

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97-CE-68-AD.

Applicability: Model 1900D airplanes (serial numbers UE-1 through UE-160), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 1,000 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the loss of the pilot and co-pilot intercom, VHF communications, and passenger address system, which could result in loss of all communication during critical phases of flight, accomplish the following:

(a) Inspect the electrical connectors, the radio switching panel and its relay printed circuit boards (PCB's) for moisture and corrosion in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(1) If moisture is found, prior to further flight, clean and dry the component in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(2) If corrosion is found, prior to further flight, either clean or replace the component, depending on the severity, in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(3) If moisture or corrosion is found, prior to further flight, locate and eliminate the source (i.e., crack, hole, leak) in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(b) Inspect the nose avionics wire harnesses for proper installation, and if any wire harness is not installed properly, prior to further flight, secure it with cable ties in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(c) Remove the A017 component PCB, part number (P/N) 101-342536-1, and replace the PCB with a new A017 component PCB (P/N 101-342536-5 or an FAA-approved equivalent part number) in accordance with the Accomplishment Instructions in Raytheon Service Bulletin (SB) No. 2643, dated August, 1996.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-1461 Filed 1-21-98; 8:45 am]

BILLING CODE 4910-13-U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Bunk Beds; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission has reason to believe that unreasonable risks of injury and death may be associated with bunk beds constructed so that children can become entrapped in the beds' structure or become wedged between the bed and a wall.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding that could result in a rule mandating bunk bed performance requirements to reduce this hazard. This rule could be issued under either the Federal Hazardous Substances Act ("FHSA") or the Consumer Product Safety Act ("CPSA"), or separate rules might be issued under the FHSA and CPSA addressing bunk beds intended for use by children or adults, respectively.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with bunk beds, the regulatory alternatives discussed in this ANPR, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death described in this ANPR.

DATES: Written comments and submissions in response to this ANPR must be received by the Commission by April 7, 1998.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Bunk Beds."¹

¹ This ANPR was approved by a 2-1 vote of the Commission. Chairman Ann Brown and

FOR FURTHER INFORMATION CONTACT: John Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0494, ext. 1315.

SUPPLEMENTARY INFORMATION:

A. Background; History of Voluntary Standards Activities

Bunk beds have been long recognized as a potential source of serious injury to children. In 1978, an Inter-Industry Bunk Bed Safety Task Group developed a Bunk Bed Safety Guideline for voluntary use by manufacturers and retailers of bunk beds intended for home use. Members of this group included the National Association of Bedding Manufacturers, the National Association of Furniture Manufacturers, the Southern Furniture Manufacturers Association, and the National Home Furnishings Association. The guideline became effective on January 1, 1979.

In February 1981, an American National Standard for Bedding Products and Components (ANSI Z357.1) was published. For the most part, this standard contained dimensional requirements for mattresses and foundations for all beds. However, it also incorporated the requirements of the January 1, 1979, industry safety guideline for bunk beds. In May 1986, the American Furniture Manufacturer's Association ("AFMA") published Voluntary Bunk Bed Safety Guidelines developed by the Inter-Industry Bunk Bed Committee ("IIBBC").

On August 26, 1986, the Consumer Federation of America ("CFA") filed a petition with CPSC requesting the promulgation of a mandatory safety regulation for bunk beds. In its petition, CFA cited three different risks of injury posed by bunk beds: Inadequate mattress supports that can allow the mattress to fall to the bunk below or to the floor, entrapment in the space between the guardrails and the mattress, and entrapment between the bed and the wall. CFA alleged that the voluntary industry guidelines did not fully address the hazards posed to consumers.

In July 1988, AFMA published Revised Voluntary Bunk Bed Safety Guidelines, with an effective date of April 1989. A majority of the revisions

were made as a result of CPSC staff comments on the May 1986 guidelines, which included comments that the requirements addressing entrapment in openings in guardrails were not adequate and that bunk beds should be required to be sold with two guardrails. To prevent entrapment, the 1989 revised guidelines did require two guardrails to accompany a bunk bed, and required that any opening in the structure of the upper bunk be less than 3 1/2 inches.

On July 21, 1988, the Commission voted to deny the petition filed by the CFA, but directed its staff to prepare a letter to AFMA and IIBBC urging that AFMA reconsider the CPSC staff comments that had not been included in the Revised Voluntary Bunk Bed Safety Guidelines. That letter was sent in August 1988. It also requested (a) that AFMA consider additional staff recommendations, (b) that AFMA submit the revised guidelines to a voluntary standards organization such as ANSI or ASTM for development as a voluntary safety standard, and (c) that AFMA develop, and provide to the Commission, a plan and proposed implementation date for a certification program to ensure that bunk beds complied with the guidelines. AFMA responded that a certification program would be established upon publication of an ASTM bunk bed standard.

In October 1992, ASTM published the Standard Consumer Safety Specification for Bunk Beds, ASTM F1427-92, in response to the Commission's August 1988 request. The performance requirements in that standard primarily addressed falls from the upper bunk, entrapment in the upper bunk structure or between the upper bunk and a wall, and security of the foundation support system. The standard also had a requirement for a warning label and for instructions to accompany the bed. In June 1994, the ASTM bunk bed standard was republished with additional provisions (requested by CPSC staff) to address collapse of tubular metal bunk beds. The most current version of the ASTM bunk bed standard was published in September 1996 and contains additional revisions suggested by CPSC staff. These address entrapment in lower bunk end structures; mattress size information on

the warning label and carton; and the name and address of the manufacturer, distributor, or seller on the bed.

Because of continued reports of deaths and other incidents associated with bunk beds, and because of indications that there is inadequate compliance with the voluntary ASTM standard, the CPSC staff prepared a briefing package that summarized the available information. Copies of this briefing package can be obtained from the Commission's Office of the Secretary. After considering the available information, the Commission decided to publish this advance notice of proposed rulemaking to begin a rulemaking proceeding that could result in performance or other standards to address the risk of entrapment associated with bunk beds.

B. Incident Data

From January 1990 through September 1997, CPSC received reports of 85 bunk-bed-related deaths of children under age 15. As shown below, 54 (64 percent) were caused by entrapment. An additional 23 children died when they were inadvertently hanged from the bed by such items as belts, ropes, clothing, and bedding. Eight children died in falls from bunk beds during this period. Almost all (96 percent) of the entrapment victims were ages 3 and younger, whereas hanging and fall victims tended to be older than 3 years. The Commission continues to receive reports of incidents and other information concerning bunk bed entrapment hazards.

Available data indicate that the number of bunk-bed-related deaths has not decreased in recent years and that the majority of fatal incidents continue to involve entrapment. To better evaluate the extent of the entrapment problem, the Commission's staff also developed national estimates of the total number of entrapment deaths that occurred each year, using statistical methodology that examined the extent of overlap between data-reporting sources. These estimates projected that about 10 bunk bed entrapment deaths have occurred each year in the United States since 1990.

FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY YEAR AND HAZARD PATTERN

Year	Hazard pattern			
	Total	Entrap.	Hanging	Falls
1990	7	5	2
1991	15	10	2	3

Commissioner Thomas H. Moore voted to approve this ANPR; Commissioner Mary S. Gall voted not to publish the ANPR.

FATAL BUNK BED INCIDENTS REPORTED TO CPSC, BY YEAR AND HAZARD PATTERN—Continued

Year	Hazard pattern			
	Total	Entrap.	Hanging	Falls
1992	4	3	1
1993	19	10	7	2
1994	10	6	3	1
1995	12	5	5	2
1996	11	10	1
1997	7	5	2
Total	85	54	23	8

Source: CPSC Data Files, January 1990–September 1997, U.S. Consumer Product Safety Commission/EHHA.

CPSC staff reviewed available information on entrapment-related incidents, which accounted for the majority of deaths, to obtain additional detail about the circumstances involved. In all, CPSC received reports of 103 entrapment incidents from January 1990 through September 1997, including 54 that involved deaths and 49 that involved “near-misses” (where a child was entrapped, but usually with no or minor injury, often because another person intervened). Most reported incidents involved wooden bunk beds, and entrapment occurred most often on the top bunk. Common areas of entrapment were under the guardrail, within the end structures of the bed, and between the bed and the wall.

With three exceptions, almost all of the incidents involving fatal entrapment in the structure of bunk beds occurred in areas of the beds that apparently did not conform to the entrapment provisions in the current voluntary standard. Two of the three exceptions involved entrapment on the upper bunk. These beds had guardrails that did not run the entire length of the bed and, in each of the two incidents, a child slipped through the space between the end of the guardrail and the bed’s end structure and became wedged between the bed and a wall. (The current standard permits guardrails that terminate before reaching the bed’s end structure, provided there is no more than 15 inches between either end of the guardrail and the bed’s closest end structure.)

The third death involving a conforming bunk bed occurred when a 22-month-old child was playing with an older sibling on a bunk bed and placed his head into a tapered opening between the underside of the upper bunk foundation and a structural member. This child is believed to have been standing on the lower bunk mattress, and, when his feet slipped off the mattress, he was suspended by his head. (The current standard only addresses openings in lower bunk end structures

that are within 9 inches above the sleeping surface of the mattress.)

C. Market Information

Industry sources estimate that about 500,000 bunk beds are sold each year for residential use (excluding institutional sales), and that sales have been relatively stable over time. The annual retail value of sales has been estimated by AFMA at about \$150 million. Industry sources estimate the average retail price of bunk beds to be about \$300, but prices range from about \$100 to \$700. Bunk beds are marketed in specialty stores, furniture stores, department stores, and by mail order. There is also a market for used bunk beds in thrift shops, garage sales, and classified advertising.

Trade sources estimate the expected useful life of bunk beds to be 13–17 years. Based on available information, there are about 7–9 million bunk beds available for use, including bunk beds that are not currently used for sleeping, and those that are now used as two separate beds.

CPSC staff is aware of at least 106 bunk bed manufacturers, which are believed to produce the bulk of annual sales. Of the 106 identified firms, 40 are either members of AFMA or are members of the ASTM subcommittee that developed the existing voluntary standard for bunk beds. According to AFMA, these 40 firms represent 75–80 percent of the total annual shipments of bunk beds. While there are likely many other small regional manufacturers or importers of bunk beds in addition to the 106 identified firms, these are not likely to account for a significant share of the U.S. market.

D. Compliance With the Existing Voluntary Standard

There has been a continuing pattern of nonconformance to the voluntary standard. From June through August 1994, the Commission’s Office of Compliance (Compliance) identified and sent letters of inquiry to 85 bunk

bed manufacturers/importers, as part of a voluntary standard conformance monitoring project. Responses to these letters revealed that 17 companies were marketing bunk bed designs that presented potential entrapment hazards. Based on these responses, as well as on retail inspections, consumer complaints, and reported incidents, 41 manufacturers have, since November 1994, recalled wooden and metal bunk beds that did not conform to the entrapment requirements in the ASTM standard. The recalls involve over one-half million bunk beds.

In February 1997, Compliance assigned 45 inspections of bunk bed retailers nationwide. Examination of 77 beds from 35 different manufacturers by staff from CPSC’s regional offices revealed that 12 bunk bed designs, each from a different manufacturer, did not conform with the entrapment requirements of the ASTM voluntary standard. Problems identified through these inspections resulted both in voluntary recalls of already produced beds and in corrections of future production. The most recent recall, in September 1997, involved five companies and pertained to 16,500 beds. One of these beds was involved in a fatal entrapment incident.

As noted above, CPSC’s staff identified 106 manufacturers and importers of wooden and metal bunk beds. The Commission believes that the actual number of manufacturers and importers could be much higher. Because of the relative ease of constructing bunk beds, many small companies are formed each year. These may quickly go in and out of the business of making bunk beds. These companies are normally not associated with industry organizations, and are often unaware of the voluntary standard or misinterpret its requirements. Accordingly, the Commission preliminarily concludes that it is very likely that there will continue to be serious conformance problems with the voluntary standard.

E. The Potential Need for a Mandatory Standard

Although the voluntary standard improves the safety of bunk beds, companies are not required to comply with it. Some manufacturers contacted by Compliance did not see an urgency to comply with a "voluntary" standard, and they did not recognize the hazards associated with noncompliance. As a result, entrapment hazards will continue to exist on beds in use and for sale. Currently, all 106 manufacturers identified by CPSC staff appear to be producing beds that conform to the entrapment requirements in the ASTM F1427 bunk bed standard. However, small regional manufacturers that periodically enter the marketplace may not be aware of the voluntary standard, or of the hazards that are associated with bunk beds.

The Commission believes that a mandatory entrapment standard may be needed for the following reasons:

1. The adoption of a mandatory standard could increase the awareness and sense of urgency of manufacturers regarding compliance with the entrapment provisions, thereby increasing the degree of conformance to those provisions.
2. A mandatory standard would allow the Commission to seek penalties for violations. Publicizing fines for noncompliance with a mandatory standard would deter other manufacturers from making noncomplying beds.
3. A mandatory standard would allow state and local officials to assist CPSC staff in identifying noncomplying bunk beds and take action to prevent the sale of these beds.
4. Under a mandatory standard, retailers, and distributors would violate the law if they sold noncomplying bunk beds. Retailers and retail associations would then insist that manufacturers and importers provide complying bunk beds.
5. The bunk bed industry is extremely competitive. Manufacturers who now conform with the ASTM standard have expressed concern about those firms that do not. Nonconforming beds can undercut the cost of conforming beds. A mandatory standard would establish a level playing field and take away any competitive cost advantage for unsafe beds.
6. A mandatory standard would help prevent noncomplying beds made by foreign manufacturers from entering the United States. CPSC could use the resources of U.S. Customs to assist in stopping hazardous beds at the docks.
7. The absence of manufacturer identification on many beds has

resulted in extremely low recall effectiveness rates. A mandatory standard could require companies to include identification on the beds.

8. Although the Commission currently believes that the ASTM voluntary standard for bunk beds adequately addresses the most common entrapment hazards associated with these products, the Commission is aware of three entrapment fatalities that occurred in conforming beds. A mandatory standard could modify the provisions in the voluntary standard so as to address the deaths that can occur on beds that comply with the voluntary standard.

Therefore, the Commission decided to issue an ANPR to begin a rulemaking proceeding and to seek public comment on all aspects of this proceeding, including (a) the need for a mandatory standard and (b) any additional requirements that may be needed to address fatalities known to have occurred on bunk beds conforming to the current voluntary standard.

However, the available information does not support a conclusion that changes to currently produced bunk beds would significantly reduce the number of fatalities due to falls and hangings. Thus, although information on these hazards is welcome, the Commission does not at this time intend to propose performance requirements to address falls or hangings from bunk beds.

F. Cost/Benefit Considerations

To provide some preliminary information on additional costs to conform to the entrapment requirements of the existing voluntary standard, CPSC's Economics staff contacted four manufacturers who had modified their production for that reason. The most expensive modification was the addition of a second guardrail to the top bunk. Two firms estimated that the additional guardrail would add \$15–20 to the retail price of these products. The other two manufacturers, who market beds in the "mid to upper" price range, estimated a \$30–40 increase in the retail price of their products. This increased cost would be incurred only by those firms that do not now conform to the voluntary standard.

CPSC estimates that the costs to society of bunk bed entrapment deaths is about \$174–346 per bed over its expected useful life. The costs of bringing bunk beds into conformance with entrapment requirements range from \$15–40 per bed. If the measures taken to address bunk-bed-related entrapment deaths were only about 4 to 23 percent effective in reducing these deaths, the costs and the benefits of

such an activity would be about equal. In fact, the Commission expects that a mandatory standard would be substantially more effective than this.

G. Statutory Authorities for This Proceeding

What statute is appropriate for regulating bunk beds? CPSA section 3(a)(1), 15 U.S.C. 2052(a)(1). The Federal Hazardous Substances Act ("FHSA") authorizes the regulation of unreasonable risks of injury associated with articles intended for use by children that present mechanical (or electrical or thermal) hazards. FHSA section 2(f)(D), 15 U.S.C. 1261(f)(D). The hazards associated with bunk beds that are described above are mechanical. See FHSA section 2(s), 15 U.S.C. 1261(s). The Consumer Product Safety Act ("CPSA") authorizes the regulation of unreasonable risks of injury associated with "consumer products," which include bunk beds—whether intended for the use of children or adults. CPSA section 3(a)(1), 15 U.S.C. 2052(a)(1). Thus, bunk beds intended for the use of adults can be regulated only under the CPSA, while bunk beds intended for the use of children potentially could be regulated under either the FHSA or the CPSA. Bunk beds probably would be considered as intended for use by children only if they have smaller than twin-size mattresses or incorporate styling or other features especially intended for use or enjoyment by children.

Section 30(d) of the CPSA, however, provides that a risk associated with a consumer product that can be reduced to a sufficient extent by action under the FHSA can be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to do so. 15 U.S.C. 2079(d). Accordingly, children's bunk beds could be regulated only under the FHSA, unless the Commission finds that it is in the public interest to regulate them under the CPSA. Thus, assuming that "adult" and "children's" bunk beds each present an unreasonable risk of injury, the Commission could:

1. Issue a rule for children's bunk beds under the FHSA and a rule for adult bunk beds under the CPSA; or
2. Issue a rule under the CPSA for both adult and children's bunk beds, and issue a rule under CPSA § 30(d) that it is in the public interest to do so.

A possible reason for finding that it is in the public interest to regulate both adult and children's bunk beds under the CPSA would be to avoid confusion as to which act applied to a particular bunk bed. The Commission will make a decision on which act(s) should be used

if and when it decides to issue a proposed rule addressing the hazards of bunk beds. As discussed below, the procedure and statutory findings required to issue a rule for bunk beds are essentially identical under either act. Accordingly, any final rule may be issued under the CPSA, the FHSA, or a combination of the two acts.

What effect will the existence of the voluntary standard have on the rulemaking? The Commission may not issue a standard under either the CPSA or the FHSA if industry has adopted and implemented a voluntary standard to address the risk, unless the Commission finds that "(i) compliance with such voluntary * * * standard is not likely to result in the elimination or adequate reduction of such risk of injury; or (ii) it is unlikely that there will be substantial compliance with such voluntary * * * standard." In this case, it appears that a high percentage of bunk beds comply with ASTM F1427-92. Accordingly, the Commission has addressed the issue of whether the relatively high degree of compliance with the ASTM standard (possibly 90 percent or more) constitutes "substantial compliance" that would prevent the Commission from issuing a mandatory standard for bunk beds.

Neither statute defines the term "substantial compliance." However, guidance is provided by the legislative history of the CPSA:

In determining whether or not it is likely that there will be substantial compliance with such voluntary * * * standard, the Commission should determine whether or not there will be sufficient compliance to eliminate or adequately reduce an unreasonable risk of injury in a timely fashion. Therefore, compliance generally should be measured in terms of the number of complying products rather than in terms of complying manufacturers.

H.R. Conf. Rep. No. 208, 97th Cong., 1st Sess. 873 (1981): "Adequately reduce" means to reduce the risk "to a sufficient extent that there will no longer exist an unreasonable risk of injury." *Id.* This legislative history suggests that substantial compliance means that there will be sufficient compliance with the voluntary standard to reduce the product's risk to the point that the risk is no longer "unreasonable."

Factors that are relevant both to a determination of unreasonable risk and to whether there is substantial compliance are the severity of the remaining injuries and the vulnerability of the injured population. The CPSC staff's analysis shows that issuing a mandatory rule could save a significant number of children's lives. Thus, the injuries are severe, and the affected

population is extremely vulnerable. The cost/benefit information discussed above indicates a likelihood that the benefits of a rule for bunk beds would bear a reasonable relationship to its costs, and the remaining risks from bunk beds are thus "unreasonable." See 15 U.S.C. 1262(i)(2)(B), 2058(f)(3)(E). Accordingly, the Commission preliminarily concludes that there currently is not substantial compliance with the ASTM standard.

Rulemaking procedure. Before adopting a CPSA standard or FHSA rule, the Commission first must issue an ANPR as provided in section 3(f) of the FHSA or section 9(a) of the CPSA. 15 U.S.C. 1262(f), 2058(a). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must then publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 3(h) of the FHSA or section 9(c) of the CPSA. 15 U.S.C. 1262(h), 2058(c). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in 3(i)(1) of the FHSA or section 9(f)(2) of the CPSA. 15 U.S.C. 1262(i)(1), 2058(f)(2). And before issuing a final regulation, the Commission must make certain statutory findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. FHSA section 3(i)(2), CPSC section 9(f)(3), 15 U.S.C. 2058(f)(3).

H. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths associated with bunk beds. In addition to possible performance standards similar to the current ASTM standard, additional performance standards may be developed to supplement the entrapment provisions of the ASTM standard. Further, the potential for labeling or instructions requirements and information and education campaigns to reduce the risk will be considered, either instead of or in addition to a mandatory standard.

It is also possible that a voluntary standard could be developed that would adequately reduce the risks of entrapment, falls, and hanging. The Commission is not aware of any voluntary standard in effect that applies to the identified risks of bunk beds other than ASTM F1427-96. As noted above, the Commission has preliminarily concluded that the degree of compliance with this ASTM standard may be

insufficient and some fatalities have occurred that are not adequately addressed by that standard. However, if improved voluntary standards are developed and implemented, the Commission would take that into account in deciding whether a mandatory standard is necessary.

I. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance, labeling, or instructions standard for bunk beds to address the risk of entrapment. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The models and numbers of bunk beds produced for sale in the U.S. each year from 1990 to the present;
2. The names and addresses of manufacturers and distributors of bunk beds;
3. The number of persons injured or killed by the hazards associated with bunk beds;
4. The circumstances under which these injuries and deaths occur, including the ages of the victims;
5. An explanation of designs that could be adapted to bunk beds to reduce the risk of entrapment;
6. Characteristics of the product that could or should not be used to define which products might be subject to the requested rule, and which products, if any, are intended for use by children, and which for adults;
7. Other information on the potential costs and benefits of potential rules;
8. Steps that have been taken by industry or others to reduce the risk of injuries from the product;
9. The likelihood and nature of any significant economic impact of a rule on small entities;
10. The costs and benefits of mandating a labeling or instructions requirement.

Also, in accordance with section 3(f) of the FHSA and section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
2. Any existing standard or portion of a standard which could be issued as a proposed regulation.
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127 or by email to cpsec@cpsec.gov. Comments should be captioned "ANPR for Bunk Beds." All comments and submissions should be received no later than April 7, 1998.

Dated: January 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98-1457 Filed 1-21-98; 8:45 am]

BILLING CODE 6355-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Requests for Exemptive, No-Action and Interpretative Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing new regulations to establish procedures for the filing of requests for the issuance of exemptive, no-action and interpretative letters from the Commission's staff.

DATES: Comments on the proposed rule must be received on or before March 23, 1998.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Comments may be sent by facsimile transmission to (202) 418-5528, or by e-mail to secretary@cftc.gov. Reference should be made to "Rule Proposal Re: Requests for Exemptive, No-Action, and Interpretative Letters."

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, or Helene D. Schroeder, Attorney-Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C., 20581. Telephone: (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Requests for Exemptive, No-Action and Interpretative Letters

A. Background

In the course of administering the Commodity Exchange Act ("Act")¹ and the rules, regulations and orders promulgated thereunder by the Commission,² Commission staff receive written requests for advice on or interpretation of particular provisions of the Act or Commission rules to proposed conduct or transactions. If appropriate, Commission staff provide the advice or guidance sought through the issuance of exemptive, no-action or interpretative letters ("Letters").³ Currently, there are no Commission rules setting forth procedures for requests for Letters.⁴

The Commission is of the view that establishment of uniform procedural rules governing these requests will significantly assist the Commission and its staff by assuring a focused presentation of the guidance sought, the issues raised thereby, and relevant precedent. The Commission is therefore now proposing uniform procedures for the filing of requests for exemptive, no-action or interpretative letters. These procedures are intended to elicit from the outset the information that staff will need to evaluate a request, and to minimize staff resources expended in seeking additional information.

Letters generally should be requested from (and, if appropriate, issued by) Commission staff in instances where the need for guidance or clarification of a rule's applicability arises from relatively routine circumstances. The Commission believes that the best mechanism for handling novel or complex issues, significant gaps in regulatory coverage, relief from regulatory requirements or initiatives for regulatory reform

¹ 7 U.S.C. § 1 *et seq.* (1994).

² Commission regulations are found at 17 C.F.R. Ch. I *et seq.*

³ These types of letters are proposed to be defined in Rule 140.99 (a)(1), (a)(2), and (a)(3), respectively, and each is discussed in Part b, below.

⁴ By contrast, since 1971, the Securities and Exchange Commission ("SEC") has required conformity with certain procedures by persons submitting requests for no-action or interpretative letters. See Securities Act Release No. 5127, 36 FR 2600 (Jan. 25, 1971) (prescribed procedures for requests under the Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Company Act of 1940 and Investment Advisers Act of 1940). Some of these procedures have been modified or supplemented by SEC staff. See, e.g., Securities Act Release No. 6253, 45 FR 72644 (Oct. 28, 1980) (institution of abbreviated response procedures by Division of Corporation Finance); and Securities Act Release No. 6269 (Dec. 5, 1980) (institution of seven-copy requirement for requests to Division of Corporation Finance).

generally is the notice and comment rulemaking process or, where appropriate, exemptive action by the Commission itself after notice and public comment. This is especially true where a perceived issue is likely to affect a large number of persons or entities. Accordingly, the Commission reminds registrants, counsel and the public that it is receptive to public and industry input (including, for example, petitions for rulemaking actions and petitions for Commission exemptive action or other orders) in the continuing process of adapting its regulatory framework to changing market circumstances. The Commission also notes that, notwithstanding the requirements for Letters set forth herein, registrants, other industry participants, counsel and members of the public should feel free to seek information from Commission staff in those situations where they do not require no-action relief, or a formal interpretation of statutory or regulatory provisions.

Although not required to do so (see II. Related Matters, below), the Commission invites public comment on this proposal.

B. The Proposed Rule

1. Definitions

Paragraph (a) of the proposed rule sets forth definitions for exemptive, no-action and interpretative letters. The term "exemptive" letter is defined as a written grant of relief to a specified person from the applicability of a specific provision of the Act or a Commission rule, regulation or order. Exemptive letters may be issued by Commission staff only in those situations where: (a) the Commission itself has exemptive authority; and (b) that authority has been delegated to staff.⁵

A "no-action" letter is defined as a written statement that staff of a specific division will not recommend enforcement action to the Commission if a proposed transaction is undertaken or a proposed activity is conducted. A no-action letter represents the position of only the division issuing it and is binding only upon that division and not

⁵ The proposed rule governs requests submitted to and processed by Commission staff. In certain circumstances, however, requests must be submitted to and processed by the Commission itself. For example, where exemptive authority has not been delegated to the staff, exemptive relief must be granted by Commission order (e.g., under Section 4(c) of the Act, 7 U.S.C. § 6(c) (1994)). The Commission intends that persons making exemption requests of it should comply with the requirements of the applicable section of the Act or Commission rules, regulations or orders, although paragraphs (b), (c), (f) and (h) of the proposed rule provide some useful guidance for such requests.