

**Before the  
Consumer Product Safety Commission  
Notice of Proposed Rulemaking  
*'Safety Standard for Clothing Storage Units'*  
Docket No. CPSC-2017-0044**

**Comments of  
The American Home Furnishings Alliance**

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**Re: *Oral Comments on the Notice of Proposed Rulemaking (NPR) the Commission issued regarding a Safety Standard for Clothing Storage Units, Docket CPSC–2017–0044***

Good morning/afternoon, I am Bill Perdue, Vice President of Regulatory Affairs for the **American Home Furnishings Alliance** (AHFA). I would like to thank U.S. Consumer Product Safety Commission (“CPSC”) for hosting this public forum and providing the opportunity for me to speak here today.

The AHFA is the world’s largest and most influential trade association serving the home furnishings industry. Our 350 member companies operate numerous domestic furniture manufacturing facilities, retail stores, 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. Member companies participate in a highly competitive market characterized by ever-changing style preferences, margin pressures, and the tendency of consumers to postpone big-ticket purchases if their perceptions of value and function are not satisfied.

The AHFA offers these comments to express its concerns with the CPSC’s **Notice of Proposed Rulemaking** to create a Safety Standard for Clothing Storage Units (the “NPR”). These comments have been developed by AHFA on behalf of the U.S. home furnishings industry and AHFA members that serve on the ASTM F15.42 subcommittee on Furniture Safety.

***The Two Test Methods Produce Inconsistent Results***

The NPR provides 2 test methods for evaluating clothing storage units (“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 compete, and testing confirmed that the two test methods produce vastly different results for the same CSUs. Based on testing by AHFA, testing the same CSU to both test methods produce different ratios that vary by as much as 124%. In some instances, a CSU passed using one method but failed using the other.

The demonstrated variability in results for the two different test methods raises serious concerns regarding enforcement of the standard if it becomes effective. For example, what would be the enforcement outcome in a situation where a furniture manufacturer verifies that its CSU ratio is 1.04 using Test Method 2 and complies with the regulation, but CPSC contends

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 uncertainty for CPSC, consumers, and the regulated industry, and raises serious concerns regarding the enforceability of the proposed rule.

***The Proposed Tests are not Repeatable or Reproducible***

In addition to the stark differences in results between the two different proposed test methods, each test method itself is also flawed based on the inherent variability in inputs. Performing the test method requires precise measurements of when the tip-over moment occurs. Data acquisition is the foundation of the two test methods. Based on our testing, however, it has become evident, that differences in who is performing the test, i.e., height and weight result in different results. 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. The inability to repeat/reproduce the test and the variability of data acquisition, will likely render the regulation unenforceable.

***CPSC's Cost-Benefit Analysis in Support of the NPR is Insufficient***

The ***'Preliminary Description of Potential Costs and Benefits of the Proposed Rule'*** fails to account for all true costs imposed by the proposed rule, and thus does not meet the statutory requirements for assessing the costs and benefits of proposed regulations. For example, the following compliance costs are not considered in the ***'Costs Associated with the Proposed Rule'***:

- product redesign, including but not limited to redesigning the operational sliding length of drawer guides; adding counterweight, e.g., redesigning to accommodate a thicker MDF back panel;
- packaging and inter-pack redesign. For example, the additional weight will require additional packaging materials and, in many instances, require an additional box;
- increased shipping and transportation costs. The additional counterweight may 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., increased testing costs. The complexity of the testing and data gathering will require manufacturers to move away from in-house testing.

AHFA and its members have tested over 1,000 CSUs that meet the performance testing requirements of ASTM F2057-19. These CSUs represent a broad range of price points and style, from RTA to fully assembled in a wide variety of heights and weights. To date, no CSUs evaluated to either Test Method 1 or 2 achieved a ratio of 1 or greater. In fact, the closest these units have come to compliance is 0.729. 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. This means that a great number of units will have to be redesigned, at a greater cost than anticipated in the NPR.

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.

The redesign will be costlier than CPSC estimates. 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 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 has compiled actual manufacturer '**cost of compliance**' data. Review of that data has identified numerous challenges. One member company has reported, based on the evaluation of their bestselling CSU, a 44% 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 cost. 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 panel 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 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.

The NPR's underestimation of cost also assumes that a manufacturer will only take one of the suggested methods for compliance. However, to comply with the NPR, especially given the uncertainty caused by the variation in results within and between test methods, it is very likely that a manufacturer must use *multiple* compliance methods in redesigning their CSUs. While the NPR anticipates interlocks as a standalone design change when calculating such costs, 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 failure to include the costs of multiple design changes makes CPSC's preliminary cost-benefit analysis woefully inadequate.

### ***The Proposed Hang Tag Does Not Provide Meaningful Information***

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 tests a broad and representative variety of CSUs currently on the market, and none achieved even a "1" under the proposed standard.

Given the test parameters, 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, and that this CSU is unsafe, even though it complies with the mandatory standard, 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. Extending the rating system to 5, when ratings above 2, based on current technology and CPSC's estimate costs, are aspirational at best, ends up misleading consumers regarding the true hazard potentially posed by a given CSU, and the universe of CSUs available for purchase.

### ***Rulemaking Through Enforcement***

Considering the fact that virtually no CSUs currently on the market meet CPSC's proposed standard, 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, through enforcement. 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 a final 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.

### ***The Effective Date in the Proposed Rule is Impracticable***

It should also be noted that the commission voted to amend the effective date of the final rule from 180-days to 30-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 amendment is not practical and will cause massive supply chain disruptions 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 was already woefully insufficient, much less 30-days to design, manufacture, and ship clothing storage units that comply with the requirements of a final rule that looks substantially like the proposed NPR.

There is also no practical way for industry to start making changes in CSU design now, in anticipation of a final rule. As we noted above, the two proposed test methods yield diverging results, and even tested within each test method is not repeatable and reproducible. This means that, even if the final rule is identical to the NPR, manufacturers will not have a way to *reliably* know whether their new designs will comply. Additionally, because the proposed rule bears no relationship in terms of requirements and testing, to the current voluntary standard, designs meant to meet and exceed the ASTM standard may still not meet that of the NPR. Additionally, because of the many gaps in the data analysis and test methods in the NPR, it is impossible to reliably predict, and prepare for, whatever CPSC's final rule will be. For all these reasons, there is simply no way that manufacturers will be able to meet the requirements of a final rule within 30 days. As a result, such a compliance period will either deprive American consumers of the ability to purchase CSUs, or will leave only non-compliant furniture, made by unscrupulous manufacturers, available for sale.

### ***The NPR's Reliance on the Data is Flawed***

The very foundation of the NPR is based on this study by UMTRI. There are 32 direct references or footnotes related to this tab throughout the NPR. The study attempts to evaluate the dynamic forces of children interacting with clothing storage units.

In reviewing Tab R, the design of the study does not align with the objective. In the introduction, staff states the objective is to obtain data on 'possible interactions' and to 'examine the forces and postures associated with climbing activities'. However, behavior and posture were demonstrated to child climbers and limited by setup, i.e., we want you to climb; we'll show you how; equipment was designed to elicit maximum forces, i.e., affordance size and friction were optimized and not limited to the proportions or properties of CSUs.

It should also be noted that the forces measured were not reported in a meaningful way that could not be directly applied to various designs based on the results. Tipover moment was indicated to be highly dependent on posture, however, posture is removed from the reported results and posture was not limited by the surveyed geometry of the CSU. Normalizing the data appears to generate more 'outliers' whose origins are not reported and there is an implied condition of no rotational acceleration in the reports analysis.

In looking at the data, statistical significance of trends is not reported; several comparisons are made but there is no scientific rationale provided or referenced in the text; nomenclature and inconsistent analysis style are not on par with peer reviewed studies; and there is no mention of rotational equilibrium in the report.

Finally, no clear, reliable, method emerges from the study that can be used to calculate the tip moment loading and data analysis and statistical comparison are lacking, e.g., ANOVA or t-test. The study is based on static postures and quasi static postures in analyzing loading where these postures and behaviors are limited, trained, and instructed. It is unclear if the apparatus was calibrated, and the activities described are not based on the CSU dimensional survey. All these factors leave the study lacking scientific detail and render it deficient in its importance in determining the effect of a child's interactions with a clothing storage unit and their impact on their stability. It also erodes the capacity of the rules math in calculating the ratio to demonstrate compliance.

Thank you for the opportunity to participate in this public hearing and AHFA looks forward to our continued participation in this process.