

Cooley

Update on CPSC NPR on
Clothing Storage Unit
Stability and STURDY Act

July 12, 2022

The CPSC's Notice of Proposed Rulemaking

- **Stability requirements:**
 - Two test methods – Test Method 1 for CSUs with drawers or pull-out shelves; Test Method 2 for “any CSU.”
 - Requires filling of drawers with 8.5 lbs/cubic foot.
 - Accounts for use of CSUs on carpet
 - Hangtag goes from 1 to 5 where “1” means compliant with the rule
- **Criticisms:** ambiguity in application of 2 applicable test methods; non-reproducibility of testing; the fact that most furniture on the market cannot currently pass the NPR standard; hangtag not providing meaningful information; insufficient time for compliance.
- **Effective Date:** 30 days after final rule promulgation
- **Stockpiling Prohibition:** Importers/manufacturers may not import more than 105% of median import/manufacture volume of prior 13 month period prior to rule enactment.

The CPSC's Notice of Proposed Rulemaking (cont'd)

- **Timing for Arrival of Final Rule:** CPSC Regulatory Agenda states briefing package to be delivered to Commission September 2022.
- **Likely Vote Outcome:** CPSC Commissioners were unanimous in their support of the NPR and have remained supportive of CPSC staff
- **Legal Challenge?:** If the rule is finalized “as is” or close to the same, then it likely will be challenged.
 - Success of such a challenge is highly dependent on substance of the final rule.
 - Similarly, likelihood of a judge issuing a stay of the rule during a challenge is highly discretionary and dependent on substance of the final rule.

STURDY Act

- **Core Features:**

- House and Senate Bills: Require CPSC to, 1 year after date of enactment, create mandatory standard with 180-day effective date.
- Only Senate Bill: Except if there is a consensus standard that includes: (1) tests that simulate the weight of children up to 60 pounds; (2) objective, repeatable, reproducible, and measurable tests that simulate real world use and account for carpet, loaded drawers, multiple open drawers, and dynamic force; (3) clothing storage units 27” and higher; and (4) warning requirements.

- **Status:**

- Original legislation passed in the House.
- An amended Senate bill passed through the Senate Commerce Committee in May 2022
- **Most likely outcome:** The Senate version of STURDY has bipartisan support and could be added to a larger bill, such as a spending bill (similar to SOFFA/Portable Fuel Container Safety Act). It’s also possible that Senate version passes freestanding in Senate and House if no opposition.

Takeaways from ASTM Subcommittee

- **CPSC creating foundation to state ASTM F2057 is inadequate**
 - CPSC cast **multiple** negative votes on ballot changes to F2057.
 - Negative ballots lay a record, stating staff's concerns that the standard does not address various safety-related components that the NPR purportedly addresses (i.e., multiple open/filled drawers, carpet, and dynamic forces from children's interactions with furniture).
 - Actions are clearly motivated to establish the record that the ASTM standard is insufficient, and therefore its rule under STURDY must look very similar to its NPR.
- **CPSC's positions unanimously rejected by ASTM subcommittee**
 - Unprecedented: CPSC received no support from ASTM committee members.