



March 23, 2022

VIA ELECTRONIC SUBMISSION

The Honorable Alexander Hoehn-Saric
Commission Chair
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Re: Safety Standard for Operating Cords on Custom Window Coverings (87 Fed. Reg. 1014; January 7, 2022).

Dear Commission Chair Hoehn-Saric:

On January 7, 2022, the U.S. Consumer Product Safety Commission (CPSC) published a proposed rule establishing safety standards for operating cords on custom window coverings. The proposed rule requires that the operating cords on custom window coverings be eliminated, thereby making them cordless or inaccessible to children. The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits the following comments on the proposed rule. While child safety is paramount, CPSC should do more to consider reasonable modifications to the proposed rule that would ease the burden on small businesses while still meeting the Commission's stated objectives.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility

Act (RFA),¹ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.³ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁴

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁵

B. Background on the Proposed Rule

On January 7, 2022, CPSC published a proposed rule to establish safety standards for operating cords on custom window coverings. The proposed rule requires that operating cords be cordless, inaccessible, or eight inches or shorter in length in any use position.⁶ The Consumer Product Safety Act authorizes CPSC to promulgate mandatory consumer safety standards if such requirements are necessary to prevent or reduce an unreasonable risk of injury.⁷ CPSC is required to rely on a voluntary standard when compliance would adequately eliminate or reduce the risk of injury and it is likely that products are in substantial compliance with the voluntary standard.⁸

Window coverings include a range of products including blinds, shades, curtains, and draperies. Operating cords are those that are used to manipulate a window covering in some way and may include single cords, multiple cords, or a continuous loop.⁹ This rulemaking regulates the operating cords on these various window covering products, specifically for custom-made coverings. Stock window coverings are already regulated under a voluntary ANSI safety standard.¹⁰

¹ 5 U.S.C. §601 et seq.

² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

³ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁴ *Id.*

⁵ *Id.*

⁶ Safety Standard for Operating Cords on Custom Window Coverings, 87 Fed. Reg. 1014, (January 7, 2022).

⁷ *Id.* at 1015 citing 15 U.S.C. §2056 (a).

⁸ *Id.* citing 15 U.S.C. §2056 (b)(1).

⁹ *Id.* at 1016.

¹⁰ American National Standard for Safety of Corded Window Covering Products § 4.3.1, ANSI/WCMA A100.1—2018, (ANSI/WCMA-2018).

According to CPSC's data, from 2009-2020 there were approximately 194 incidents involving injury and/or fatality by strangulation from window operating cords.¹¹ CPSC states that it is promulgating this rule to further reduce the number of incidences of strangulation from window covering cords.

II. Advocacy's Comments

A. CPSC should seek comment on and revise its Regulatory Flexibility Act analysis.

1. CPSC's initial Regulatory Flexibility Act analysis relies on incomplete information. The Commission should publish an updated analysis for comment.

In the proposed rulemaking, CPSC conducts an initial Regulatory Flexibility Act analysis as required by statute.¹² The analysis identifies 302 manufacturers, 1,538 retailers, and 83 importers that may be affected by this rule. However, it does not offer enough detail about firm size or cite all its sources in the analysis. CPSC should provide more detail about these affected small businesses and cite each source where appropriate. CPSC should present a table showing the breakdown of each affected industry by firm size, along with average revenue for each size group. CPSC's revenue estimates of small businesses in affected industries in its analysis do not match revenue estimates of these types of businesses in publicly available economic data sources. CPSC may have used employer data to count the number of firms but used non-employer data to estimate the average revenues. CPSC should ensure that it cites all data sources used, and Advocacy recommends using the same data sources to estimate average annual revenue as for estimating counts of affected small firms when possible.

For example, Census Bureau data on small employer firms with fewer than five employees from the Statistics of U.S. Businesses data series include firm count and revenue statistics for firms with at least one employee up to four employees, and revenues for these businesses will differ from small firms without employees (non-employers) included in the Census Bureau's Nonemployer Statistics data series. CPSC should consult with Advocacy to ensure that the Commission's analysis understands the impacts on small entities and that it meets statutory requirements under the Regulatory Flexibility Act.

2. Advocacy encourages CPSC to consider alternatives that reduce the burden to small businesses while still meeting the stated objectives of increased child safety.

Producing products that minimize the risk of serious harm or death to children are of paramount concern. To the extent that CPSC can identify and consider alternatives that minimize the economic impacts to small businesses while still meeting the stated objectives of the rule, Advocacy would encourage the Commission to do so.

¹¹ *Id.* at 1023.

¹² *Id.* at 1046.

Small businesses are deeply concerned about child safety when using their products, but they will need additional time to respond to the requirements of the rulemaking. Advocacy conducted outreach to small manufacturers and retailers of custom window coverings. One manufacturer said that production of compliant products requires at least 50 percent more labor and more square footage of manufacturing plant space, which means large upfront and per-unit costs. These additional costs to produce the compliant products will result in higher prices. Some small manufacturers indicated that not all consumers will be willing to pay increased prices. They may instead respond by foregoing new window coverings, opting to keep existing ones, or purchasing used or old products that are even less safe.

Several small manufacturers indicated that the proposed rule would render approximately 45 to 90 percent of their current products non-compliant. They stated that the proposed rule would eliminate certain categories of window coverings. Some orders will still be in the construction and design phase when CPSC's rulemaking goes final, causing them to halt production on products that have already been ordered and paid for. This would result in a lack of confidence in these businesses by consumers, and the potential that they may not purchase the compliant products.

According to small manufacturers, CPSC's adoption of voluntary standards for operating cords on stock window coverings took large manufacturers approximately two years to comply. Given the unique and custom nature of the products being regulated under the current rulemaking, CPSC should consider offering additional time for compliance, and in the interim require manufacturers to continue to educate consumers about product safety for corded window coverings as well as offering safety devices for corded products.

Another potential alternative to the rulemaking would be the adoption of voluntary standards for custom window coverings. Small businesses have indicated that CPSC has not considered the recent updates to the voluntary standard in this rulemaking. CPSC could assess whether these latest voluntary standards provide the necessary level of child safety sought through this rulemaking, and adopt such standards provided they meet the objectives of the rule.

B. CPSC should consider exceptions in situations where corded window coverings are a necessity, such as under the Americans with Disabilities Act.

CPSC should consider and allow for exceptions in situations where the consumer may need a corded window covering. Examples may include inaccessible window coverings, such as ones located behind furniture, or over a kitchen sink. Furthermore, the rule does not consider situations in which an operating cord is necessary due to the consumer having a disability. For example, operating cords might be necessary if someone were not able to stand to pull down a shade or use a retractable cord. Cordless window shades can also be very heavy which creates additional accessibility issues. In such instances a corded window covering would be necessary. However, under the proposed rule, these products would be prohibited.

Small manufacturers have indicated that motorized coverings may cost as much as 20 times more than mechanical cord systems. Instead of buying updated, more expensive products, consumers may opt to keep existing old coverings, or attempt to purchase second-hand coverings that may also be several years old. This would create even more hazards as old products are even less compliant with existing safety standards.

CPSC should therefore consider exceptions in situations where a corded product is necessary due to consumer limitations. Small businesses are already counseling customers on operating safety with corded products. They will continue to do so for those customers who request a corded product. Small businesses can also offer safety devices to be used with corded coverings in situations where the customer cannot use a cordless option.

III. Conclusion

Both Advocacy and small businesses are concerned for the safety of children with respect to operating cords on custom window coverings. While child safety is paramount, CPSC should do more to consider reasonable modifications to the proposed rule that would ease the burden on small businesses while still meeting the Commission's stated objectives. If you have any questions or require additional information, please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Prianka P. Sharma
Assistant Chief Counsel
Office of Advocacy
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Copy to: Dominic Mancini, Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget