



**UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814**

This document has been electronically  
approved and signed.

**DATE:** June 24, 2015

**BALLOT VOTE SHEET**

**TO:** The Commission  
Todd A. Stevenson, Secretary

**THROUGH:** Stephanie Tsacoumis, General Counsel  
Patricia H. Adkins, Executive Director

**FROM:** Patricia M. Pollitzer, Assistant General Counsel  
Mary A. House, Attorney, OGC

**SUBJECT:** Draft Letter to Petitioner re Denial of Petition for Change to the Bunk Bed Standard (CP 10-2 & HP 10-1) and Draft Letter to Petitioner re Denial of Petition Requesting Standard for Bunk Bed Cornerposts (CP 03-1 & HP 03-1)

BALLOT VOTE DUE June 30, 2015

On May 22, 2015, the Commission voted to deny the following petitions because current information would not support a conclusion that a rule is reasonably necessary to reduce an unreasonable risk of injury associated with bunk beds:

- Petition CP 10-2 & HP 10-1, *Petition for Change to the Bunk Bed Standard* (“Side Entrapment Petition”)
- Petition CP 03-1 & HP 03-1, *Petition Requesting Standard for Bunk Bed Cornerposts* (“Corner Post Extension Petition”)

The Office of the General Counsel has drafted a letter to each petitioner informing the petitioner of the Commission’s action on each petition.

Please indicate your vote for each letter on the following options:

**I. Side Entrapment Petition.**

- A. Approve the letter denying petition CP 10-2 & HP 10-1, as drafted.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC’s Web Site: <http://www.cpsc.gov>

B. Approve the letter denying petition CP 10-2 & HP 10-1, with the following changes.

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

C. Do not approve the letter denying petition CP 10-2 & HP 10-1.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

D. Take other action. (Please specify.)

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**II. Corner Post Extension Petition.**

A. Approve the letter denying petition CP 03-1 & HP 03-1, as drafted.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

B. Approve the letter denying petition CP 03-1 & HP 03-1, with the following changes.

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

C. Do not approve the letter denying petition CP 03-1 & HP 03-1.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

D. Take other action. (Please specify.)

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachments:

- Draft Letter to Carol Pollack-Nelson, Ph.D., Independent Safety Consulting, re Denial of Petition CP 10-2 & HP 10-1; and
- Draft Letter to John Lineweaver, The Danny Foundation, re Denial of Petition CP 03-1 & HP 03-1.



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

OFFICE OF THE GENERAL COUNSEL

Todd A. Stevenson  
Secretary, Office of the Secretary  
Tel: 301-504-0800  
E-Mail: [tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov)

June \_\_, 2015

Carol Pollack-Nelson, Ph.D.  
Independent Safety Consulting  
13713 Valley Drive  
Rockville, MD 20850

Dear Dr. Pollack-Nelson:

The U.S. Consumer Product Safety Commission (“Commission”) has considered your Petition for Change to the Bunk Bed Standard, CP10-2 and HP 10-1 (“Petition”), dated April 16, 2010. The Petition requested that the Commission issue a rule to revise the Commission’s regulations at 16 C.F.R. parts 1213, 1500, and 1513, referred to collectively as the “Bunk Bed Standard,” to incorporate requirements for head and neck entrapment testing in spaces created by side structures, such as ladders, provided with the bunk bed. The Commission considered the information that you provided, along with comments on the Petition by interested persons, information about voluntary standards activities, and a package of written materials prepared by the staff. After reviewing these materials, and for the reasons discussed below, the Commission voted to deny the Petition.

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 here:

- (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). After considering 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). Thus, the principal finding that the Commission would have to make before issuing a final rule to amend the Bunk Bed Standard is that spaces created by bunk bed side structures pose an unreasonable risk of death or injury to children and that a change to the mandatory standard 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).

*Whether the product presents an unreasonable risk of injury.* In considering whether a product presents an unreasonable risk of injury, the likelihood and severity of injury must be assessed. Staff reviewed the deaths and injuries associated with bunk bed side structure entrapments over a 20-year period. CPSC conducted 50 recalls involving bunk beds since 1990; none was based on side structure entrapments. The incident data demonstrate nine total incidents associated with side structure entrapments; the review found four fatalities in the 20-year period. The relative infrequency of Petition-relevant injuries and deaths, combined with the lack of recalls, is not likely to support a conclusion that bunk bed side structures present an unreasonable risk of injury.

The current voluntary standard for bunk beds is ASTM F1427-13, *Standard Consumer Safety Specification for Bunk Beds*. After receiving the Petition, CPSC staff worked collaboratively with the ASTM F15.30 Bunk Bed Subcommittee, of which you are a member, to develop entrapment provisions for bunk bed ladders and other side structures in the voluntary standard. On April 15, 2013, ASTM published a revision to the voluntary standard that includes requirements for entrapment testing between all ladder structures, between ladder steps and the upper-bunk boundary, and along the entire boundary of the bunk bed between the lower bunk foundation and the upper-bunk foundation (rather than in the end structures only). This testing is performed using the same probes that are specified in the mandatory Bunk Bed Standard and are based on the anthropometric dimensions of children at greatest risk of entrapment. The revised voluntary standard also requires, for bunk beds whose ladders are attached to the side of the lower bunk, that any gaps between the ladder and the lower-bunk mattress must be smaller than 1.88 inches or larger than 9 inches, to avoid the potential for entrapment. These dimensions are based on child anthropometric data and the probes used in the Bunk Bed Standard for entrapment testing.

Staff did not identify any bunk bed side structure entrapment incidents since the revised ASTM standard was adopted in 2013. Moreover, staff’s research indicates that testing with the same probes specified in the Bunk Bed Standard is effective at reducing the incidence of head and neck entrapments, in general. As a result, the Commission has concluded that these modifications to the voluntary standard adequately address the hazard presented by spaces in bunk bed side structures and that bunk beds that comply with the existing ASTM standard are not likely to present an unreasonable risk of injury.

*Whether a rule is reasonably necessary to address an unreasonable risk of injury.* To issue a final rule, the Commission would need to find that the rule is “reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product.” 15 U.S.C. § 2058(f)(3)(A). As discussed above, the staff’s review of the incident data suggests that bunk bed side structures that comply with the current voluntary standard are unlikely to present an unreasonable risk of injury. Staff concluded that compliance with the current voluntary standard would have prevented the same fatalities and injury that would have been addressed through the requested rulemaking. Based on an assessment of bunk beds on the market and the low cost to meet the applicable requirements, staff further concluded that bunk beds sold to consumers are likely to substantially comply with the current voluntary standard. Accordingly, a rule would not be necessary to address an unreasonable risk of injury.

*Whether failure to issue a rule would unreasonably expose petitioners and others to unreasonable risk.* The Commission must consider the effect of denying the relief requested in the Petition on the risk of injury to consumers. Because CPSC staff has concluded that compliance with the current voluntary standard would have prevented the same fatalities and injury that would have been addressed through the requested rulemaking, and because staff presented evidence that bunk beds are likely to substantially comply with the voluntary standard, the Commission concludes that consumers are unlikely to be unreasonably exposed to a risk of injury based on the Commission’s denial of the Petition.

*Conclusion.* Based on its review of information provided by the CPSC staff, the Commission concluded that a change to the Bunk Bed Standard is not reasonably necessary to address an unreasonable risk of injury posed by spaces in bunk bed side structures. Accordingly, the Petition, CP10-2 and HP 10-1, is denied.

Thank you for bringing this safety issue to the Commission’s attention. CPSC staff will continue to monitor bunk bed-related incidents and voluntary standards activities.

Sincerely,

Todd A. Stevenson  
Secretary



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OFFICE OF THE GENERAL COUNSEL

Todd A. Stevenson  
Secretary, Office of the Secretary  
Tel: 301-504-0800  
E-Mail: tstevenson@cpsc.gov

June \_\_, 2015

John Lineweaver  
The Danny Foundation  
P.O. Box 680  
Alamo, CA 94507

Dear Mr. Lineweaver:

The U.S. Consumer Product Safety Commission (“Commission”) has considered the Petition Requesting Standard for Bunk Bed Cornerposts, CP 03-1 and HP 03-1 (“Petition”), submitted by The Danny Foundation and dated September 26, 2002. The Petition requested that the Commission issue a rule to revise the Commission’s regulations at 16 C.F.R. parts 1213, 1500, and 1513, referred to collectively as the “Bunk Bed Standard,” to establish a mandatory standard that prohibits bunk bed corner post extensions and finials. The Petition asserted that extensions and finials pose a substantial risk of injury or death to children from hanging, when clothing, bedding, or other items become caught on them. The Commission considered the information you provided, along with comments on the Petition by interested persons, information about voluntary standards activities, and a package of written materials prepared by CPSC staff. After reviewing these materials, and for the reasons discussed below, the Commission voted to deny the Petition.

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 here:

- (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). After considering 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). Thus, the principal finding that the Commission would have to make before issuing a final rule to amend the Bunk Bed Standard is that extensions and finials on bunk beds pose an unreasonable risk of death or injury to children and that a change to the mandatory standard 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).

*Whether the product presents an unreasonable risk of injury.* In considering whether a product presents an unreasonable risk of injury, the likelihood and severity of injury must be assessed. Staff reviewed the deaths and injuries associated with vertical protrusions over a 24-year period. CPSC conducted 50 recalls involving bunk beds since 1990; none was based on vertical protrusions. The incident data demonstrate 16 cases of unintentional strangulation; 15 were fatal and involved bunk bed corner posts. Six fatalities are known to have involved a corner post extension, meaning at least one death occurs every 4 years. The relative infrequency of Petition-relevant injuries and deaths, combined with the lack of recalls, is unlikely to support a conclusion that vertical protrusions on bunk beds present an unreasonable risk of injury.

The current voluntary standard for bunk beds is ASTM F1427, *Standard Consumer Safety Specification for Bunk Beds*. After receiving the Petition, CPSC staff worked collaboratively with the ASTM Bunk Bed Subcommittee to develop vertical protrusion provisions for bunk beds. Beginning in 2007, ASTM modified the voluntary standard to include provisions that prohibit vertical protrusions and differences in fit between components on the top surface of an upper bunk that exceed  $\frac{3}{16}$  inch (5 mm). The voluntary standard now also requires that all caps affixed to the top surface of bunk beds taper, fit flush with the top of a corner post, and minimally overhang the edge of a corner post.

Since ASTM added the vertical-protrusion provisions into the voluntary standard in 2007, the frequency of fatalities potentially relevant to the petition has declined, and there have been no confirmed fatalities involving a corner post extension or finial. As a result, the Commission has concluded that these modifications to the voluntary standard adequately address the strangulation hazard posed by bunk bed corner post extensions and finials, and that bunk beds that comply with the existing ASTM standard are not likely to present an unreasonable risk of injury.

*Whether a rule is reasonably necessary to address an unreasonable risk of injury.* To issue a final rule, the Commission would need to find that the rule is “reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product.” 15 U.S.C. § 2058(f)(3)(A). As discussed above, the staff’s review of the incident data suggests that bunk beds that comply with the current voluntary standard are unlikely to present an unreasonable risk of injury from vertical protrusions. Staff concluded that compliance with the current voluntary standard would have prevented the same fatalities that would have been addressed through the requested rulemaking. Based on an assessment of bunk beds on the market and the low cost to

meet the applicable requirements, staff further concluded that bunk beds sold to consumers are likely to substantially comply with the current voluntary standard. Accordingly, a rule would not be necessary to address an unreasonable risk of injury.

*Whether failure to issue a rule would unreasonably expose petitioners and others to unreasonable risk.* The Commission must consider the effect of denying the relief requested in the Petition on the risk of injury to consumers. Because the CPSC staff has concluded that compliance with the current voluntary standard would have prevented the same fatalities that would have been addressed through the requested rulemaking, and because staff presented evidence that bunk beds are likely to substantially comply with the voluntary standard, the Commission concludes that consumers are unlikely to be unreasonably exposed to a risk of injury based on the Commission's denial of the Petition.

*Conclusion.* Based on its review of all the available information, the Commission concluded that a change to the Bunk Bed Standard is not reasonably necessary to address an unreasonable risk of injury posed by finials and corner post extensions on bunk beds. Accordingly, the Petition, CP 03-1 and HP 03-1, is denied.

Thank you for bringing this safety issue to the Commission's attention. CPSC staff will continue to monitor bunk-bed related incidents and voluntary standards activities.

Sincerely,

Todd A. Stevenson  
Secretary