



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

OS # 5569
 DUO
 REMOVED
 WITH
 ATTACHMENT
 DELETED.

DATE: January 13, 1998

MEMORANDUM

TO : Commissioner Thomas H. Moore

Through: Sadye E. DUM, Secretary *TD*
 Jeffrey S. Bromme, General Counsel *JB*
 Pamela Gilbert, Executive Director *PG*

FROM : Ronald L. Medford, Assistant Executive Director *RLM*
 Office of Hazard Identification and Reduction
 John D. Preston, Project Manager, ES *JDP*
 (301) 504-0494 Ext. 1315

SUBJECT: Response to Your Questions Regarding Bunk Beds

1/13/98 *JD*
 CPSC 6 (b)(1) Cleared *WITH*
 ATTACHED
 No Mfrs/PrvtLblrs or TABLE
 Products Identified *REMOVED*
 Excepted by _____
 Firms Notified, _____
 Comments Processed, _____

1. For each of the 41 manufacturers who have had recalled beds since 1994, can you provide the following information:

(a) How long have they been in business;

Compliance has reviewed 15 firms' files involving bunk beds subject to recall. The remainder of the firms' files have been sent to archives since they were closed and the staff is no longer monitoring their recalls. The staff can retrieve and review these files if you wish.

Firms were contacted either by letter, telephone or through an establishment inspection conducted by a field investigator. Where an establishment inspection was conducted, the investigator may have been able to identify how long the firm was in business. Where a firm was contacted by letter or telephone, unless they included that statement in their response, that information would not be available. On the attached chart, available information that responds to the question is provided.

(b) How big are they (either in terms of number of employees or sales figures or any other information you may have upon which to base an answer);

The attached chart indicates the size of the firm based upon available sales information. Where an establishment inspection disclosed relevant information it is also included. This information was not obtained from all of the firms contacted.

(c) Which ones indicated they did not feel the need to comply because the standard was only voluntary (please provide any written statements to that effect).

The attached chart indicates the firms and their knowledge of the voluntary standard.

NOTE: This document has not been reviewed or accepted by the Commission.
 Initials _____ Date 1/13/98

2. The cost/benefit analysis paper deals with the benefits of a voluntary standard. What would the cost benefit analysis look like if: 1) we assume that each year's new production will have 10% (or less)* nonconforming beds even without the commission taking any further action, 2) the most recent ASTM standard (1996), with its addition of the lower bunk bed entrapment provisions is the level which we expect beds to meet to be considered conforming and 3) the alternative being considered is a mandatory standard. *Given that we have, since 1992, brought every manufacturer we have found into conformance, is the 10% figure too high?

The outcome of the cost/benefit analysis does not depend on proportion of conformance. Each new conforming bed introduced to the market would confer a net benefit. However, since total benefits (as well as total costs) depend on how many beds are brought into conformance by a mandatory rule, the smaller the proportion of nonconforming beds, the fewer the potential total benefits (and associated total costs).

The economic analysis looks at the future cost and benefit of bringing a single nonconforming bed up to (a mandatory) standard. Therefore, a manufacturer that already produces a conforming bed would have no additional costs. Further, there would be no additional benefits since the conforming bed already averts potential deaths and injuries.

For each new bed, the analysis compared the cost to meet a standard to its "benefit" (i. e., the dollar value of the deaths that conformance might avert). The cost according to several manufacturers would be \$15-40 per bed. The benefit calculation rests on three factors: (1) deaths that conformance "addresses" or has the potential to avoid, (2) the risk of death per nonconforming bed, and (3) the potential effectiveness of the standard in averting death.

Effectiveness refers to the likelihood that a conforming bed will avert deaths that the standard addresses. Because children come in different sizes, mattresses may or may not fit, guard rails may or may not stand up, and other such factors, the standard is probably not going to be 100% effective. The cost/benefit analysis estimated that the standard would address about 72 % of the entrapment fatalities. The analysis also noted that there would be positive net benefits (i.e., benefits minus costs) if a mandatory standard were about 4% to 23 % effective, for costs of \$15 and \$40, respectively.

3. On what basis does Compliance believe, as is stated on page 6 of the briefing package, that the actual number of manufacturers and importers could be much higher than the 106 already identified?

This statement is based upon the fact that for each public announcement of a recall since the recall issued in November, 1994, as well as trade complaints and CPSC surveillance, the staff continues to uncover additional manufacturers not in compliance with the voluntary standard.

How many of the beds being manufactured each year are these unidentified manufacturers and importers likely to account for (I note that the proposed ANPR itself states that any firms other than the 106 “are not likely to account for a significant share of the U.S. market”)?

It is unknown what percent or number of non-complying bunk beds the unidentified manufacturers and importers produce and distribute. Based upon previous Compliance efforts of surveillance and recalling non-conforming bunk beds, the staff continues to identify beds that present a risk of death from entrapment.

If the Commission votes to publish the ANPR, the statement in quotes in the parenthetical note in this question will be removed.

Attachment

cc: Chairman Ann Brown
Commissioner Mary Sheila Gall



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

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MEMORANDUM

DATE: January 13, 1998

TO : Commissioner Mary Sheila Gall

Through: Sadye E. **DUM**, Secretary *T. S. For*
 Jeffrey S. Bromme, General Counsel *JB*
 Pamela Gilbert, Executive Director *PG*

FROM : Ronald L. Medford, Assistant Executive Director *RLM*
 Office of Hazard Identification and Reduction
 John D. Preston, Project Manager, ES *JP*
 (301) 504-0494 Ext. 1315

SUBJECT: Response to Your Questions Regarding Bunk Beds

1. The staff's briefing stated that a mandatory standard would: "Allow state and local governments to assist CPSC in identifying non-complying bunk beds. "
 - (a) Can state and local governments presently *not* assist CPSC in identifying bunk beds that do not conform with the voluntary standard?

No. State and local authorities can and do assist CPSC in identifying bunk beds that do not conform to the voluntary standard. However, state and local authorities often have additional enforcement powers where there is a mandatory standard. For example, where there is a mandatory regulation, states advise firms that the mandatory regulations must be met in order to sell the products. In addition, where a CPSC requirement is mandatory, the state may be more likely to adopt the rule as a mandatory state requirement and conduct enforcement programs on the state and local level. In some cases, states have the ability to seize or take other actions against firms that sell products that do not meet mandatory requirements. Similar enforcement action cannot be taken for failure to meet a voluntary industry standard.

- (b) If the answer to (a) above is yes, please identify the occasions on which the Commission staff has requested the assistance of state and local governments in identifying bunk beds that do not conform with the voluntary standard, and on which the Commission staff was told by a state or local government that such assistance would not be furnished.

The staff has sought state and local assistance in identifying bunk beds that do not conform to the voluntary standard. Much of the direction given to State and local authorities

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NOTE: This document has not been reviewed or accepted by the Commission. No Mfrs/PrvtLblrs or Products Identified

Initial *RL* Date *1/13/98*

by field office staff is oral or based upon previous recall announcements involving non-conforming bunk beds. However, the assistance state and local officials provide is one of identifying possible violations of the voluntary standard only. Since there is no mandatory rule, the state and local officials can only identify where there is a possible violation and cannot take unilateral action to prevent the immediate sale and distribution of such products.

- (c) If the answer to (a) above is yes, please provide this office with copies of any written communications from the Commission staff requesting such assistance, and copies of any written communications from state and local governments declining to furnish such cooperation.

See responses to (a) and (b) above.

- (d) Has the Commission staff ever received notification from officials of a state or local government that those officials have found examples of bunk beds that do not conform with the existing voluntary standard?

As a result of the last year's Recall Round-Up, several manufacturers of non-conforming bunk beds were identified by state officials. We are seeking further documentation which will be provided under separate cover.

- (e) If the answer to (d) above is yes, please identify all such occasions, and furnish any written communications generated by all of them.

To be provided under separate cover

- 2. The staff's briefing stated that a mandatory standard would: "Prevent non-complying [bunk] beds made overseas from entering the United States. " Responses by staff to commissioners' questions on this point indicated that the role of the U.S. Customs Service might differ depending on whether a product was covered by a mandatory, versus a voluntary standard.

- (a) Can the U.S. Customs Service presently *not* assist CPSC in identifying or clearing entry into the U.S. of bunk beds that do not conform with the voluntary standard?

The U. S. Customs Service may seize products that violate laws of the United States and may refuse admission of such products and detain them. Thus, the U. S. Customs Service can seize, detain and refuse admission of products that violate mandatory safety standards issued by CPSC. The U. S. Customs Service has no authority to seize, detain and refuse admission into the United States products that do not conform to voluntary standards. While CPSC has asked U.S. Customs to notify it when shipments of a product subject to a voluntary standard come into the United States, our experience is that Customs is not particularly interested in expending its resources where the product does not violate a mandatory

standard. There is little incentive for U.S. Customs to identify such products if they cannot take immediate enforcement action against the product.

- (b) If the answer to (a) above is yes, please identify the occasions on which the Commission staff requested the assistance of the U.S. Customs Service in identifying and preventing the entry into the U.S. of bunk beds that do not conform with the voluntary standard, and on which the Commission staff was told by an official of the U.S. Customs Service that such assistance would not be furnished.

We have not been told by U.S. Customs that they would not furnish assistance. However, their assistance is limited as stated in 2(a) above.

- (c) If the answer to (a) above is yes, please provide this office with copies of any written communications from the Commission staff requesting such assistance, and copies of any written communications from the U.S. Customs Service declining to furnish such cooperation.

See response to 2 (a) and 2 (b) above.

- (d) Has the Commission staff ever received notification from officials of the U.S. Customs Service that those officials have found examples of bunk beds that do not conform with the existing voluntary standard?

We are unaware of any such notifications by U.S. Customs officials. See response to 2(a) above for a possible reason.

- (e) If the answer to (d) above is yes, please identify all such occasions, and furnish any written communications generated by all of them.

See response to 2 (d) above.

cc: Chairman **AM** Brown
Commissioner Thomas H. Moore