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.