



April 18, 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 Clothing Storage Units (87 Fed. Reg. 6246; February 3, 2022).

Dear Commission Chair Hoehn-Saric:

On February 3, 2022, the U.S. Consumer Product Safety Commission (CPSC) published a proposed rule establishing safety standards for clothing storage units (CSUs). The proposed rule requires that CSUs be tested and exceed minimum stability requirements, be marked and labeled with safety information, and bear a hang tag providing data about the unit's stability. The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits the following comments on the proposed rule. While the prevention of risk of injury or death to children by furniture tip-over accidents is of the utmost importance, CPSC should consider reasonable alternatives 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 February 3, 2022, CPSC published a proposed rule to establish safety standards for CSUs. CSUs are freestanding furniture items, greater than 27 inches in height, that are typically used for storing clothing. CSUs may include chests, bureaus, dressers, drawer chests, chifferobes, armoires, and clothes wardrobes among others.⁶ The Consumer Product Safety Act authorizes CPSC to promulgate mandatory consumer safety standards if 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

In 2017, the Commission issued an advance notice of proposed rulemaking that discussed the possibility of developing a rule to address the risk of injury or death from CSUs. On February 7, 2018, Advocacy met with CPSC representatives to discuss the advance notice of proposed rulemaking and to share relevant comments from small businesses. At that time, Advocacy reiterated industry compliance with the ASTM voluntary standards, and that industry was willing to comply with updates to those standards in the future.⁹ This proposed rule follows a review of the public comments received on the advance notice.

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 87 Fed. Reg. 6246.

⁷ *Id.* at 6247 citing 15 U.S.C. §2056 (a).

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

⁹ A summary of the meeting is available in the rulemaking docket. *See* Meeting with U.S. Small Business Administration and Consumer Product Safety Commission Staff, (February 7, 2018), <https://www.regulations.gov/docket/CPSC-2017-0044/document>.

The rulemaking attempts to reduce injuries and fatalities caused when a CSU tips over because of a young child attempting to climb on it and/or open the drawers or doors. According to CPSC's data, from 2000 to 2020 there were approximately 226 fatalities associated with CSU tip-overs, 193 of which involved children.¹⁰ CPSC estimated 78,200 nonfatal tip-over injuries from 2006 to 2019 that were treated at a hospital emergency department.¹¹ Of this number, 72 percent involved children. CPSC states that it is promulgating this rule to further reduce the risk of injury or death from such accidents.¹²

CPSC is proposing a mandatory standard for CSUs, as well as labeling and performance and technical information requirements. To comply with the standard, a CSU would need to remain upright while incurring a specified amount of weight and force, and while other criteria specific to the type of CSU are met (such as all drawers being open in a dresser or doors open in an armoire). To achieve this, CPSC outlined two testing methods, one specific to CSUs with drawers, and one applicable to all CSUs.¹³ In addition to passing the testing requirements, manufacturers would also need to include a permanent warning label on each item. The label includes information about the hazards of use of the product, and how to install tip-over restraints.¹⁴ The retailer must also include hang-tags containing information about the safety rating of each CSU at the time of original purchase.¹⁵

II. Advocacy's Comments

A. CPSC's initial Regulatory Flexibility Act analysis underestimates the impact the proposed rule will have on small businesses.

In the proposed rulemaking, CPSC conducts an initial Regulatory Flexibility Act analysis (IRFA) as required by statute.¹⁶ In its IRFA, CPSC states that the average cost per CSU could be between 5 and 25 percent.¹⁷ On February 16, 2022, Advocacy held a small business roundtable to gather feedback on CPSC's analysis and the requirements of the rule. One small importer estimated that additional packing materials and costs plus the increased shipping weight will drive up per unit costs by 44 percent. This does not include costs to test the CSUs or ship them to third parties for testing, nor does it include the cost increases this importer's suppliers will incur in the manufacturing process. Other small manufacturers and importers reported similar estimates of the impacts of the proposed rule, stating that the costs will increase approximately 30-40 percent. These small businesses report that an increase of this magnitude will put many of them out of business.

¹⁰ *Id.* at 6246,

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 6276.

¹⁴ *Id.* at 6280.

¹⁵ *Id.* at 6318.

¹⁶ *Id.* at 6300.

¹⁷ *Id.* at 6302.

Small businesses also stated that CPSC only estimated the cost of installing an interlock system, necessary to ensure only one drawer would open at a time, and not the cost of adding counterweight to the product, which is necessary for the interlock system to work. Roundtable attendees also spoke about increased freight and delivery costs. Finally, they stated that in some instances the new requirements will make the products so heavy they will pose a risk of injury to those delivering the item to the purchaser.

As CPSC describes in their analysis, most of the affected entities will be non-upholstered furniture manufacturers, furniture wholesalers, or furniture stores. This includes 20,485 small businesses, which make up 97.7 percent of all businesses in those industries. Over half of the businesses in these industries have fewer than five employees. Some other manufacturers may be affected as well, including those in upholstered, metal, or other household furniture manufacturing. These industries have a similar makeup but with fewer businesses; the 1,344 small businesses constitute 97.4 percent of all businesses in the industries.¹⁸

Given the discrepancy in the estimates of the impacts of the proposed rule on small businesses, CPSC should consult with Advocacy to ensure that the Commission's analysis accurately portrays the impacts on small entities and that it meets statutory requirements under the Regulatory Flexibility Act. The Commission should consider publishing an updated analysis that includes information from industry about the impacts of the proposed rule.

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

Small furniture manufacturers, importers, and retailers are deeply concerned about child safety and tip-over prevention when using their products. Advocacy encourages CPSC to identify and consider alternatives that minimize the economic impacts to small businesses while still meeting the stated objectives of the rule.

1. CPSC should consider a later effective date for the rulemaking, and in the interim require small businesses to educate and assist consumers with existing product safety options.

While preventing tip-over incidents is of the utmost importance to small businesses, they will need additional time to respond to the rulemaking's requirements. The proposed rule will take effect 30 days after rule finalization.¹⁹ This is problematic because small businesses will not have enough time to redesign their products to comply with the proposed requirements. Small businesses that import products will incur additional difficulties due to existing supply chain disruptions, as well as normal lead times required for some of these products.

Some small business owners stated that they will simply not have any inventory available for sale for an extended period until they are able to redesign their products to comply with the rule.

¹⁸ *Id.* at 6300-6301.

¹⁹ *Id.* at 6298.

This will leave a hole in the industry whereby new products are not available for purchase. Instead, consumers may look to purchase older, used models that have even fewer safety features.

The Commission sought comments on the proposed effective date but stated that delaying the rule would delay safety benefits.²⁰ Advocacy acknowledges that a longer effective date may delay benefits. However, given the potential for consumers to buy less safe products, CPSC should consider offering additional time for small businesses to comply with the rule. In the interim, CPSC could minimize safety risks by requiring manufacturers to continue to educate consumers about product safety, including requiring wall anchor kits to be given upon purchase of a CSU, offering to install the anchor kit for the purchaser, providing tags and labels that clearly identify the risks and potential injuries, and other activities as deemed appropriate.

2. CPSC should reconsider its two proposed testing methods, as they produce different results that may be confusing for consumers and small businesses alike.

In the proposed rule, CPSC offers two different methods for testing the potential for CSU tip-over incidents. The Commission states that Test Method 1 is most appropriate for CSUs with drawers or pull-out shelves, while Test Method 2 is appropriate for any CSU.²¹ When small businesses attempted to reproduce both testing methods on the same product, they had differing results, and in some instances the product was compliant by one method and non-compliant by another.²² The Commission should therefore revisit the necessity for having two methods if Test Method 2 is appropriate for any CSU, and consider adopting one method so that there is less variability and confusion.

3. CPSC should consider updating existing voluntary standards if it is appropriate to do so.

Another potential alternative to the rulemaking would be to update the existing voluntary standards. CPSC outlined the inadequacies of several existing voluntary standards in its rulemaking.²³ In each instance, CPSC stated that the standard was inadequate to address the risk of injury or fatality from a tip-over accident and made detailed assertions about those inadequacies. Advocacy would encourage the Commission to work with industry to address the defects in these standards and adopt these updates if it is appropriate to do so. Updating existing standards will ensure that industry has a voice in the process, which may help in minimizing the impacts to small businesses.

²⁰ *Id.*

²¹ *Id.* at 6276.

²² *See* Comments from the American Home Furnishings Alliance, dated October 8, 2021.

²³ *Id.* at 6254-6258.

- 4. CPSC should clarify that once a product has been tested and certified, small importers and retailers may rely on that certification without incurring additional testing costs.**

In the proposed rule, CPSC states that small importers would be required to issue a general certificate of conformity to verify that their CSU products comply with the rule.²⁴ Importers may rely on a certificate issued by the supplier (manufacturer). CPSC does not specify whether retailers may similarly rely on these certificates if the retailer is not the same as the importer. Advocacy suggests that CPSC clarify that once a product has been tested and certified, each additional party in the supply chain may use that certification without the need for additional testing.

III. Conclusion

Both Advocacy and small businesses are concerned for the safety of children with respect to CSU tip-over accidents. While child safety is paramount, CPSC should 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
U.S. Small Business Administration

Copy to: Dominic Mancini, Deputy Administrator
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²⁴ *Id.* at 6302.