



October 8, 2021

Via Electronic Mail

Commissioner ***Peter A. Feldman***
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: ***CPSC's Notice of Proposed Rulemaking on Furniture Stability***

Commissioner Feldman:

The ***American Home Furnishings Alliance*** (AHFA) is the world's largest and most influential trade association serving the home furnishings industry. AHFA's 350 member companies operate numerous domestic furniture manufacturing facilities and comprise an extensive global supply chain that provides a wide variety of home furnishings to American consumers. Member companies provide approximately 300,000 manufacturing jobs throughout the U.S. and represent a \$60.6 billion segment of the nation's economy. AHFA member companies are mostly small businesses located in communities across the country.

The AHFA writes to express its concerns on behalf of its members with the agency's draft proposed Notice of Proposed Rulemaking to create a safety standard for clothing storage units (the 'NPR'). While the Commission has not voted to publish and notice the NPR, AHFA believes the items outlined below can benefit and advance the public discussion surrounding such a vote and the essential elements of the NPR. The AHFA encourages the Commission to schedule a staff briefing on the 1,100 plus page NPR to facilitate this discussion, allowing for a

robust hearing of the critical aspects detailed in the NPR that affect AHFA members and consumers.

The Two Test Methods Produce Different Results for the Same Unit and Both Test Methods Rely on Inherently Subjective Inputs

Since the NPR's publication, AHFA and its members have tested over 1,000 clothing storage units (CSUs) using the new proposed test methods. The results and data have been informative and unsettling. All the CSUs recently tested by AHFA, and its members meet and, in many cases, exceed the performance test methods outlined in Section 7 of the current ASTM standard for clothing storage units (F2057-19). However, none of them are compliant to the requirements of the NPR by achieving the ***minimum ratio of 1 or greater***.

The NPR provides 2 test methods for evaluating CSUs: Test Method 1 is '***most appropriate for CSUs with drawers or pull-out shelves***'; Test Method 2 is appropriate for '***any CSU***.' The two test methods overlap and AHFA has confirmed this is a source of variability in the test results. Based on the testing by AHFA and its members, testing the same CSU to both test methods, has produced different ratios that vary by as much as 124%¹.

Of concern is what happens during an enforcement evaluation when a furniture manufacturer verifies that its CSU ratio is 1.04 using Test Method 2 and complies with the regulation, but CPSC contends that the CSU, when tested to Test Method 1, scores a ratio of 0.98 and is therefore non-compliant? The possibility for—and indeed certainty of—inconsistent results between the two test methods creates far too much uncertainty for CPSC, consumers, and the regulated industry.

Putting aside the differences in test methodology and results between the two, the test methods themselves are also flawed based on the inherent input variability. Performing the test method requires precise measurements of when the tip-over moment occurs. Data

¹ Testing has produced some ratios that vary between 0.05-0.11 from test to test. When testing units where ratios are closer to 1 following significant design modifications, testing has produced variances in ratios from 3-9%.

acquisition is the foundation of the two test methods. Based on our testing, it has become evident, that differences in who is performing the test, i.e., height and weight is problematic. This combined with the varying reaction times of those applying the required force, produces compounding variability in the calculus used to determine the compliance ratio.² The inability to repeat/reproduce the test and the variability of data acquisition, will prompt endless legal action that consume resources and, at worst, potentially render the regulation unenforceable.

Estimated Costs Have Been Understated by the Agency

The NPR addresses several approaches to modify CSUs to increase their stability, thereby improving their ratio, and provided associated costs to achieve compliance. Those costs are understated.

In reviewing the ***'Preliminary Description of Potential Costs and Benefits of the Proposed Rule'*** (pg.128), the following compliance costs are not considered in the ***'Costs Associated with the Proposed Rule'*** (pg.142): product redesign; redesigning the operational sliding length of drawer guides; adding counterweight, e.g., redesigning to accommodate a thicker MDF back panel³; packaging and interpack redesign, e.g., additional weight will require additional packaging materials and in many instances, require an additional box; shipping and transportation, e.g., the additional counterweight will eliminate the use of FedEx/UPS for drop shipment forcing manufacturers to utilize more expensive LTL shipment options; and the cost of third party testing for all CSUs, i.e., the complexity of the testing and data gathering will require manufacturers to move away from in-house testing.

While the proposed rule anticipates the use of an interlock device, AHFA testing and evaluation of CSUs across a broad array of price points, reveals compliance to the proposed rule will require additional measures beyond the addition of an interlock. Interlocks alone are not enough to reach a 1 or greater ratio. AHFA's testing confirms that in every instance, reaching 1

² In evaluating the repeatability/reproducibility (R/R) of test method 1 (50 repetitions on the same unit), ratios observed ranged from a minimum of 0.056 to a maximum of 0.081 for an average ratio of 0.066.

³ While most companies are using a thicker MDF back panel, the material used for the counterweight can be anything, e.g., steel.

or greater will require the interlock plus additional counterweight. Additionally, some CSU's required levelers and the restriction of the drawer operational sliding length.

AHFA is currently compiling actual manufacturer **'cost of compliance'** data. Preliminary review of that data is presenting numerous challenges. One member company has reported, based on their evaluation of their bestselling CSU, a 44%⁴ increase to their manufacturing cost and in evaluating their top 6 CSUs for compliance [**a ratio of 1 or greater**], a total annual cost of compliance of \$4.82M. This does not include transportation cost, which is estimated to be \$2M.

While staff points to the cost of the interlock, the actual cost of compliance is greater than simply adding \$12 to the manufacturing cost⁵. As mentioned above, interlocks do not provide the necessary safety measure in evaluating the **'tip over moment'** of the CSU. In every case, all CSUs evaluated require the interlock plus counterweight. Of note, the cost of the counterweight is not accounted for in the cost and benefit narrative.

The counterweight is becoming a necessary part of the overall compliance strategy in evaluating CSUs. If a company decides to use steel plating, the cost of the additional weight is \$1/pound. If a thicker MDF back panel is used, the cost of compliance will also be affected. Some manufacturers are adding up to a 3/4-inch thick MDF back panel⁶ and bottom to achieve compliance. It should be noted, MDF is a dense engineered wood product and will add considerable weight to the CSU based on the area dimensions of the back panel. This additional thickness must also be accounted for in the redesign of the CSU.

The agency has also failed to consider that the additional weight, added to a CSU to achieve compliance, has the unintended consequence of making all CSUs heavier. One member company has suggested they would need to add an additional 125 pounds to their standard

⁴ On average, the cost of compliance is 32% of the manufacturing cost of the unit.

⁵ In evaluating interlocks, AFHA was quoted a price of \$12. CPSC quotes a price of \$6 (pg.147 of the PDF). This price doesn't include the cost to modify the design and additional steps in the manufacturing process and the NPR is unclear regarding interlocks being preinstalled for ready-to-assemble CSUs. This will be an additional cost and issue for packaging.

⁶ In one CSU evaluated, an additional 1% was added on top of a 5/8-inch back panel.

CSU. In addition to these compliance methods, many companies are now reducing the maximum drawer extension, redesigning CSUs to extend the front feet or front edge of the CSU forward to relocate the fulcrum and adding leveling devices.⁷

The NPR's underestimation of cost also assumes that a manufacturer will only take one of the suggested methods for compliance. To comply with the NPR, it is very likely that a manufacturer must use multiple compliance methods. While the NPR anticipates interlocks, it does not anticipate manufacturers will have to use multiple options in addition to interlocks to demonstrate compliance by achieving a ratio of 1 or greater.

The Hang Tag

The proposed hang tag is not informative to consumers and punitive to manufacturers because it ignores the reality that no marketable CSU will ever achieve a score of 2, 3, 4, or 5. As previously discussed, AHFA and its members have tested over 1,000 CSUs. To date, all the CSUs evaluated to either Test Method 1 or 2 did not achieve a ratio of 1 or greater; but all pass the performance testing requirements of ASTM F2057-19. In fact, the closest these units have come to compliance is 0.729⁸. For these CSUs to comply with the NPR, it would require significant modification, redesign, the addition of a significant amount of counterweight, and incorporating interlocks into all CSUs.

AHFA has no doubt that no CSU will ever reach a 5, let alone a 2. The label proposed by CPSC lacks context for consumers to understand what it means. It will improperly suggest that a '1' is a low score since the scale is from 1-5. However, achieving the minimum compliance ratio of 1 is extremely difficult and costly. With the discussion above, it can be assumed manufacturers would need to double the cost and compliance methods to achieve a compliance ratio of 2. The rating system is an attempt by the agency to select winners and

⁷ It is estimated leveling devices will add an additional \$2 per leveler to the manufacturing cost of a CSU.

⁸ This CSU had an interlock. It should be noted that during the demonstration at the AHFA Regulatory Summit, there was a CSU with an interlock that achieved a ratio of 0.9.

losers at retail. It also sets up an environment fraught with mischief where companies will potentially falsify the information on the hang tag if there is not robust enforcement.

AHFA Is Concerned About Retrospective Enforcement of ASTM F2057 and the Proposed Rule

The CPSC's briefing package described staff's testing of 186 clothing storage units currently on the market to the NPR's requirements and staff stated that only one unit passed these proposed requirements. While veiled in the NPR, AHFA would like to know the dimensions of that CSU to better understand how it complied.

Considering these results, AHFA is concerned with the potential for the agency to retroactively apply the standard to CSUs manufactured prior to the compliance date of the regulation. Should the CPSC insist upon recalls for CSUs manufactured before the compliance date in the final rule, most if not all CSUs in consumers' homes today could be subject to recall.

This is not a baseless concern. AHFA is aware that the agency has retroactively enforced the F2057-19 standard. This has caused great concern within the industry and, even more troubling, the CPSC has not clearly articulated their compliance guidance regarding their retroactive enforcement. The NPR and CPSC's publicly stated enforcement policies must provide certainty for manufacturers and importers, that application of this rule, or any similar rule, will be applied ***prospectively*** for CSUs manufactured after the effective date of the rule and following a sufficient ***'sell through' period of 24 months***.

It should also be noted that the effective date in the rule is 180 days. This compliance schedule is too compressed given the magnitude of what is being proposed and the realities of the supply chain for CSUs. This 180-day effective date means manufacturers will have to ensure it has imported 100% of its prior production in approximately 6 months. This is not practical and would likely cause massive supply chain disruption because, as the agency is aware, virtually no furniture manufactured for sale in the United States currently complies with the proposed rule. The 180 days is also woefully insufficient to design, manufacture, and ship units that comply with the requirements of a final rule that looks substantially like the proposed NPR.

Progress in the Voluntary Standard Group Has Been Stymied by CPSC's Refusal to Provide Updated IDI and Incident Data

In April 2021 and for the benefit of the F15.42 subcommittee, AHFA emailed a request to the primary CPSC staffer sitting on ASTM F15.42 subcommittee for the incident data underlying the CPSC's ***2020 Report for Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture, and Appliances*** (published January 2021). AHFA received no response and sent a follow-up email reiterating the request in May. AHFA received no response to the follow-up request.

AHFA was left with no choice but to request this data under the Freedom of Information Act (FOIA) and did so in June 2021. In August 2021, the CPSC's FOIA office responded and stated obtaining this information would cost nearly \$4,000. It likely will take many months to process with no guarantee of the usefulness of the data that will be provided.

This means that, at a substantial cost to an individual member of the ASTM F15.42 subcommittee, it likely will take until December 2021 or January 2022, at a minimum, for the AHFA to receive the data that is important to its ongoing work and the work of F15.42. It is also not clear that the data will be in the format most useful to the subcommittee. It is also very likely that CPSC will have already published its updated report for 2021 by the time the data underlying the 2020 report is obtained through FOIA.

This needless delay has stymied the work of the AHFA and the ASTM subcommittee. CPSC should provide the data underlying the 2020 report to the entire F15.42 subcommittee expeditiously and well in advance of the next subcommittee meeting so it can be thoroughly reviewed by all committee members. CPSC should do the same for the 2021 report likely to be issued in a few months.

In closing, I'd like to personally invite you to the next ASTM F15.42 furniture safety subcommittee meeting scheduled to meet on Wednesday, November 17, and Thursday

November 18. This meeting will take place at the Conference Center located on the Greensboro, NC campus of Guilford Technical Community College. During the meeting, there will be a demonstration of proposed test methods to ASTM F 2057-19 and of the proposed test methods outlined in the NPR.

AHFA plans on submitting detailed comments to the NPR once it's published. Please do not hesitate to contact me if you have any questions and I hope to see you at the ASTM meeting in November.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Perdue", with a long horizontal flourish extending to the right.

Bill Perdue
VP Regulatory Affairs
American Home Furnishings Alliance
336-881-1017
bperdue@ahfa.us