

Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

DATE: March 22, 2023

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel, Regulatory Affairs

SUBJECT: Implementation of STURDY § 201(d): Determination Regarding ASTM F2057-23 and
Draft Direct Final Rule

BALLOT VOTE DUE: Tuesday, March 28, 2023

The STURDY provisions of the Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, Div. BB, tit. II, § 201, 136 Stat. 4459 (Dec. 29, 2022), require the Commission to determine whether “a voluntary standard exists that meets the requirements” Congress specified in the statute for protecting children against tip-overs of clothing storage units (CSUs). STURDY § 201(d)(1). If the Commission determines that a voluntary standard exists that was published not later than 60 days after STURDY’s enactment, was developed by ASTM International or another appropriate voluntary standards organization, and meets STURDY’s requirements for protecting children up to 72 months of age from injury or death from tip-overs of CSUs, then the Commission must, within 90 days of its determination, “promulgate a final consumer product safety standard” adopting the voluntary standard. STURDY § 201(d).

On February 6, 2023, ASTM International published a revised version of its Standard Safety Specification for Clothing Storage Units, ASTM F2057. As discussed in the accompanying briefing memorandum, staff advises that the Commission could determine that ASTM F2057-23 satisfies STURDY’s requirements. If the Commission so determines, then the Office of the General Counsel recommends publication of the attached draft direct final rule that adopts the performance requirements of ASTM F2057-23 as the Safety Standard for Clothing Storage Units in 16 C.F.R. part 1261, in place of the current part 1261 requirements that otherwise will take effect on May 24, 2023. Absent significant public comment, the direct final rule would be effective for CSUs manufactured starting 120 days after its publication in the *Federal Register*. The draft *Federal Register* document also stays implementation of the current part 1261 requirements, so that they will not take effect on May 24, 2023.

Please indicate your vote on the following options:

- I. Determine that ASTM F2057-23 meets the requirements of STURDY section 201(d) and direct staff to publish the draft *Federal Register* notice to revise 16 C.F.R. part 1261 accordingly and stay the current requirements of part 1261.

(Signature)

(Date)

- II. Determine that ASTM F2057-23 does not meet the requirements of STURDY section 201(d) and direct CPSC staff to notify ASTM of this determination and that the Commission is retaining the existing Safety Standard for Clothing Storage Units in 16 C.F.R. part 1261.

(Signature)

(Date)

- III. Take other action specified below.

(Signature)

(Date)

Attachment: March 22, 2023, Staff Briefing Memorandum: Assessment of ASTM F2057-23, Standard Safety Specification for Clothing Storage Units, against the requirements of STURDY, Pub. L. No. 117-328, Div. BB, tit. II, § 201, 136 Stat. 4459 (Dec. 29, 2022).

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1261

[Docket No. CPSC-2023-0015]

Safety Standard for Clothing Storage Units

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In November 2022, the U.S. Consumer Product Safety Commission published a consumer product safety standard for clothing storage units (CSUs) to protect children from tip-over-related death or injury, with an effective date of May 24, 2023. In December 2022, the President signed into law the STURDY legislation, which requires CPSC to either develop and promulgate a new consumer product safety standard for CSUs that meets certain requirements specified in STURDY or determine that a voluntary standard exists that meets STURDY's requirements. If the Commission determines that a timely issued voluntary standard satisfies STURDY's criteria, then STURDY requires the Commission to promulgate a final consumer product safety standard that adopts the applicable performance requirements of the voluntary standard, to supersede any existing CSU rule. On XXXX XX, 2023, the Commission determined that ASTM F2057-23, Standard Safety Specification for Clothing Storage Units, is a voluntary standard that meets the requirements of STURDY. In light of that determination, this direct final rule adopts the requirements of ASTM F2057-23 as required by STURDY. Because STURDY provides that adoption of the ASTM standard will supersede CPSC's current rule, the current CSU rule published on November 25, 2022, is stayed and will not take effect.

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DATES: The rule is effective [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the Commission receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the Commission receives such a comment, it will publish a notice in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The CSU rule promulgated by CPSC on November 25, 2022, is stayed as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2023-0015, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

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Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2023-0015, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7945 or (888) 531-9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

On November 25, 2022, the Commission published a consumer product safety standard to protect children from tip-over-related death or injury from CSUs (the current CSU rule), with an effective date of May 24, 2023. 87 FR 72,598.

On December 29, 2022, President Biden signed STURDY into law. Pub. L. 117-328, 136 Stat. 4459, Div. BB, tit. II, § 201. STURDY provides that the Commission must assess whether “a voluntary standard exists that meets” the performance and warning requirements in the statute. STURDY § 201(d)(1). Specifically, the standard must protect children from tip-over-related death or injury with “tests that simulate the weight of children up to 60 pounds,”

“tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force,” “testing of all clothing storage units, including those 27 inches and above in height,” and warnings. STURDY § 201(c)(2).

If the Commission determines that a voluntary standard exists that was published not later than 60 days after STURDY’s enactment, was developed by ASTM International or another similar voluntary standards organization, and meets STURDY’s requirements for protecting children from tip-over-related death or injury, then the Commission must, within 90 days of its determination, “promulgate a final consumer product safety standard” that adopts the voluntary standard’s relevant performance requirements. STURDY § 201(d). Those mandatory requirements “will supersede any other existing standard for clothing storage units to protect children from tip-over related death or injury.” STURDY § 201(d)(1).

If, however, no mandatory safety standard has been established for CSUs based on a voluntary standard, then by December 29, 2023, the Commission must “promulgate a final consumer product safety standard for clothing storage units to protect children from tip-over-related death or injury.” STURDY §§ 201(c)(1) and (c)(1)(B).

A consumer product safety standard promulgated under STURDY “shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).” STURDY §§ 201(c)(4), (d)(1).¹

II. ANALYSIS OF ASTM F2057-23

On February 6, 2023, ASTM International published a revised version of its Standard Safety Specification for Clothing Storage Units, ASTM F2057-23.

¹ On XXXX XX, 2023, the Commission voted (X-X) to publish this direct final rule.

A. Consultation with Stakeholders

Over more than five years, CPSC staff has collaborated extensively and received comments from manufacturers and retailers of CSUs, consumer groups, independent product safety experts, and other stakeholders, both within the ASTM standards-setting process and during CPSC's notice-and-comment rulemaking. This consultation continued through the development and balloting of ASTM F2057-23 and after the adoption of STURDY, including a broadly attended set of meetings hosted at CPSC's laboratory in January 2023.

Following ASTM's adoption of ASTM F2057-23, the Commission received recommendations that it determine that ASTM F2057-23 meets the requirements of STURDY. On February 7, 2023, Parents Against Tip-overs (PAT) and the American Home Furnishings Alliance (AHFA) jointly sent a letter to the Commission, in which they made a "request for prompt agency action to review and consider F2057-23 as a mandatory product safety standard for clothing storage furniture." Attachment A to the Staff Briefing Package.² PAT and AHFA asserted that the updated standard "meets the specific requirements of the Act" because:

- It includes performance tests that simulate "real-world" use of clothing storage furniture;
- It includes performance tests that account for the impact of carpeted flooring on CSU stability, as well as the impact of "loaded" drawers, multiple open drawers, and the dynamic force of a child climbing or playing on the unit; and,
- The performance tests simulate the weight of children up to 60 pounds and apply to all clothing storage units 27 inches and above in height.

² The Staff Briefing Package is available at XXXX.

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PAT and AHFA also cited both STURDY and ASTM F2057-23 as “the result of an extraordinary collaborative effort between parents, industry, consumer advocates and child safety experts,” that “achieved rare bipartisan backing in Congress.”

On February 20, 2023, PAT submitted a second letter to urge “acceptance of ASTM F2057-23 as the final consumer product safety standard for CSUs, according to the guidance provided under The STURDY Act.” Attachment B to the Staff Briefing Package. PAT stated in that letter that “[t]he tip-over problem has gone unresolved for far too long, and adopting the new ASTM standard is the solution that will result in much more stable CSUs” than have historically been sold, and thereby “save lives.” In addition, PAT reiterated its assertion that ASTM F2057-23 was designed to and does meet the requirements of STURDY.

On March 3, 2023, Donald Mays, an independent product safety expert, sent the Commission an assessment of the ASTM standard. Mr. Mays stated that he analyzed the ASTM standard and the requirements of STURDY and concluded that the Commission should “adopt ASTM F2057-23 and incorporate that standard by reference in their rule.” Attachment C to the Staff Briefing Package. On March 6, 2023, Kids in Danger and Consumer Reports jointly sent a letter to the Commission in which they similarly “urge[d] the Commission to promulgate a final consumer product safety standard under the STURDY Act ... that adopts [ASTM F2057-23’s] performance requirements as mandatory.” Attachment D to the Staff Briefing Package. Also on March 6, 2023, the Home Furnishings Association (HFA), which stated that it represents 1,550 members and more than 8,000 storefronts across the country, wrote to the Commission urging adoption of ASTM F2057-23. HFA stated, “We strongly believe that the revised ASTM 2057-2023 safety standard for clothing storage units meets the criteria outlined in the STURDY Act

and must be adopted by the CPSC as the federal Safety Standard. It achieves everyone's goals of protecting children." Attachment E to the Staff Briefing Package.

B. Staff Assessment of the Voluntary Standard

Staff assessed the voluntary standard in a Staff Briefing Package. Staff noted that STURDY defines a clothing storage unit as "any free-standing furniture item manufactured in the United States or imported for use in the United States that is intended for the storage of clothing, typical of bedroom furniture." STURDY § 201(a). STURDY also provides, however, that CPSC "shall specify the types of furniture items within the scope of subsection (a) as part of a standard promulgated under [STURDY] based on tip-over data as reasonably necessary to protect children up to 72 months of age." STURDY § 201(b). For a standard to satisfy the requirements of STURDY, all types of clothing storage units specified by CPSC, "including those 27 inches and above in height," must be tested. STURDY § 201(c)(2)(C).

ASTM F2057-23 applies to "free-standing clothing storage units, including but not limited to chests, chests of drawers, drawer chests, armoires, [chifforobes], bureaus, door chests, and dressers, which are 27 in. (686 mm) or greater in height, 30 lb (13.6 kg) or greater in mass, and contain 3.2 ft³ (90.6 dm³) or greater of enclosed storage volume." ASTM F2057-23 § 1.1. The standard "does not cover shelving units, such as bookcases or entertainment furniture, office furniture, dining room furniture, jewelry armoires, underbed drawer storage units, occasional/accent furniture not intended for bedroom use, laundry storage/sorting units, or built-in units intended to be permanently attached to the building, nor does it cover 'Clothing Storage Chests' as defined in Consumer Safety Specification F2598." ASTM F2057-23 § 1.2.

Although the ASTM voluntary standard does not include all CSUs as defined in section 201(a) of STURDY, staff noted that STURDY contemplates that not all "clothing storage units"

would be subject to a mandatory standard and gives CPSC the authority to limit “the types of furniture items” that are within the scope of the rule based on tip-over data. STURDY § 201(b). Indeed, STURDY specifies that covered CSUs are limited to those “intended for the storage of clothing, typical of bedroom furniture,” which staff noted could further support a finding that the ASTM standard’s exclusion of types of furniture that are not free-standing, not intended for clothing storage, and/or not bedroom furniture meets the requirements of STURDY. STURDY § 201(a).

The ASTM standard excludes units weighing less than 30 pounds empty. The Commission has previously noted an absence of known incidents causing death or serious injury for CSUs that weigh less than 30 pounds empty (see 87 FR at 72,628, Table 1). Therefore, staff assessed that based on known tip-over data, the Commission could find that testing units of less than 30 pounds is not “reasonably necessary” to protect children from injury or death. STURDY § 201(b).

Similarly, staff noted that while there are data on nonfatal incidents associated with tip-overs of CSU having a storage volume less than 3.2 cubic feet, ASTM based this volume on the lowest known volume of a fatal incident-involved CSU with a height of 27 inches or above. Staff therefore concluded that the Commission could find that, based on tip-over data, testing units having a storage volume less than 3.2 cubic feet is not “reasonably necessary” to protect children from injury or death. STURDY § 201(b).

STURDY section 201(d)(2) establishes a checklist of requirements that a voluntary standard must meet to become a mandatory standard. The first requirement is that the standard “protects children up to 72 months of age from tip-over-related death or injury.” STURDY §201(d)(2)(A). Section 7.1 of the ASTM standard states: “The test methods in this safety

specification are intended to simulate the reaction of a clothing storage unit on carpet, loaded drawers, multiple open drawers, and a dynamic force from possible interaction of a child up to 72 months.” Staff therefore assessed that the Commission could conclude that the standard “protects children up to 72 months of age from tip-over-related death or injury,” as further described below.

Section 201(d)(2)(B) of STURDY requires that a voluntary standard must meet requirements described in subsection (c)(2). Subsection (c)(2) in turn requires:

- Tests that simulate the weight of children up to 60 pounds;
- Objective, repeatable, reproducible, and measurable tests, or series of tests, that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force;
- Testing of all clothing storage units as specified by the Commission, including those 27 inches and above in height; and
- Warning requirements based on ASTM F2057-19, or its successor at the time of STURDY’s enactment, provided that the Commission may strengthen the warning requirements of ASTM F2057-19 or its successor if reasonably necessary to protect children from tip-over-related death or injury.

Staff assessed that the Commission could find that the ASTM standard includes tests that simulate the weight of children up to 60 pounds. Staff noted that STURDY appears to use 72 months and 60 pounds interchangeably; this, and the structure of STURDY, suggest that Congress considered 60 pounds a representative weight for a 72-month-old child. According to the 2000 Centers for Disease Control Clinical Growth Charts, which ASTM members used as a

reference for ASTM F2057-23, 60 pounds is the approximate weight of a 95th percentile 72-month-old child.

STURDY requires tests that simulate the weight of children up to 60 pounds, and ASTM F2057-23 has a set of three stability tests to simulate the capability of a child weighing up to 60 pounds interacting with a CSU. The first stability test, Section 9.2.1 Simulated Clothing Load, loads drawers with simulated clothing loads. The CSU must not tip over with all doors and extendible elements (movable load-bearing storage components including, but not limited to, drawers and pullout shelves) open. Staff assessed that it would be reasonable to conclude that a child weighing up to 60 pounds would be able to open loaded drawers and that the Commission could conclude that this is a test that simulates the weight of children up to 60 pounds.

The second stability test, Section 9.2.2 Simulated Horizontal Dynamic Force, applies a 10-pound horizontal force over a period of at least 5 seconds at a “hand-hold” not to exceed a 56-inch height, and then holds the force for at least 10 seconds. The Staff Briefing Package cites a study that found the elbow pull strength of children 2 to 5 years old to be in the range of 6.14 to 26.0 pounds. Staff assessed that the Commission could conclude that this second stability test simulates the pull force of children up to 60 pounds.

The third stability test, Section 9.2.3 Simulating a Reaction on Carpet with Child Weight, uses 60 pounds of weight placed on the edge of an open drawer or pull-out shelf, while the CSU is tilted forward using a 0.43 inch test block to simulate placement on a carpeted surface, with all doors and extendible elements open. Based on the requirements of STURDY, staff assessed that

the Commission could conclude that this is a test that simulates the static weight of children up to 60 pounds.

STURDY also requires “objective, repeatable, reproducible, and measurable tests or series of tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force.” STURDY § 201(c)(2)(B). Staff noted that the ASTM F2057-23 test methods describe the steps to take, specifications for test apparatus, load, dimension, and tolerances for dimensions and loads, all of which are consistent with accepted practices. Because all of these test methods are specified in the ASTM standard, staff assessed that the Commission could conclude that the tests in ASTM F2057-23 are objective, repeatable, reproducible, and measurable.

Staff assessed that the ASTM stability tests utilize tests or a series of tests that represent real-world conditions. For example, section 9.2.1 Simulated Clothing Load tests the CSU with multiple open and loaded drawers on a flat surface. Section 9.2.3 of ASTM 2057-23, described above, is a stability test that simulates placement on a carpeted surface with open drawers. The use of a 0.43-inch thick test block (as specified in section 8.2.3) is consistent with the carpet simulation in CPSC’s final CSU rule. See 87 FR 72,636. Staff assessed that the Commission could, therefore, conclude that ASTM F2057-23 includes a stability test that simulates interaction with a CSU on a carpeted surface, which is a real-world condition.

Section 9.2.1 of the ASTM standard, Simulated Clothing Load, is a test conducted on a hard, level, and flat test surface with extendible elements and doors open and, if 50 percent or more of the storage volume is extended, the unit is to be filled with a “simulated clothing load.” The fill weight in extendible elements is calculated using a density of 8.5 pounds per cubic foot

of volume, which is the same density used by the Commission in its November 2022 rule. *See* 87 FR 72,610-11. All extendible elements are opened and must remain open for 30 seconds without tip over. Based on this test, staff assessed that the Commission could conclude that ASTM F2057-23 includes a test that simulates drawers with items in them and multiple open drawers, which is another scenario reflecting real-world use.

STURDY section 201(c)(2)(D) requires warnings based on ASTM F2057-19 (the predecessor standard to ASTM F2057-23). Many of the warning requirements in section 10 of ASTM F2057-23, Marking and Labeling, are substantively identical to those in the 2019 version. Product safety expert Donald Mays has opined that the ASTM F2057-23 warning requirements differ from the F2057-19 requirements by being “more specific,” adding requirements for conspicuous placement, and warning against defeating drawer interlocks. Mays Letter at 4. Therefore, staff assessed that the Commission could conclude that ASTM F2057-23 meets the warning requirements of STURDY.

Lastly, under STURDY section 201(d)(2)(C) and (D), a voluntary standard must be “developed by ASTM International” or another voluntary standards organization that the Commission deems appropriate, and such standard must be published not later than 60 days after STURDY’s enactment, *i.e.*, by February 27, 2023. STURDY § 201(d)(2)(C) and (D). ASTM F2057-23, which ASTM International published on February 6, 2023, satisfies these requirements.

C. Commission Determination

Based on the Commission’s assessment of ASTM F2057-23 and for the reasons stated in the Staff Briefing Package, on XXXX XX, 2023, the Commission determined that ASTM F2057-23 meets the requirements of STURDY. Therefore, as required by STURDY, this direct

final rule adopts the requirements of that voluntary standard as a consumer product safety standard. Because STURDY provides that adoption of the voluntary standard “will supersede any other existing standard for clothing storage units,” the current CSU rule would only be in effect for about two months before being superseded by this new standard. Therefore, the Commission finds good cause to stay the current CSU rule as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], so that it will not take effect.

The Commission’s determination to adopt ASTM F2057-23 is based on the specific provisions of that standard and the unique history of its adoption in conjunction with the STURDY legislation. The Commission does not anticipate approving through the standard-revision process of STURDY section 201(e) any changes to ASTM F2057-23 that would reduce the level of protection for children up to 72 months of age from tip-over-related death or injury. After December 2027, moreover, STURDY allows the Commission “to modify the requirements of [an adopted voluntary] standard or to include additional provisions if the Commission makes a determination that such modifications or additions are reasonably necessary to protect children from tip-over-related death or injury.” STURDY § 201(f)(1).

III. Incorporation by Reference

In accordance with regulations of the Office of the Federal Register (OFR), 1 CFR part 51, this preamble summarizes ASTM F2057-23 and its availability to interested parties. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy is available for viewing on ASTM’s website at:

<https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/>

READINGLIBRARY. Additionally, interested parties can purchase a copy of ASTM F2057-23

from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. This material also is available for inspection at CPSC and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to www.archives.gov/federal-register/cfr/ibr-locations.html. Interested parties can schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7479; email: cpsc-os@cpsc.gov.

IV. Testing and Certification

Section 14(a) of the CPSA includes requirements for certifying that children's products and non-children's products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products.

A "children's product" is a consumer product "designed or intended primarily for children 12 years of age or younger." *Id.* 2052(a)(2). The following factors are relevant when determining whether a product is a children's product:

- Manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and

- The Age Determination Guidelines issued by CPSC staff in September 2002, available at <https://www.cpsc.gov/content/2002-Age-Determination-Guidelines>, and any successor to such guidelines.

Id. “For use by children 12 years and younger” generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children’s products may be decorated or embellished with a children’s theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

This rule requires CSUs that are not children’s products to meet the certification requirements under section 14(a)(1) of the CPSA and requires CSUs that are children’s products to meet the certification requirements under section 14(a)(2) and (a)(3) of the CPSA. The Commission’s requirements for certificates of compliance are codified at 16 CFR part 1110. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers) of a non-children’s product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a)(1). Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children’s product that is subject to a children’s product safety rule to certify that, based on a third-party conformity assessment body’s testing, the product complies with the applicable children’s product safety rule. *Id.* 2063(a)(2). Section 14(a) also requires the Commission to publish a notice of requirements (NOR) for a third-party conformity assessment body (*i.e.*, testing laboratory) to obtain accreditation to assess conformity with a children’s product safety rule. *Id.* 2063(a)(3)(A). Because some CSUs are children’s products, the rule is a children’s product safety rule as applied to those products.

The Commission published a final rule, codified at 16 CFR part 1112, Requirements Pertaining to Third Party Conformity Assessment Bodies, which established requirements and criteria concerning testing laboratories. Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. The stability standard for CSUs is on the list of children's product safety rules for which CPSC has issued an NOR. 87 FR 72,598 (Nov. 25, 2022); 16 CFR 1112.15(b)(54). Testing laboratories that apply for CPSC acceptance to test CSUs that are children's products for compliance with the rule must meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1261, Safety Standard for Clothing Storage Units, in the laboratory's scope of accreditation listed on the CPSC website at www.cpsc.gov/labsearch.

The requirements of ASTM F2057-23 are sufficiently similar to the current CSU rule that firms approved to test to the current rule can also test to ASTM F2057-23. Therefore, the existing NOR will remain in place. CPSC-accepted third party labs are expected to update the scope of their accreditations to reflect the revised standard in the normal course of renewing their accreditations.

V. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act, 5 U.S.C. 551-559, generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an

exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B).

The purpose of this direct final rule is to adopt the applicable performance requirements of ASTM F2057-23. STURDY requires that once the Commission has determined that ASTM F2057-23 “exists” and “meets the requirements” of STURDY section 201(d)(2), it must adopt the applicable performance requirements of ASTM F2037-23, which “shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act.” STURDY § 201(d)(1). Because the Commission made this determination on XXXX XX, 2023, the adoption of ASTM F2057-23 as a mandatory standard is required by law, and public comments would not lead to substantive changes to the standard or to the effect of the standard as a consumer product safety rule. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion undermining “the rule’s underlying premise or

approach,” or a showing that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply.

VII. Paperwork Reduction Act

The current CSU rule includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). This revised mandatory standard contains similar warning and labeling requirements compared to the current rule, but does not require a hang tag. Therefore, this rule does not increase the burden of these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1261, including obtaining approval and a control number. Because the warning and labeling burden is similar and there is no increase in the information collection burden but only a reduction, the

revision does not affect the information collection requirements or approval related to the standard.

VIII. Environmental Considerations

The Commission’s regulations provide for a categorical exclusion from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

IX. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. STURDY deems a rule issued under that Act to be a “consumer product safety standard.” Therefore, once this takes effect, it will preempt in accordance with section 26(a) of the CPSA.

X. Effective Date

Under STURDY, this rule “shall take effect 120 days after the date of the promulgation of the rule, or such a later date as the Commission determines appropriate.” Manufacturers of CSUs have been aware of new stability requirements since the current CSU rule was published in November 2022, and the instant rule is based on a voluntary standard published in February 2023. The Commission accordingly will make this rule effective 120 days after promulgation.

Unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As a consumer product safety standard under the CPSA, this rule applies to CSUs manufactured after the effective date. 15 U.S.C. § 2058(g)(1).

XI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA has determined that this rule is a “major rule” as defined in 5 U.S.C. § 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1261

Consumer protection, Imports, Incorporation by reference, Information, Labeling, Safety

The Commission amends 16 CFR part 1261 as follows:

PART 1261 – SAFETY STANDARD FOR CLOTHING STORAGE UNITS

1. Revise the authority citation for part 1261 to read as follows:

Authority: 15 U.S.C. 2058; Pub. L. 117-328, 136 Stat. 4459, Div. BB, tit. II, § 201.

2. Amend 1261.1 by revising paragraph 1261.1 to read as follows:

§ 1261.1 Scope and purpose.

(a) *Scope and purpose.* This part, a consumer product safety standard, prescribes safety requirements for clothing storage units, as defined in paragraph (b). The requirements in this part are intended to protect children up to 72 months of age from tip-over-related death or injury.

(b) *Application.* Clothing storage unit means any free-standing furniture item manufactured in the United States or imported for use in the United States that is intended for the storage of clothing, typical of bedroom furniture. All clothing storage units that are manufactured after [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], are subject to the requirements of this part.

3. Amend 1261.2 by revising paragraph 1261.2 to read as follows:

§ 1261.2 Requirements for clothing storage units.

Each clothing storage unit that is subject to ASTM F2057-23, *Standard Safety Specification for Clothing Storage Units*, approved on February 1, 2023, shall comply with ASTM F2057-23. ASTM F2057-23 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: cpsc-os@cpsc.gov. For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to www.archives.gov/federal-register/cfr/ibr-locations.html. A free, read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may also obtain a copy from ASTM

International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959;
phone: (610) 832-9585; www.astm.org.

§ 1261.3 [Removed]

4. Remove § 1261.3

§ 1261.4 [Removed]

5. Remove § 1261.4

§ 1261.5 [Removed]

6. Remove § 1261.5

§ 1261.6 [Removed]

7. Remove § 1261.6

§ 1261.7 [Removed]

8. Remove § 1261.7

§ 1261.8 [Removed]

9. Remove § 1261.8

Alberta E. Mills,
Secretary,
Consumer Product Safety Commission.



Memorandum

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
Jason Levine, Executive Director

FROM: DeWane Ray, Deputy Executive Director for Operations

SUBJECT: Assessment of ASTM F2057-23, Standard Safety Specification for Clothing Storage Units, against the requirements of STURDY, Pub. L. No. 117-328, Div. BB, tit. II, § 201, 136 Stat. 4459 (Dec. 29, 2022).

DATE: March 22, 2023

CPSC staff has assessed ASTM F2057-23, Standard Safety Specification for Clothing Storage Units, against the requirements of STURDY, Pub. L. No. 117-328, Div. BB, tit. II, § 201, 136 Stat. 4459 (Dec. 29, 2022). As explained in detail below, the Commission could determine that ASTM F2057-23 meets STURDY’s requirements. If the Commission makes that determination, then ASTM F2057-23 must be incorporated into a mandatory consumer product safety standard.

I. BACKGROUND

Since at least 2015, CPSC has sought to reduce and prevent tip overs of clothing storage units (CSUs), which have caused numerous deaths and injuries to children. See 82 Fed. Reg. 56,752, 56,752-53 (Nov. 30, 2017) (discussing past efforts and issuing advance notice of proposed rulemaking). Because these units store clothing in the home, young children are likely to be familiar with and have easy access to them. And because they feature closed storage behind drawers or doors, children often open these elements and explore, play, and climb. See 87 Fed. Reg. 72,598, 72,626 (Nov. 25, 2022) (issuing final CSU tip-over rule). When a unit tips over onto a child, it can cause severe or fatal injuries. *Id.* at 72,602.

On December 29, 2022, President Biden signed STURDY into law as Division BB, title II, section 201 of the Consolidated Appropriations Act of 2023. STURDY requires the Commission, not later than one year after the date of the enactment of that Act (December 29, 2023), to “promulgate a final consumer product safety standard for clothing storage units to protect children from tip-over-related death or injury.” STURDY § 201(c)(1)(B). The promulgated standard must protect children from tip-over-related death or injury with “tests that simulate the weight of children up to 60 pounds”; “tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted

surfaces, drawers with items in them, multiple open drawers, and dynamic force”; “testing of all clothing storage units, including those 27 inches and above in height”; and “warning requirements.” STURDY § 201(c)(2).

Congress also directed the Commission to assess whether “a voluntary standard exists that meets” the performance and warning requirements of the statute. STURDY § 201(d)(1). If the Commission determines that a voluntary standard exists that was published not later than 60 days after STURDY’s enactment, was developed by ASTM International or another similar voluntary standards organization, and meets STURDY’s requirements for protecting children, then the Commission must, within 90 days of its determination, “promulgate a final consumer product safety standard” that adopts the voluntary standard’s relevant performance requirements. Those mandatory requirements “will supersede any other existing standard for clothing storage units to protect children from tip-over related death or injury.” *Id.*

II. ANALYSIS OF ASTM F2057-23

Over more than five years, CPSC staff has collaborated extensively and received comment from manufacturers and retailers of CSUs, consumer groups, independent product safety experts, and other stakeholders, including within the ASTM standards-setting process. This consultation continued after the adoption of STURDY, such as a broadly attended set of meetings hosted at CPSC’s laboratory in January 2023.

On February 6, 2023, ASTM International published a revised version of its Standard Safety Specification for Clothing Storage Units, ASTM F2057-23 (available at <https://www.astm.org/products-services/reading-room.html>). On February 7, Parents Against Tip-overs (PAT) and the American Home Furnishings Alliance (AHFA) jointly sent a letter to the Commission (Attachment A), in which they made a “request for prompt agency action to review and consider F2057-23 as a mandatory product safety standard for clothing storage furniture.” PAT and AHFA asserted that the updated standard “meets the specific requirements of the Act” because, they wrote:

- It includes performance tests that simulate “real-world” use of clothing storage furniture;
- It includes performance tests that account for the impact of carpeted flooring on CSU stability, as well as the impact of “loaded” drawers, multiple drawers open, and the dynamic force of a child climbing or playing on the unit; and,
- The performance tests simulate the weight of children up to 60 pounds and apply to all clothing storage units 27 inches and above in height.

PAT and AHFA cited STURDY and ASTM F2057-23 as “the result of an extraordinary collaborative effort between parents, industry, consumer advocates and child safety experts,” that “achieved rare bipartisan backing in Congress.”

On February 20, 2023, PAT submitted a second letter (Attachment B) “to urge your acceptance of ASTM F2057-23 as the final consumer product safety standard for CSUs, according to the guidance provided under The STURDY Act.” PAT stated in that letter that “[t]he tip-over problem has gone unresolved for far too long, and adopting the new ASTM standard is the solution that will result in much more stable CSUs and save lives.” In addition, PAT reiterated their assertion that ASTM F2057-23:

was designed to meet the requirements of paragraph (2) from STURDY. This new voluntary standard:

- Protects children from tip-over-related death or injury with a test that simulates the weight of children up to 60 pounds.
- Is an objective, repeatable, reproducible, and measurable series of tests that simulates real-world use and accounts for impacts on clothing storage unit stability that results from placement on carpeted surfaces, drawers, and dynamic force.
- Tests all clothing storage units, including those 27 inches and above in height.
- Has sufficient warning and labeling requirements.

On March 3, 2023, Donald Mays, an independent product safety expert, sent a letter to the Commission (Attachment C) encouraging the Commission to adopt ASTM F2057-23 and incorporate that standard by reference in their rule. On March 6, 2023, Kids in Danger and Consumer Reports jointly sent a letter to the Commission (Attachment D) in which they similarly “urge[d] the Commission to promulgate a final consumer product safety standard under the STURDY Act ... that adopts [ASTM F2057-23’s] performance requirements as mandatory.” (Citation omitted.) Additionally on March 6, 2023, The Home Furnishings Association (HFA) sent a letter to the Commission (Attachment E) urging the Commission to adopt the ASTM 2057-2023 standard as the federal safety standard for clothing storage units.

On March 7, 2023, the Commission received a letter from a bipartisan, bicameral Congressional group (Attachment F) emphasizing PAT’s support for adopting ASTM 2057-23 and encouraging the Commission to use its expertise to swiftly evaluate the ASTM voluntary standard.

Pursuant to STURDY § 201(d)(1), CPSC staff has assessed ASTM F2057-23 against the requirements of STURDY. As explained in detail below, staff concludes that the Commission could determine that ASTM F2057-23 meets the requirements of STURDY section 201(d)(2). If the Commission determines it does, then, under STURDY section 201(d)(1), ASTM F2057-23 must be incorporated into a mandatory consumer product safety standard.

A. Scope of the Voluntary Standard

For purposes of STURDY, “clothing storage unit means any free-standing furniture item manufactured in the United States or imported for use in the United States that is intended for the storage of clothing, typical of bedroom furniture.” STURDY § 201(a). But the safety standard required by STURDY does not necessarily have to apply to all these CSUs. Instead, CPSC “shall specify the types of furniture items within the scope of subsection (a) as part of a standard promulgated under [STURDY] based on tip-over data as reasonably necessary to protect children up to 72 months of age.” STURDY § 201(b). For a standard to satisfy the requirements of STURDY, all types of clothing storage units specified by CPSC, “including those 27” and above in height,” must be tested. STURDY § 201(c)(2)(C).

ASTM F2057-23 applies to “free-standing clothing storage units, including but not limited to chests, chests of drawers, drawer chests, armoires, chifforobes, bureaus, door chests, and dressers, which are 27 in. (686 mm) or greater in height, 30 lb (13.6 kg) or greater in mass, and contain 3.2 ft³ (90.6 dm³) or greater of enclosed storage volume.” ASTM F2057-23 § 1.1. The

standard “does not cover shelving units, such as bookcases or entertainment furniture, office furniture, dining room furniture, jewelry armoires, underbed drawer storage units, occasional/accent furniture not intended for bedroom use, laundry storage/sorting units, or built-in units intended to be permanently attached to the building, nor does it cover ‘Clothing Storage Chests’ as defined in Consumer Safety Specification F2598.” ASTM F2057-23 § 1.2. The ASTM voluntary standard therefore does not cover all CSUs as defined by STURDY itself. Congress, however, gave CPSC authority to limit the scope of CSU testing based on tip-over data.

ASTM excludes units weighing less than 30 pounds empty. Although this does not consider the weight of filling material such as clothing, STURDY does not require that drawer fill be accounted for in this scope determination. Given the absence of known incidents causing death or serious injury for CSUs that weigh less than 30 pounds empty (see 87 Fed. Reg. at 72,628, Table 1), the Commission could conclude, “based on tip-over data,” that testing units of less than 30 pounds is not “reasonably necessary” to protect children from injury or death. STURDY § 201(b).

Similarly, while there are data on nonfatal incidents associated with tip-overs of units with a storage volume lower than 3.2 cubic feet, most incidents likely involve CSUs with storage volumes greater than the ASTM threshold of 3.2 cubic feet. ASTM based this volume on the lowest known volume of a fatal incident-involved with a CSU with a height of 27 inches or above. The Commission could conclude, “based on tip-over data,” that testing units having a storage volume lower than 3.2 cubic feet is not “reasonably necessary” to protect children from injury or death. STURDY § 201(b).

The ASTM standard identifies several products that are excluded from the standard, such as bookcases or entertainment furniture, office furniture, dining room furniture, jewelry armoires, underbed drawer storage units, occasional/accent furniture not intended for bedroom use, laundry storage/sorting units, or built-in units intended to be permanently attached to the building. Nor does it cover “Clothing Storage Chests” as defined in Consumer Safety Specification F2598. STURDY specifies that covered CSUs are those “intended for the storage of clothing, typical of bedroom furniture,” which is generally consistent with the ASTM standard’s exclusion of these types of furniture that are not free-standing, not used for storing clothing, and/or not associated with the bedroom.

Over more than five years, CPSC staff has collaborated extensively and received comment from manufacturers and retailers of CSUs, consumer groups, independent product safety experts, and other stakeholders, both within the ASTM standards-setting process and during CPSC’s notice-and-comment rulemaking. This consultation continued through the development and balloting of ASTM F2057-23 and after the adoption of STURDY, including a broadly attended set of meetings hosted at CPSC’s laboratory in January 2023. As demonstrated in Attachments A through E there is broad support from consumer groups and CSU furniture manufacturers to recognize ASTM F2057-23 as a standard that meets STURDY.

B. Protecting Children up to 72 Months of Age

STURDY section 201(d)(2) establishes a checklist of requirements that a voluntary standard must meet to become a mandatory standard under the law. The first requirement is that the standard “protects children up to 72 months of age from tip-over-related death or injury.”

STURDY §201(d)(2)(A). In Section 7.1 of the ASTM standard states: “The test methods in this safety specification are intended to simulate the reaction of a clothing storage unit on carpet, loaded drawers, multiple open drawers, and a dynamic force from possible interaction of a child *up to 72 months*” (emphasis added). As discussed further below the Commission could conclude that the standard “protects children up to 72 months of age from tip-over-related death or injury.”

C. Subsection (c)(2) Requirements

To be approved under STURDY section 201(d)(2)(B), a voluntary standard must “meet[] the requirements described in subsection (c)(2).” Section (c)(2) in turn requires:

(A) tests that simulate the weight of children up to 60 pounds;

(B) objective, repeatable, reproducible, and measurable tests, or series of tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force;

(C) testing of all clothing storage units, including those 27 inches and above in height; and

(D) warning requirements based on ASTM F2057–19, or its successor at the time of enactment, provided that the Consumer Product Safety Commission may strengthen the warning requirements of ASTM F2057–19, or its successor, if reasonably necessary to protect children from tip-over-related death or injury.

We assess below ASTM F2057-23’s satisfaction of each of these individual requirements.

1. *Tests that simulate the weight of children up to 60 pounds*

STURDY appears to use 72 months and 60 pounds interchangeably; this, and the structure of STURDY, suggest that Congress considered 60 pounds a representative weight for a 72 month old child. According to the 2000 Centers for Disease Control (CDC) Clinical Growth Charts, which ASTM members used as a reference for ASTM F2057-23, 60 pounds is the approximate weight of a 95th percentile 72-month-old child.¹ STURDY requires tests that simulate the weight of children up to 60 pounds, and ASTM F2057-23 has a set of three stability tests to simulate the capability of a child weighing up to 60 pounds interacting with a CSU.

The first stability test, *Section 9.2.1 Simulated Clothing Load*, loads drawers with simulated clothing loads. The CSU must not tip over with all doors and extendible elements open. It would be reasonable to conclude a child weighing up to 60 pounds would be able to open loaded drawers and therefore the Commission could conclude this is a test that simulates the weight of children up to 60 pounds.

¹ The 95th percentile weight for boys at 6 years old is 60 pounds and the 95th percentile weight for girls at 6 years old is a bit under 60 pounds. The charts use smoothed data to make a continuous curve; the 6-year-old line corresponds to 72 months old. CDC (2000). Clinical Growth Charts, 2 to 20 years: Stature-for-age and Weight-for-age percentiles. Available: <http://www.cdc.gov/growthcharts>.

The second stability test, Section 9.2.2 *Simulated Horizontal Dynamic Force*, applies a 10-pound horizontal force applied over a period of 5 seconds and held for 10 seconds at a “hand-hold” not to exceed a 56-inch height. A 2000 study² found the average elbow pull strength of children 2 to 5 years old was 17.2 pounds with a range of 6.14 to 26.0 pounds. The dynamic force is within the capability of children that weigh 60 pounds. The Commission could conclude this is a test that simulates the pull force of children up to 60 pounds.

The third stability test, Section 9.2.3 *Simulating a Reaction on Carpet with Child Weight*, uses weights totaling 60 pounds placed on the edge of an open drawer or pull-out shelf, while the CSU is tilted forward using 0.43 inch test blocks to simulate placement on a carpeted surface. This test simulates a static load of a 60 pound child on the edge of an open drawer. Based on the language in STURDY, the Commission could conclude that this is a test that simulates the weight of children up to 60 pounds, albeit with no additional tip-over moments generated due to dynamic climbing forces or center of mass position.

2. “[O]bjective, repeatable, reproducible, and measurable tests or series of tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force”

Objective, Repeatable, Reproducible, and Measurable Tests. The ASTM F2057-23 test methods describe the steps to take, specifications for test apparatus, load, dimension, and tolerances for dimensions and loads, all of which are consistent with accepted practices. The Commission could conclude that the tests in ASTM F2057-23 are objective, repeatable, reproducible, and measurable.

Tests that simulate real-world use. The ASTM stability requirements have three tests or series of tests that individually represent a real-world condition. Section 9.2.1 *Simulated Clothing Load* tests the CSU with multiple open and loaded drawers on a flat surface. Section 9.2.2 *Simulated Horizontal Dynamic Force* tests the CSU with multiple open drawers and a 10-pound pull force over a period of 5 seconds and held for 10 seconds at a “hand-hold” not to exceed a 56 inch height on a flat surface. Section 9.2.3 *Simulating a Reaction on Carpet with Child Weight* tests the CSU with multiple open drawers, a 60-pound weight, and the CSU angled with 0.43-inch test blocks to simulate the effect of carpet. Reading STURDY section 201(c)(2)(B) as allowing tests or a series of tests that separately and independently simulate real-world conditions including carpeted surfaces, loaded drawers, multiple open drawers, and dynamic force (rather than requiring testing for all these conditions simultaneously), the Commission could conclude that ASTM F2057-23 satisfies section 201(c)(2)(B).

Carpeted Surfaces. Section 9.2.3 of ASTM 2057-23, described above, is a stability test that simulates placement on a carpeted surface. The use of a 0.43-inch thick test block (as specified in section 8.2.3) is consistent with the carpet simulation in CPSC’s final CSU tip over rule. See 87 Fed. Reg. 72,636. The Commission could, therefore, conclude that ASTM F2057-23 includes a stability test that simulates placement of a CSU on a carpeted surface.

Filled Drawers and Multiple Drawers Open. Section 9.2.1 of the ASTM standard, *Simulated Clothing Load*, is a test conducted on a hard, level, and flat test surface with

² DTI (2000). *Strength Data for Design Safety – Phase 1* (DTI/URN 00/1070). London: Department of Trade and Industry.

extendible elements (movable load-bearing storage components including, but not limited to, drawers and pullout shelves; does not include bins) and doors open,³ and, if 50 percent or more of the storage volume is extended, the unit filled with a “simulated clothing load.” The fill weight in extendible elements is calculated using a density of 8.5 pounds per cubic foot of volume. All extendible elements are opened and must remain open for 30 seconds without tip over. Based on this test, the Commission could conclude that ASTM F2057-23 includes a test that simulates drawers with items in them and multiple open drawers.

Dynamic Force. ASTM 2057-23 Section 9.2.2 *Simulated Horizontal Dynamic Force* applies a 10 pound horizontal force over a period of 5 seconds and held for 10 seconds at a “hand-hold” not to exceed a 56 inch height. As discussed in detail above, the dynamic force is within the capability of children that weigh 60 pounds. The Commission could conclude this is a test that simulates the pull force of children up to 60 pounds.

3. *Testing of all CSUs, including those 27 inches and above in height*

STURDY section 201(c)(2)(C) requires testing of all units that are both within STURDY section 201(a)’s definition of a CSU, and designated by the Commission under STURDY section 201(b). STURDY section 201(b) states that CSUs should be subjected to testing based on incident data. As explained in section II.A, above, the Commission could conclude that ASTM F2057-23’s scope of coverage is consistent with STURDY’s focus on incident data

4. *Warning Requirements*

STURDY section 201(c)(2)(D), requires warning requirements based on the predecessor standard to ASTM F2057-23, ASTM F2057-19. Many of the warning requirements in section 10 of ASTM F2057-23, Marking and Labeling, are substantively identical to those in the 2019 version that Congress referenced. The Commission could conclude that ASTM F2057-23 meets the warning requirements of STURDY.

D. Procedural Requirements

Lastly, under STURDY section 201(d)(2)(C) and (D), a voluntary standard must be “developed by ASTM International” or another voluntary standards organization that the Commission deems appropriate, and must be published not later than 60 days after STURDY’s enactment, i.e., by February 27, 2023. ASTM 2057-23, which ASTM International published on February 6, 2023, satisfies both requirements.

III. CONCLUSION

ASTM F2057-23 is not as protective of safety as CPSC’s 2022 final rule. The question framed by Congress, though, is whether ASTM F2057-23 meets the minimum requirements of the new STURDY law. Further, given that Congress went forward with enacting STURDY in December 2022 after CPSC promulgated its final rule in November 2022, STURDY can be seen as embodying legislators’ preference for consideration of a less protective voluntary standard in place of CPSC’s rule as the mandatory standard for CSU stability. Consistent with the advocacy of PAT and AHFA, STURDY can be interpreted to further this policy and support a determination that ASTM F2057-23 meets the requirements of STURDY section 201(d).

³ Except those locked by an interlock system that meets standard’s requirements.

Should the Commission make this determination of sufficiency, it must adopt ASTM F2057-23's performance requirements in a consumer product safety standard promulgated within 90 days of the determination. In this case, it is recommended that the Commission publish a direct final rule for purposes of meeting this requirement. That mandatory standard "will supersede" the Commission's 2022 rule and "any other existing standard for clothing storage units to protect children from tip-over-related death or injury." STURDY § 201(d)(1).

Attachment A – Joint letter from AHFA and PAT to the Commission dated February 7, 2023



February 7, 2023

Via email

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

RE: *Consideration of the Revised ASTM F2057-23 Furniture Safety Standard for Clothing Storage Units as directed by STURDY*

Chairman Hoehn-Saric:

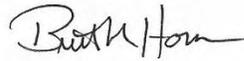
On behalf of **Parents Against Tip-overs** [PAT] and the **American Home Furnishings Alliance** [AHFA], we write today urging the Consumer Product Safety Commission to complete a prompt review of **ASTM F2057-23** as required by the STURDY Act [the Act]. As outlined below, we believe the updated ASTM standard meets the specific requirements of the Act:

- It includes performance tests that simulate “real-world” use of clothing storage furniture;
- It includes performance tests that account for the impact of carpeted flooring on CSU stability, as well as the impact of “loaded” drawers, multiple drawers open, and the dynamic force of a child climbing or playing on the unit; and,
- The performance tests simulate the weight of children up to 60 pounds and apply to all clothing storage units 27 inches and above in height.

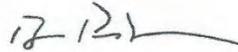
As required by the ACT, the updated ASTM standard has been approved by the ASTM F15.42 Furniture Safety Subcommittee and was published within 60 days of enactment on **February 7, 2023**. This is the result of an extraordinary collaborative effort between parents, industry, consumer advocates and child safety experts, all united in the goal to advance child safety. With support from this broad stakeholder group, the revised ASTM standard – along with the amended STURDY Act that endorses it – achieved rare bipartisan backing in Congress.

PAT and AHFA are united in this request for prompt agency action to review and consider F2057-23 as a mandatory product safety standard for clothing storage furniture.

Respectfully,



Brett Horn
Chairman
Parents Against Tip-overs
816-550-3999
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Bill Perdue
VP Regulatory Affairs
AHFA
336-881-1017o
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C.C.: Commissioner Peter Feldman
Commissioner Mary Boyle
Commissioner Richard L. Trumka, Jr.
CPSC Secretary Alberta E. Mills
CPSC General Counsel Austin Schlick

Attachment B- Letter from PAT to the Commission dated February 20, 2023



February 20, 2023

RE: Approval of ASTM F2057-23 as Final Rule for Clothing Storage Units

Chairman Hoehn-Saric:

On behalf of the families of the more than 297 children who have been killed from falling furniture in the past 22 years, Parents Against Tip-overs is writing to the Consumer Product Safety Commission today to urge your acceptance of ASTM F2057-23 as the final consumer product safety standard for CSUs, according to the guidance provided under The STURDY Act. The tip-over problem has gone unresolved for far too long, and adopting the new ASTM standard is the solution that will result in much more stable CSUs and save lives.

As Section 2(d) of the STURDY Act requires, the recently published ASTM F2057-23 was designed to meet the requirements of paragraph (2) from STURDY.

This new voluntary standard:

- Protects children from tip-over-related death or injury with a test that simulates the weight of children up to 60 pounds.
- Is an objective, repeatable, reproducible, and measurable series of tests that simulates real-world use and accounts for impacts on clothing storage unit stability that results from placement on carpeted surfaces, drawers, and dynamic force.
- Tests all clothing storage units, including those 27 inches and above in height.
- Has sufficient warning and labeling requirements.

Parents Against Tip-overs was the driving force behind both the STURDY Act passage and the significant life-saving improvements to the 2057 standard; we not only supported these efforts, we helped lead them. They are strong tests that address the real world causes of tip-overs as identified by the CPSC's own study, are difficult to pass, will result in much more stable CSUs, and will prevent tip-overs. *We know that F2057-23 will save lives, and if these tests had been mandatory 20 years ago, our children would still be here today.* Meghan would be studying abroad, Charlie would be graduating high school, Maddie may have her first boyfriend, Shane would be graduating middle school, Chance might be a dancer, Camden could be playing in the school band, Teddy may be playing youth baseball, Conner would be in 3rd grade, and we would never have had to fight this battle. We fear that if the CPSC does not accept ASTM F2057-23 as the final consumer product safety standard for CSU stability, we may still be fighting 20 years from now.

We strongly urge the Commission to follow the intent of the STURDY Act and adopt ASTM F2057-23 immediately as the final CSU safety standard. We can't bring our children back, but we now need the CPSC to take swift action to protect other children from the same hazard which took our sons and daughters lives. We believe with every piece remaining of our broken hearts that once made mandatory, the ASTM solution will do just that. Thank you.

Sincerely,

Brett Horn
Chairman
Parents Against Tip-overs

Kimberly Amato
Vice-Chairman
Parents Against Tip-overs

Attachment C- Letter from Donald Mays to the Commission dated March 3, 2023

Donald L. Mays
580 Hunting Ridge Rd.
Stamford, CT 06903
Donald.L.Mays@gmail.com
917-561-2906

March 3, 2023

Dear Chairman Hoehn-Saric:

I am writing to express my opinion about the decision that the CPSC must make regarding the future safety of clothing storage units. To comply with the STURDY Act, you are faced with the decision of whether to accept the performance requirements of ASTM's F2057-23 Standard Safety Specification for Clothing Storage Units. By this letter, I will share my expertise and insight so that you can make a well-informed decision.

To be clear at the outset, I am providing the information below as an independent product safety expert. I have no financial interest in this issue, but I care deeply about the safety of children.

Summary

The safety requirements of ASTM's F2057-23, which was published on February 6, 2023, are a quantum leap forward in providing consumers with the safety they need to protect their families against injuries and deaths from furniture tip-over. The CPSC should give serious consideration to adopting ASTM F2057-23 in its entirety. I base this conclusion on my 40 years' experience in the product safety field. With a background in test engineering, I have designed comprehensive testing and safety assurance programs while working for a wide range of organizations including consumer organizations, nationally recognized independent testing laboratories, a consulting firm, and a global consumer product manufacturer. That broad experience has given me a unique perspective for addressing many product safety challenges, including those associated with unsafe furniture. As a consumer member on numerous standards development committees focused on improving product safety, I am an ardent public voice advocating for safer consumer products.

Background

I am an advanced-degreeed mechanical engineer. During the last 20 years of my career, I was involved with testing furniture for stability. As the former Technical Director of the Good Housekeeping Institute, I reported on hazardous, unstable furniture that was responsible for far too many injuries and deaths. I created the furniture safety test program at Consumer Reports when I held the position of Senior Director of Product Safety and Technical Policy. In that capacity, I oversaw the testing of dozens of clothing

storage units and devised a test program that was much more rigorous than the ASTM standard in effect at the time. As a board member for Kids In Danger, I volunteered my time to run furniture stability tests that demonstrated the inadequacy of the voluntary ASTM standard. As Chief Safety and Quality Officer for Samsung North America, I continued to work on better standards to prevent both furniture and TV tip-over. From the beginning, I continuously advocated for the use of heavier test weights, a clothing load in dresser drawers, and testing furniture placed on carpet, and I have continued contributing my safety advocacy efforts in retirement.

I focused my advocacy work through ASTM by actively contributing to their F15.42 Subcommittee on Furniture Safety. I worked closely with former CPSC Commissioner Robinson as well as former CPSC Commissioner Mohorovic to pressure furniture manufacturers to work cooperatively with ASTM and develop a standard that would replicate real-world use and raise the bar significantly on safety. Unfortunately, the furniture industry's persistent obstruction over many years led to a lack of progress in making significant improvements to the standard. As a member of ASTM's F15 Executive Committee, I voted to remove the former chairman of the Furniture Safety Subcommittee and replace him with a person who would get the job done. But it really took the threat of CPSC's rulemaking, along with an act of Congress through the STURDY Act, to get furniture manufacturers to finally cooperate in developing a far more rigorous and effective standard. That enhanced standard, ASTM F2057-23, supersedes the previous standard—ASTM F2057-19. I believe that furniture made to comply with this most recent standard will no longer subject children to unreasonable risk of death and injury.

The STURDY Act

As you know, the Stop Tip-Overs of Unstable Risky Dressers on Youth Act (STURDY) was signed into law by President Biden on December 29, 2022. The act requires that the CPSC promulgate a consumer product safety rule for freestanding clothing storage units to protect children from tip-over related death or injury. Based on tip-over data, the CPSC must determine the scope of the types of clothing storage units to be included in the rule so as to protect children up to 72 months of age from injury and death. The CPSC now must examine the effectiveness of any voluntary consumer product safety standards for clothing storage units after consultation with consumer groups, manufacturers, independent child-product engineers, and experts like myself.

The specific requirements for the standard promulgated by the rule are the following:

1. tests to simulate the weight of children up to 60 pounds;
2. objective, repeatable, reproducible, and measurable tests or series of tests that simulate real-world use to account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force;
3. testing of all clothing storage units, including 27 inches and above in height; and
4. warning requirements based on ASTM F2057-23 if reasonably necessary to protect children from tip-over related deaths and injuries.

The STURDY Act states that if a voluntary standard exists that meets the above requirements, the Commission shall adopt the applicable performance requirements of the voluntary standard related to protecting children from tip-over death and injury. Such standard will be treated as a consumer product safety rule and will supersede any other existing consumer product safety standard for clothing storage units.

The Commission now must determine whether the revised performance requirements specified in ASTM F2057-23 meet the requirement for the STURDY Act.

The eight ways that ASTM F2057-23 meets STURDY Act requirements

The ASTM F2057-23 Standard Safety Specification for Clothing Storage Units was developed by a large committee comprised of consumer organizations, parent groups, testing labs, independent experts, government regulators, retailers, and furniture manufacturers. Balance was maintained in the standard-development process so that the votes of manufacturers and others who have financial interest in the sale of furniture could not outweigh the votes of consumers, users, and those with general interest in the standard. The standard was approved by consensus and was published on February 6, 2023. The result is that we now have a standard that meets the requirements of the STURDY Act. The table that follows shows how:

STURDY Act	Requirements of ASTM F2057-23
Simulate weight of children up to 60 pounds	Sec. 9.2.3.5 requires applying two connected 30-pound weights over the top of a door or a fully opened drawer ("extendable element") most likely to cause tipover. The unit must not tip over. The total 60 pounds of weight simulates the weight of a child up to 72 months old.
Objective, repeatable, reproducible, and measurable test	Test requirements are designed specifically to simulate real-world use. In my experience, this test method will yield excellent test-to-test repeatability and also excellent lab-to-lab reproducibility on the same units, and thereby produce meaningful results. This helps facilitate compliance determinations. Test results are measurable on a pass-fail basis, based on whether or not the unit tips over during testing.
Stability on carpeted surfaces	Sec 9.2.3 requires simulating a reaction on carpet with a child's weight. Test blocks measuring 0.43 inches high are placed under the rear legs of the unit under test. This simulates the forward tilt that would occur when the unit is pushed against the wall in a room with wall-to-wall carpeting where underlying tack strips around the perimeter cause the unit to tip slightly forward. The height of the test blocks was determined empirically from a survey taken on units by subcommittee members, and is based on CPSC research showing that carpeting will cause as much as a 1.5 degree forward tilt of typical clothing storage units. In the test, the unit must remain stable when two connected 30 pound weights are applied to the top of an open door or drawer.
Drawers with items in them	Sec. 9.2.1 simulates a clothing load in each drawer and large storage compartments. Each drawer and storage compartment is first measured for usable volume. A weight of 8.5 pounds per cubic foot of volume is applied to the center of each drawer or compartment. The weight was determined based on experiments conducted separately by Consumer Reports and Kids In Danger using clothing typical of what would be stored in dressers.
Multiple drawers open	The above test (Sec 9.2.1) requires that the unit remain stable when all drawers and doors are open once the simulated clothing load is applied.
Dynamic force	Sec. 9.2.2 specifies a requirement for a simulated horizontal dynamic force. The test requires the unit to remain stable when a 10-pound horizontal force is applied to the highest height, not greater than 56 inches, in which a child could grab the top edge of a drawer or drawer pull to assist in climbing. The 56-inch maximum was based on anthropometric data for the reach of an average 5-year-old child. The 10-pound force was determined to be a practical force applied for tip over and is consistent with other ASTM standards.
Include units 27 inches and above in height	The scope described in Sec. 1.1 includes case goods intended for clothing storage that are 27 inches or greater in height.
Warning requirements	The warning requirements for this standard specified in Sections 9.3 and 10 of F2057-23 are more specific than the preceding version (F2057-19). The revised standard includes requirements for placement of the warning labels for conspicuity and warns against defeating interlock on drawers, should they exist.

Effectiveness of ASTM F2057-23

While only published in the last few weeks, there is evidence that suggests that the F2057-23 voluntary standard will protect children from death and injury far better than the previous version of the standard. Case in point: On December 30, 2022, a 28-month-old girl was severely injured when a loaded, freestanding, seven-drawer dresser tipped over and crushed her toes. The dresser was part of the Caramia Kids Charlie four-piece nursery furniture set sold through Costco. Before sale, it was tested by an accredited independent laboratory and determined to comply with all the requirements of ASTM F2057-19, the former version of the current voluntary standard. Following that incident, the dresser was tested by South Shore Furniture. It was reported by a member of ASTM F15.42 Furniture Safety Committee who works for South Shore that the unit failed every section of the ASTM F2057-23 standard. Had F2057-23 been in place at the time of manufacture, this unit would not be on the market and the serious injury would have been avoided.

In 2016, Kids In Danger (KID) and Shane's Foundation published a report on furniture stability that included testing of 19 clothing storage units. In reviewing the test results, I believe that just two of the 19 units tested for that report would have passed all F2057-23 test requirements. Those two units, the Sauder Pogo 3-Drawer Dresser model 414434 and The Land of Nod Blake 2-Over-3 Changing Table 5-drawer chest model 108874, were able to withstand more than 70 pounds of force applied over open drawer faces in a test to determine the tipping point. They also passed a clothing load test with all drawers opened, as well as a carpeted surface test with a full clothing load. While the test conditions for the KID report were not exactly the same as those required by F2057-23, in my expert opinion they were close enough to reasonably conclude that these two units would meet the requirements of the existing standard, while the 17 other tested units would have failed.

As previously stated, ASTM F2057-23 significantly raises the bar for safety over the standard's previous version. The new standard now requires new test protocols that simulate the reaction to placing the units on thick wall-to-wall carpeting, reaction to drawers full of clothes and fully opened, and reaction to dynamic forces applied by a climbing child. The new standard also increased the weight used to test tip-over resistance from 50 pounds to 60 pounds, thus simulating the weight of an older, 72-month-old child. In addition, requirements for warnings have been significantly strengthened. In my expert opinion, those changes will go a long way to protecting children as well as adults from the hazards of unstable furniture.

Federal Rule 16 CFR 1261

I am pleased that the CPSC took the initiative to start rulemaking to mandate a performance standard for furniture stability. That action was clearly necessary, in my opinion, knowing that the development of a stringent ASTM standard had languished for years. However, I was surprised that the test method defined in the rule took such a

divergent path from the direction of the ASTM standard. Over the years, CPSC staff actively participated in the ASTM F15.42 Furniture Safety Committee, although there was a regular rotation of CPSC staff members on that committee. That, I believe, may have led to inconsistency in thought and communication over time.

There are several problems with the CPSC's current approach that will seriously undermine the effectiveness of the final rule--16 CFR 1261.

Complexity: The test method prescribed in 16 CFR 1261 is unnecessarily complex. It requires a determination of the fulcrum, the tip-over moment, and the threshold moment, all terms that perhaps are familiar only to engineers. It also requires a calculation to be made to determine compliance. The formula for that calculation differs depending on the style of the clothing storage unit. Test technicians must use extreme care in selecting and applying the correct formula.

It should also be recognized that testing of furniture is likely to be done in the country of manufacture, which is usually an Asian country. In my experience in working with labs in many foreign countries, communication has to be crystal clear in order ensure complex test methods are followed precisely--a very difficult process.

Potential for error: The rule requires two precise measurements to be taken during testing—measurement of the distance from the maximum drawer extension to the fulcrum and measurement of the distance from the fulcrum to the center of force—each being subject to potential measurement error. Since the two required measurements are interdependent, this introduces the possibility of a compound measurement error. In addition, using the wrong formula for calculating the stability rating will also lead to errors in the test result.

Repeatability/reproducibility: Test-to-test repeatability will be challenging when following this test method. That's because the measurement of the distance from the maximum drawer extension to the fulcrum, and measurement of the distance from the fulcrum to the center of force, can change depending on deflection the drawers under test. That deflection occurs at various levels based on the strength of the drawer glides, which often bend, loosen, or even break during testing. And since wood is a natural material, one can predictably expect natural variation in its strength in holding drawer glides. MDF (or particleboard), which is often used in lower-cost furniture, is even more subject to variations in strength. Therefore, I predict that the required distance measurements will vary depending on the amount of deflection of the opened drawer due to integrity of the drawer glides and their attachment strength. The test method does provide a provision for chocking the drawers if the glides break, but that changes the natural deflection of the drawer, and thus affects the measurement.

Since the STURDY Act requires repeatability and reproducibility, it is reasonable to conclude that the test method prescribed in 16 CFR 1261 will not meet the requirements of STURDY in both theory and practice.

Compliance and enforcement: Because the test methods prescribed in the rule are so complex; because there is so much potential for error; and because sample-to-sample, test-to-test, and lab-to-lab repeatability and reproducibility problems can be expected, it is likely to result in challenges to determining compliance with the rule. Those issues will not only introduce challenges for the testing labs conducting compliance testing, but they will also make enforcement of this rule by the CPSC exceptionally difficult.

Consumer understanding: The final rule requires hangtags to show a stability rating for compliant clothing storage units. In my opinion, those hangtags are more likely to confuse consumers rather than inform them. Other government agencies that require consumer-facing labeling for energy efficiency on everything from cars to appliances have long struggled with consumer understanding of their ratings systems. In addition, the CPSC's proposed hangtags prescribe a scale of 1.0 to 2.0 while, from a human factors standpoint, consumers are far more familiar with a five-point scale. Furthermore, the prescribed stability rating will only be observed by the first owner of the furniture; secondary buyers of used furniture will not have access to the ratings tag. While I am sure that the intention of the CPSC is to encourage manufacturers to strive for high stability scores, my opinion is that consumers should be confident that *any* clothing storage unit they buy will be stable and free from potential injury to a child.

Recommendations

I commend the CPSC for using its authority to protect consumers from avoidable death and injury associated with unstable clothing storage units. This is a critical issue with potential to save lives and it is essential that the most technically solid standard be applied. As someone who has dedicated years to this issue, I believe strongly that the ASTM F2057-23 provides a practical, repeatable, and reproducible test method that simulates real-world, foreseeable use and misuse. The standard was developed in an open and transparent way with strong input from dozens of consumers and technical experts, including those from the CPSC.

Testing required to meet ASTM F2057-23 is straightforward, which greatly reduces the likelihood of error. It provides excellent pass/fail criteria. This makes it easy to determine compliance, which will be helpful for any future enforcement actions. Furthermore, the ASTM standard can be updated or revised at any time, allowing the subcommittee that developed it to respond to emerging incident data. By contrast, continuous improvement to 16 CFR 1261 is not as easily done by the CPSC. As a test engineer and product safety expert, I find that the test procedure detailed in 16 CFR 1261 is overly complex, prone to measurement errors, difficult to enforce, and not easily understood by consumers.

I encourage the Commission to adopt ASTM F2057-23 and incorporate that standard by reference in their rule. Making the standard mandatory will ensure a level playing field for all manufacturers and retailers, and effectively ensure that all clothing storage

units manufactured in the future will be far more protective of children from avoidable death and injury.

I would be glad to discuss with you the information I have provided in this letter and answer any questions you have.

Respectfully,

A handwritten signature in cursive script that reads "Don Mays".

Don Mays
Product Safety Expert
917-561-2906

Attachment D – Joint letter from KID and CR to the Commission dated March 6, 2023



March 6, 2023

The Honorable Alex Hoehn-Saric, Chairman
The Honorable Peter Feldman, Commissioner
The Honorable Richard Trumka, Jr., Commissioner
The Honorable Mary Boyle, Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Re: STURDY Act and ASTM F2057-23

Dear Chairman Hoehn-Saric and Commissioners Feldman, Trumka, and Boyle:

On behalf of Consumer Reports (CR) and Kids In Danger (KID), we would like to express our gratitude for the significant amount of work that the CPSC has put into addressing the risk of injury from furniture tip-overs. Without the CPSC's research and active engagement, we would not be on the cusp of major improvements to furniture stability like we are today. CR and KID write to communicate our strong support of ASTM F2057-23, which is an important step forward, and we urge the Commission to promulgate a final consumer product safety standard under the STURDY Act (Pub. L. No. 117-328, div. BB, tit. II) that adopts its performance requirements as mandatory.

As you are aware, our organizations have sought for years to address the dangers of furniture tip-overs through a variety of efforts, including through our participation in the development of the ASTM standard, independent testing of dressers, engagement in the rulemaking process and support for the CPSC's safety standard on clothing storage units, and advocacy for the STURDY Act as championed by Congresswoman Jan Schakowsky and Senator Bob Casey. While the Commission appropriately determined that previous versions of the ASTM standard were woefully inadequate to prevent tip-over-related injuries and deaths, the current ASTM standard meets the requirements of the STURDY Act and would greatly reduce the risks posed by unstable clothing storage units (CSUs) to young children.

CR and KID, along with other consumer and health organizations and Parents Against Tip-Overs (PAT), supported amending the STURDY Act to require the CPSC to adopt the performance requirements of a voluntary standard if they meet the requirements of the legislation. Neither our organizations, nor the bill's sponsors, would have supported this

amendment if we were not confident that ASTM F2057-23 would greatly improve children's safety.

Under the STURDY Act, any standard promulgated or adopted by the CPSC must include testing that:

- Simulates the weight of children up to 60 pounds;
- Contains objective, repeatable, reproducible, and measurable tests or series of tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force; and
- Evaluates all clothing storage units, including those 27 inches and above in height.

Such a standard must also include warning requirements based on ASTM F2057-19, or its successor at the time of enactment, provided that the CPSC may strengthen these warning requirements if reasonably necessary to protect children from tip-over-related death or injury. ¹ In addition, any adopted voluntary standard must "protect[] children up to 72 months of age from tip-over-related death or injury."²

Below we outline how ASTM F2057-23 satisfies each of the requirements of the law.

ASTM F2057-23 includes objective, repeatable, reproducible, and measurable series of tests that simulate real-world use.

The feasibility of ASTM F2057-23 for implementation by manufacturers around the world is an advantage of the standard. ASTM F2057-23 uses straightforward criteria to evaluate dresser stability: either a unit tips over as a result of testing, or it does not. The required tests are simultaneously rigorous and uncomplicated, making them feasible for manufacturers around the world to carry out, using testing equipment already at their disposal. All three of the voluntary standard's tests are objective, repeatable, reproducible, and measurable; simulate real-world use; and, when considered in their totality, meet the requirements of the STURDY Act.

ASTM F2057-23 Section 9.2.3 includes testing that simulates the weight of children up to 60 pounds, and accounts for impacts on clothing storage unit stability that may result from multiple drawers open and placement on carpeted surfaces.

Section 9.2.3, "Simulating a Reaction on Carpet with Child Weight," accounts for the weight of children up to 60 pounds, and the impacts on CSU stability that may result from multiple open drawers and placement on carpeted surfaces, in a single test. The test requires that a CSU's rear-most floor supports be placed on 0.43 inch blocks that the CPSC determined to "adequately simulate the effect of carpet," in a repeatable and reproducible manner.³ After a CSU is placed on testing blocks, the test addresses the impact of multiple open drawers on a unit's stability by requiring that all available extendible elements are opened or fully extended.

Next, a "test apparatus of not less than 60.0 [pounds]" is applied "over the top of the door or extendible element most likely to cause tip-over." The weights must then "rest without additional support for 30 [seconds]" and the CSU must not tip during this period.⁴

ASTM F2057-23 Section 9.2.1 accounts for impacts on clothing storage unit stability that may result from drawers with items in them.

The Section 9.2.1 "Simulated Clothing Load" test requires calculating the usable volume of each drawer and storage compartment. Enclosed storage volume, "the amount of storage inside drawers and behind doors intended for clothing storage," is calculated as "the total of all extendible element volume ... and all non-extendible enclosed storage volume."⁵ If 50% or more of extendible elements can be extended, all enclosed storage space (drawers and storage behind doors) is weighted with 8.5 pounds per cubic foot to simulate clothing fill. Similar to the CPSC rule, if more than 50% of the volume remains in the case (i.e., cannot be extended), weight is not added. If interlocks are employed, the standard has testing to assure they will work effectively to limit how many drawers are open.

ASTM F2057-23 Section 9.2.2 accounts for impacts on clothing storage unit stability that may result from dynamic force.

The Section 9.2.2 "Simulated Horizontal Dynamic Force" test, which simulates the dynamic force created by a child interacting with a CSU, requires that an empty CSU be placed on a test surface with all doors and all available extendible elements extended. The test then requires the application of a 10 pound horizontal force, "parallel to the direction of outward motion, at the highest hand-hold, not to exceed 56 [inches], on the extendible element most likely to cause tipover."⁶ The position is held for 10 seconds, during which the unit must remain stable. Importantly, it is our understanding that the primary reason for the inclusion of the language, "protects children up to 72 months of age from tip-over-related death or injury," in subparagraph (d)(2)(A) of the STURDY Act, was for consistency, and it was intended to mirror the language of subsection (b), "CPSC Determination of Scope."⁷

ASTM F2057-23 requires testing of all clothing storage units including those 27 inches and above in height.

The scope of ASTM F2057-23 applies to CSUs "including but not limited to chests, chests of drawers, drawer chests, armoires, chifforobes, bureaus, door chests, and dressers, which are 27 inches or greater in height, 30 pounds or greater in mass, and contain 3.2 feet squared or greater of enclosed storage volume."⁸ The CPSC's rule similarly uses the 27-inch height limit, based on CPSC staff's finding that "the number of incidents associated with shorter units is small and these incidents did not result in deaths or serious injuries."⁹ In line with this determination, the scope of the ASTM standard is reasonable.

ASTM F2057-23 warning and labeling requirements are precise, well placed, and informative.

Recognizing that warnings are not nearly as effective in preventing tip-overs as design changes that improve CSU stability, ASTM F2057-23 warning requirements (see Sections 9.3 and 10) are robust, well placed, and designed to be as effective as possible. The warning requirements are more specific and conspicuous than the warning requirements of ASTM F2057-19, and include warnings against defeating interlock systems, should they exist. The STURDY Act also states that the CPSC can "strengthen the warning requirements [of ASTM F2057-23]" if doing so is "reasonably necessary to protect children from tip-over-related injury or death."¹⁰

We appreciate the time and energy the CPSC has dedicated in recent years to understanding furniture tip-overs in order to protect children. The STURDY Act provides an opportunity for the CPSC to rely upon ASTM F2057-23 if it meets the requirements of the STURDY Act. We are confident that it does. Testing by both KID and CR, using elements of the new voluntary standard, show that units on the market that meet the performance requirements of the 2019 standard would fail under the more rigorous requirements of the 2023 standard, underscoring the additional layers of protection the new evaluations provide. The tests included in ASTM F2057-23 account for real-world use and impacts on stability from various child interactions. The tests have simple pass-fail criteria, making determining compliance easy for testers. As is required under the STURDY Act, ASTM F2057-23 was developed in consultation with representatives from consumer groups, safety professionals, clothing storage unit manufacturers, and other furniture industry representatives, and it is widely supported. We appreciate your consideration and welcome any questions you may have.

Sincerely,

Nancy Cowles
Executive Director
Kids In Danger

Gabe Knight
Policy Analyst
Consumer Reports

¹ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. BB, tit. II, §201(c)(2)(d) <https://www.congress.gov/bills/117th-congress/house-bill/2617/text> (2022).

² *Id.*

³ Safety Standard for Clothing Storage Units, 87 Fed. Reg. 72598, 72634 (Nov. 25, 2022).

⁴ ASTM F2057-23, Standard Safety Specification for Clothing Storage Units (Feb. 6, 2023) (www.astm.org/f2057-23.html).

⁵ *Id.*

⁶ *Id.*

⁷ Consolidated Appropriations Act, 2023, *supra* note 1, at div. BB, tit. II, §201(b), (d)(2)(a).

⁸ ASTM F2057-23, *supra* note 3.

⁹ CPSC, *supra* note 2, at 72623.

¹⁰ Consolidated Appropriations Act, 2023, *supra* note 1, at div. BB, tit. II, §201(c)(2)(d).

Attachment E- Letter from HFA to the Commission dated March 6, 2023



myHFA.org | 800.422.3778

March 6, 2023

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

Dear Chairman Hoehn-Saric,

Throughout the Consumer Product Safety Commission's (CPSC) rulemaking creating a Safety Standard for Clothing Storage Units, the Home Furnishings Association (HFA), representing 1,550 members and 8,000+ storefronts across the country, provided oral and written comments expressing concern about the impact to retailers and consumers of the position taken by the Notice of Proposed Rulemaking and now, Final Rule (87 FR 72598) effective May 24, 2023.

For years, HFA members have actively participated in the ASTM F 15.42 Furniture Subcommittee along with key safety stakeholders to implement consensus-driven, safe, and effective voluntary standards. Our industry has been a long-time advocate of, and has called for, making those voluntary ASTM standards mandatory. To that end, we engaged with all stakeholders, including parent groups, consumer advocates and testing labs to help pass the STURDY Act through Congress on December 23, 2022. Everyone has applauded its enactment into law thanks to the President's signature.

We strongly believe that the revised ASTM 2057-2023 safety standard for clothing storage units meets the criteria outlined in the STURDY Act and must be adopted by the CPSC as the federal Safety Standard. It achieves everyone's goals of protecting children.

However, right now there is confusion and uncertainty as a result of the CPSC Final Rule and its parallel STURDY Act required rulemaking. Both have different implementation timelines and product requirements which is paralyzing to our industry.

CPSC acknowledged in its rulemaking that 'at least 97 percent of the furniture retailers are small' and our HFA membership is a reflection of that statistic. Family-owned, generational businesses are now facing a complex regulatory requirement for 100% of the clothing storage units that they currently market and sell. This retail base is buying from small furniture manufacturers facing the same challenge.

The Final Rule includes an assertion that, 'it is unlikely that any indirect impact of this rule on small retailers would be substantial.' HFA and its members vigorously refute this claim. With the redesign of an entire product category, fewer options for consumers, and increasing prices in already turbulent economic times, our members are already seeing an impact. We also know that the scope of the CPSC Final Rule could include additional products, like nightstands. Given the buying cycle for these products, many furniture retailers are evaluating inventory levels and planning purchases.

¹ <https://www.govinfo.gov/content/pkg/FR-2022-11-25/pdf/2022-24587.pdf>, Page 59

¹ <https://www.govinfo.gov/content/pkg/FR-2022-11-25/pdf/2022-24587.pdf>, Page 59

Mailing Address: PO Box 2483, Carmichael, California 95609-2483



Retailers are a critical safety link for consumers and manufacturers as their staff must educate their customers on product hazards within the home. Their understanding of the design and safety of these products is imperative so they can help consumers make informed choices. The confusion created by competing rules is making it nearly impossible for retailers to know what they need to communicate internally and externally. That impacts the trust they garner with their customer base.

We urge you to adopt the ASTM 2057-2023 revisions as the federal safety standard for clothing storage units. It is the most reasonable, effective way forward; the consensus solution that does what all of us, CPSC included, want and that is for every American family to have access to safe and affordable products.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark S.'.

Mark Schumacher
Chief Executive Officer
Home Furnishings Association

C.C.: Commissioner Peter Feldman
Commissioner Mary Boyle
Commissioner Richard L. Trumka, Jr.
CPSC Secretary Alberta Mills

Mailing Address: PO Box 2483, Carmichael, California 95609-2483

Attachment F – Bicameral letter to the Commission dated March 7, 2023

Congress of the United States

Washington, DC 20515

March 7, 2023

The Honorable Alexander Hoehn-Saric
Chairman
United States Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Dear Chairman Hoehn-Saric:

We write to encourage the Consumer Product Safety Commission (CPSC) to work expeditiously to implement the Stop Tip-overs of Unstable, Risky Dressers on Youth, or STURDY, Act, enacted as part of the Consolidated Appropriations Act, 2023.

The STURDY Act is the culmination of a multi-year bipartisan and bicameral effort to protect children from death or serious injury due to furniture tip-overs. Consensus on the final text was reached through good faith negotiations among key stakeholders, including bereaved parents, consumer advocates, and industry groups.

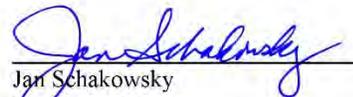
The STURDY Act establishes criteria for a mandatory safety rule for clothing storage units (CSUs) to prevent furniture tip-overs. As part of this rulemaking, the bill directs the CPSC to consider adoption of the ASTM International voluntary standard as the final mandatory rule if the voluntary standard is sufficient to protect children up to 72 months from tip-over related death or injury. ASTM published a revised voluntary standard (ASTM 2057-23) in February 2023 in response to the STURDY requirements. This standard is supported by Parents Against Tip-overs who are the primary advocates for stronger safety standards for CSUs and the drivers of the STURDY Act. They are urging adoption of ASTM 2057-23. Thus, consistent with Congress's intent to provide protection for children and peace-of-mind for parents, we call on CPSC to use its expertise to swiftly evaluate the ASTM International voluntary standard and ensure a safe and effective rule is in place as quickly as possible to protect children from death or serious injury.

Thank you for your tireless work to implement this law and keep children safe. We look forward to supporting you in this effort.

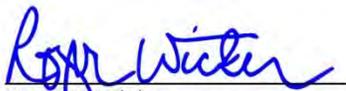
Sincerely,

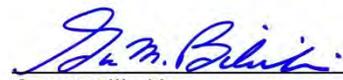


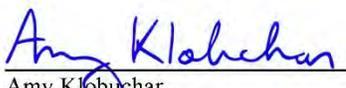
Robert P. Casey, Jr.
United States Senator

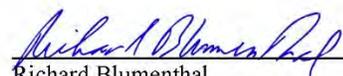


Jan Schakowsky
Member of Congress
Ranking Member, Subcommittee
on Innovation, Data, and
Commerce


Roger F. Wicker
United States Senator


Gus M. Bilirakis
Chair
Subcommittee on Innovation,
Data, and Commerce


Amy Klobuchar
United States Senator

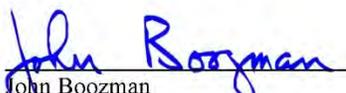

Richard Blumenthal
United States Senator


Thom Tillis
United States Senator


Tim Kaine
United States Senator


Bill Hagerty
United States Senator


Rick Scott
United States Senator


John Boozman
United States Senator

cc:
Commissioner Peter Feldman
Commissioner Richard Trumka, Jr.
Commissioner Mary Boyle