. It would put teeth into our effort to bring the rest of the industry into conformance by potentially reaching more non-conforming bunk beds, imposing little, if any, new costs on manufacturers who already are conforming to the voluntary standard.

I am a great believer in voluntary standards -- from drawstrings on children's clothing to window blind cords to babywalkers -- because I have found they are often the most effective way to protect consumers. My record of five years is clear on this. And my support for the NPR in this case certainly does not in any way signal a desire on my part to now start codifying as mandatory rules the many voluntary standards that apply to possibly thousands of consumer products.

I believe the decision today is an important step -- though not the final step -- that this agency can take which will result in saving lives of young children.