



RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

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Via Electronic Filing

Alberta E. Mills
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East-West Highway
Bethesda, MD 20814

Re: Safety Standard for Clothing Storage Units; 87 Fed. Register 6246 (February 3, 2022); Docket No. CPSC-2017-0044

Dear Secretary Mills:

The Retail Industry Leaders Association (RILA or the Association) appreciates the opportunity to submit written comments on the U.S. Consumer Product Safety Commission's (CPSC or Commission) proposed rule on Safety Standards for Clothing Storage Units (CSUs) (Proposed Standard).¹ RILA and its members support the Commission's critical consumer safety mission and appreciate the CPSC's leadership on product safety matters, including consumer education campaigns, and stakeholder outreach.

By way of background, RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. Some of RILA's members sell furniture that is within the scope of the Proposed Standard.

RILA members take very seriously the compliance and safety of all products they sell, especially with regard to safety for their most vulnerable customers, children and senior citizens. RILA members devote significant resources to ensuring products they sell meet or exceed applicable safety requirements. RILA and its members also have a long history of collaborating with the CPSC to address consumer product safety issues, including regularly cooperating to implement product recalls, actively participating in the

¹ Notice of Proposed Rulemaking, Safety Standard for Clothing Storage Units; 87 Fed. Register 6246 (February 3, 2020); Docket No. CPSC-2017-0044

Commission's industry partnership programs, and promoting CPSC's consumer awareness initiatives such as the AnchorIt! campaign.

RILA's comments will not cover the technical requirements of the Proposed Standard, which will be addressed by other commenters with expertise in the nuances of product engineering and design, including the CSU manufacturers that produce and supply the furniture that retailers ultimately sell to consumers. Instead, RILA takes this opportunity to comment on the practical implications of aspects of the implementation period in the Proposed Standard, as well as to share additional information related to CPSC's cost analysis.

A summary of RILA's input follows below.

- CPSC's proposed 30-day effective date is arbitrary and capricious, fails to account for supply chain realities, and would create unnecessary waste. RILA recommends that CPSC include *at minimum* a 180-day effective date in the final standard.
- An anti-stockpiling provision structured around a median manufacturing or import volume during the preceding 13 months is not aligned with typical manufacturing and import processes and volume fluctuations and does not consider recent unprecedented supply chain challenges. RILA recommends that CPSC reinstate the previous anti-stockpiling calculation from its draft NPR that is based on "best sales year" from the preceding five years to better reflect these business realities.
- CPSC should revisit its cost analysis for the Proposed Standard to ensure it appropriately reflects costs to consumers and producers, as well as any potential costs from waste associated with disposal of in-transit and in-production inventory that will become non-compliant under the proposed Rule's expedited 30-day effective date. RILA has provided additional information on costs associated with compliance with the Proposed Standard and the expedited implementation period in our comments for the Commission's consideration.
- In practice, CPSC's proposed hang tag rating system will fail to differentiate between CSUs on the market and could create confusion. The use of the hang tag also fails to consider practical aspects of how CSUs are often merchandised (e.g., flat-packed units). RILA recommends that the CPSC omit the hang tag requirement from the final standard.
- The Commission should remain open to considering adoption of the forthcoming revised consensus-based voluntary standard being developed by the ASTM F15.42 Subcommittee.

Each of these comments are discussed in more detail below.



1. A 30-Day Effective Date is Inadequate and Fails to Account for Supply Chain Realities

The Commission has proposed to have a forthcoming mandatory standard take effect 30 days following promulgation of its final standard. This timeline is grossly inadequate and will not provide sufficient time for the industry to respond to the likely changes needed to product design, and testing to ensure the redesign will meet the final standard's requirements. Such a short timeframe also does not provide adequate time for the production and transport steps that would follow once CSUs are tested to the new standard.

Even without the backdrop of current and widely publicized COVID-19 pandemic-related supply chain challenges, the time required to redesign and test products to the final standard could alone take months. A RILA member that currently carries over 1,000² different styles of CSUs has learned from its suppliers that any individual style of CSU could require up to five (5) months to redesign and test the product to the final standard once issued. It is also unclear whether there would be enough capacity across global labs with the capability of testing CSUs to meet the demand for testing all CSU products (i.e., tens of thousands of products) in a 30-day timeframe. Testing is essential to verifying a product complies with safety standards and this critical step should not be compromised by a highly compressed implementation timeframe. After redesigned CSUs are manufactured and ready to be loaded on an ocean carrier for transport, shipping takes an average of 6 to 7 weeks from country of production to arrival at U.S. ports of entry. The current congestion that many ports are experiencing may mean that it could be a week or more before the cargo is offloaded with additional time needed for the redesigned CSUs to clear customs.

Industry cannot begin the process of complying with a *final* standard until it is final. Given the costs related to a product redesign and changes in manufacturing production lines and processes, retailers' manufacturing partners will not initiate redesign of CSUs based on the requirements outlined in the Proposed Standard. Attempting to forecast a final standard based on the Proposed standard is too likely to result in wasted design resources and materials. Additionally, labs cannot certify that a product will meet a future standard that is merely speculative. Understandably, industry and CPSC-accredited third-party labs rely on standards set forth in final rules for the regulatory clarity and certainty needed to proceed with investing resources to implement any changes.

It has long been customary practice for the CPSC to provide at least six months for industry to implement any final mandatory standard by building in effective dates that toll 180 days following promulgation of a final standard, including products where risks to children were particularly at the forefront.³ Indeed CPSC's

² For example, in 2021, a RILA member carried 23 unique private label CSUs (total sales 6,234 units; \$2.1M in sales in 2021) and 2,044 national brand CSUs (268,842 units totaling approx. \$91M in sales).

³ See e.g., Final Rule, Safety Standard for Crib Mattresses; 87 Fed. Register 8640 (Feb. 15, 2022) (which included an effective date six months following publication); Notice of Proposed Rulemaking, Safety Standard for Operating Cords on Custom Window Coverings; 87 Fed. Register 1014 (Jan. 7, 2022) (which states at 1045, "[t]he proposed rule includes an effective date that is 180 days after the final rule is published in the Federal Register. Because some manufacturers may need to redesign certain custom window coverings of unusual sizes to accommodate a cordless operation, a later effective date would allow manufacturers more time to redesign and spread the research and development costs or eliminate product variants that cannot be switched to cordless." (emphasis added)); Notice of



draft NPR originally included a 180-day effective date until an amendment made a few weeks prior to publication of the Proposed Standard revised it to a mere 30 days. Although in some cases, and as discussed above, the timeframe from redesign/testing, to production and delivery of a CSU may exceed 6 months, a 180-day implementation period comes closer to realistic supply chain transition timeframes. RILA recommends the CPSC include a *minimum* of a 180-day effective date in its final CSU standard. Additionally, RILA encourages the Commission to consider comments provided by manufacturers and their representatives to assist with better understanding typical redesign and production timeframes for CSUs.

2. Structuring an Anti-Stockpiling Requirements Around a 13-Month Median is Not Aligned with Production and Import Practices

Just prior to publication of its Proposed Standard, the Commission amended its earlier draft version of the NPR to change the basis for an anti-stockpiling provision from the best sales year in the preceding five years to the median manufacturing or import volume during the preceding 13 months. Retailers are concerned that deriving the stockpiling threshold from activity in the preceding year is misaligned with import practices and normal fluctuations in import and production volumes.

For any product, there are many variables at play that determine how many individual units are imported in any given month. Business arrangements that drive import activities routinely change based on timing, efficiency, costs, and other business considerations between the parties involved. Import volumes may go up for one importer and down for another at any given time while the net import across the industry remains comparable.

Structuring the anti-stockpiling provision around a median of manufacturing/import volumes from the preceding year would fail to correct for any anomalies and disruptions in production and import activities. This would fail to achieve the desired outcome of a level playing field that prevents and deters stockpiling across the industry. Over the past two years, the COVID-19 pandemic has significantly disrupted supply chains, retail operations, and consumer buying patterns. As the country transitions out of the pandemic, consumer buying patterns and retail operations are beginning to return to more normal cycles. To better account for variability, RILA recommends the CPSC revert back to the original draft stockpiling provision that is structured around best sales year during the preceding five years.

3. CPSC's Cost Analysis Does Not Appear to Account for All Costs

The cost analysis CPSC included with its Proposed Standard appears to significantly underestimate the cost to consumers and industry. It is also unclear if CPSC factored in other societal/environmental costs tied to the significant disposal of newly noncompliant products that will likely result if the Commission proceeds with the tight 30-day timeline for implementation.

Proposed Rulemaking, Safety Standard for Play Yards, 76 Fed. Register 58167 (Sept. 20, 2011) (which states at 58172, "[t]o allow time for play yards to come into compliance, we intend for the standard to become effective 6 months after the publication of the final rule . . ." (emphasis added));



The CPSC has estimated a cost increase of \$5.80 per unit to meet the Proposed Standard. However, it appears the CPSC has based its estimate around the lowest cost to adapt a specific type of CSU furniture and deemed it to be representative of all CSU furniture. Within its "Costs and Small Business Impacts" discussion the CPSC references cost increases could exceed \$25 per unit—this amount is close to and could even exceed the retail price point for some units within the scope of the Proposed Standard. Also, it is unclear if the \$5.80/unit considers the scale of production runs—i.e., that production at a smaller scale by a smaller manufacturer could average significantly higher increases per unit.

A RILA member engaged a domestic and international CSU manufacturer to gain a better understanding of the estimated production and shipping cost increases (*i.e.*, due to increase overall unit weight) that would be associated with meeting the Proposed Standard. Those estimates are outlined further in an attached addendum (see Addendum A). The manufacturer estimated overall cost increases, including shipping costs, will be within a range of 20 to 48 percent. At this time, the typical market cost of a currently compliant unit from that manufacturing partner is around \$335 USD. At the lower (20 percent) end of the estimated increase, that unit would increase by around \$67/unit, which is \$61 above the CPSC's \$5.80 per unit estimate. A cost increase of 48 percent would result in an even greater discrepancy with CPSC's cost estimates.

Given these cost disparities, RILA urges the Commission to engage further with manufacturers to better understand the range of variables and costs it should consider prior to finalizing its cost analysis for the final standard.

Additionally, under the CPSC's proposed 30-day effective date, there will be significant sunk costs and waste associated with product that will need to be landfilled, as well as societal costs from associated environmental burdens. Although there is no way to precisely calculate the impact, one RILA member estimated approximately 23,000 units and \$7.8M of lost product sales.⁴ The environmental cost of this volume of waste is estimated to be 91,316 kg of CO₂ emissions based on estimated average weight and material type of furniture sold. We emphasize that these figures only reflect the estimates of one national retail chain. The actual costs and environmental impacts would be much greater as it would encompass all units that could not be sold due to stockpiling and in-transit/in-production inventory held by manufacturers, importers, distributors, and retailers. RILA recommends that the CPSC revisit its cost analysis to determine that it adequately reflects economic and environmental impacts.

4. The Proposed Hang Tag Rating System is Unworkable in Practice

The Proposed Standard includes a new and novel hang tag requirement that would require CSUs to have an attached hang tag that bears a 1 to 5 stability scale rating. In practice, when applied to CSUs it is unlikely

⁴ This estimate assumes that 1/12 of the retailer's 2021 total sold units are on the water when the final standard is published. This estimate does not include cost associated with transportation and disposal of newly non-compliant units.



to provide adequate comparison information to consumers to inform their buying decisions. It also has the potential to create confusion and there are practical barriers to implementation in many cases.

If CPSC's intent with the hang tag rating stability rating is to model ratings like the well-recognized ENERGY STAR® yellow tag,⁵ it should be noted that the yellow tags make comparisons between like units within the market and do not make a comparison between all units in the market as the proposed stability hang tag would. Applying this same approach to CSUs, based upon current understanding of the proposed rating scale, similar types of CSUs (e.g., three-drawer dressers) would likely all score the same on the scale and preclude any ability to compare or contrast them. Also, unlike an ENERGY STAR rating, which is well-recognized and involved a broad consumer awareness effort, it is unclear whether and how the Commission plans to raise consumer awareness about the new rating scale – particularly in a very abbreviated 30-day implementation period. Before implementing a new rating scale, the Commission should clearly define the value to consumers and provide corresponding consumer education to avoid creating confusion.

The hang tag requirement also does not account for the way retailers often merchandise furniture, including CSUs. Many CSUs would be merchandised in flat-pack packaging in retail stores. In those scenarios it is unclear how and where a hang tag would be placed.

In sum, while the hang tag and rating scale is an interesting concept, it should undergo further refinement to demonstrate it would provide for comparison shopping between like CSUs. RILA recommends the CPSC omit this requirement from its final standard. Any future hang tag and rating scale scheme should only be implemented after its value to consumers has been clearly demonstrated and all interested stakeholders have the opportunity to review and provide input on future refinement.

5. The Commission Should Consider Adoption of Forthcoming ASTM Revised Standard

RILA also wishes to acknowledge the work that is currently ongoing in the ASTM F15.42 Subcommittee to revise the current consensus-based voluntary standard for CSUs. It is RILA's understanding that the Subcommittee's work is near completion, and it may issue a revised standard as early as the next few months. The Subcommittee includes representatives from a diverse set of stakeholders, including consumer advocates, testing labs and manufacturers. RILA encourages the Commission to remain open to considering the outcome of the ASTM process and adopt the forthcoming ASTM standard update as the final standard.

Closing

In closing, RILA and its members strongly support the CPSC's consumer safety mission and share the Commission's commitment to protecting consumers and ensuring that all products sold to U.S. consumers are in stringent compliance with all applicable safety standards and legal requirements. We appreciate CPSC's leadership and meaningful engagement with stakeholders.

⁵ See generally, ENERGY STAR (website) at <https://www.energystar.gov/>.



If you have any questions or need any additional information, please contact me at susan.kirsch@rila.org or (202) 866-7477.

Sincerely,



Susan Kirsch
Vice President, Regulatory Affairs



Addendum A: Breakdown of Estimated Industry CSU Cost Increased Based on Proposed CPSC Standard

The below cost general cost estimates were provided to a RILA retailer member by a domestic and international manufacturing partner that supplies some of the CSU products the retailer carries. The cost increases are based on specific analysis of individual units, assigning a percent cost increase. The percent range shows the variability between different models and the percent cost increases expected.

- Typical market cost of a currently compliant CSU is \$335 USD.
- Manufacturing and labor costs will increase between 30% and 70% based on the design of the CSU (There is significant variability to cost based on the unique furniture designs).
- Increased weight will drive added packaging costs due to weight limits (2 boxes instead of 1). It is expected that on average the weight of the units will increase between 25 and 35 pounds.
- Shipping costs will increase between 6% and 35% due to increased weight necessary to meet the updated standards.
- Overall cost increases are expected to be within a range of 20% to 48% (from product development to shipping). This is a \$61 difference from the CPSC's lower estimate (\$5.80/unit) based on a market cost of \$335/unit.

