



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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John Lineweaver
The Danny Foundation
P.O. Box 680
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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,

A handwritten signature in dark ink, appearing to read "Todd A. Stevenson", is written over a light blue rectangular background.

Todd A. Stevenson
Secretary