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Division of the Secretariat
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Submitted via www.regulations.gov

**Comments of Consumer Reports to the
Consumer Product Safety Commission on the
Notice of Proposed Rulemaking: Safety Standard for Clothing Storage Units
Docket No. CPSC-2017-0044**

Consumer Reports (CR), the independent, non-profit member organization,¹ welcomes the opportunity to submit comments to the Consumer Product Safety Commission (CPSC) regarding the agency's notice of proposed rulemaking to establish a mandatory safety standard for clothing storage units (CSUs).² Addressing furniture tip-over hazards has been a priority for CR for more than a decade.³ We know first-hand how critical it is to implement a strong mandatory standard, based on the results of our independent testing, the findings of our investigations, and our experience advocating for change.⁴ We also know through our comparative stability testing of CSUs that it is indeed feasible to make a safer product, and the CPSC's proposed rule would go a long way toward achieving this goal. In the following comments, we outline the serious tip-over risks associated with CSUs and provide input and recommendations on the proposed rule.

As a persistent hidden hazard, furniture tip-overs take a severe toll on families across the country. Existing harm mitigation efforts, including those tied to the voluntary standards process, the promotion and use of anti-tip restraints, and safety messaging to the public, are valuable—but

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit, and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² CPSC, Notice of Proposed Rulemaking: "Safety Standard for Clothing Storage Units" (Feb. 3, 2022) (Docket No. CPSC-2017-0044) (online at: www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-01689.pdf).

³ Consumers Union is the former name of the advocacy division of Consumer Reports and the former name of the organization as a whole; *see, e.g.*, Consumer Reports, "Safety alert: Furniture fails to meet tip-over standards" (Apr. 2007) (online at: web.archive.org/web/2011071403www.consumerreports.org/cro/home-garden/home-furnishings/safety-alert-furniture-stability-306/overview/index.htm).

⁴ Consumer Reports, "Furniture Tip-Overs: A Hazard in Your Home" (last updated: Aug. 2, 2021) (online at: www.consumerreports.org/furniture/furniture-tip-over-investigation).

they, alone, have done far too little to reduce tip-over deaths and injuries. It is clear that a strong mandatory rule, accounting for real-world conditions and foreseeable child interactions with CSUs, is urgently needed.

I. Clothing Storage Units Too Easily Pose an Unreasonable Risk of Injury to Children

Although tip-over incidents have affected people of various ages, the vast majority of furniture tip-over fatalities involve young children. Since 2000, hundreds of children have died in furniture tip-over incidents, and every year, thousands are treated for injuries at the emergency department.⁵ We were pleased to see in the CPSC’s most recent report on tip-over incident data that staff has identified a statistically significant decline in tip-over injuries from 2011-2020. According to agency staff, this is due in large part to a reduction in tip-overs related to a television,⁶ though we suspect that recent declines in injuries also may be attributable to the enduring work of Parents Against Tip-Overs and others who have increased public awareness about the danger of furniture tip-overs. Despite this apparent decline, tip-over injuries and deaths still occur with alarming regularity. According to the latest CPSC data, an estimated 22,500 people suffer a medically-treated injury related to a tip-over every year. An average of six children are rushed to the emergency department every day after a chest, bureau, or dresser tips over onto them.⁷ Not all of these children survive. A strong and timely federal safety rule can help protect children against these preventable deaths and injuries.

The ASTM Furniture Safety Subcommittee was formed over twenty years ago to address tip-over hazards. While CPSC staff, consumer groups, and parent advocates are active participants in the consensus-based subcommittee, a majority of voting members represent the interests of the furniture industry.⁸ Historically, some of these members have resisted changes that would ensure the standard better accounts for “real-world factors” that contribute to CSU instability, such as placement on carpeting and known child interactions like climbing and pulling on drawers.⁹ Many revisions over the years have been relatively minor; notably, two of the very few significant revisions that have been approved – (1) requiring anchoring kits (revision published in ASTM F2057-09) and (2) extending the standard’s scope to shorter dressers (revision published in ASTM F2057-19) – coincided with the introduction of legislation addressing CSU safety.¹⁰

⁵ Suchy, Adam, Directorate for Epidemiology, Division of Hazard Analysis, CPSC, “Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture, and Appliances: 2021 Report” (Feb. 2022) (online at: www.cpsc.gov/s3fs-public/2021_Tip_Over_Report_POSTED.pdf).

⁶ *Id.* at 9.

⁷ *Id.* at 5.

⁸ ASTM International, “F15.42 Roster” (last accessed Apr. 15, 2022) (online at member.astm.org/MyASTM/MyCommittees/CommitteeRoster/CommitteeDetails).

⁹ CPSC, *supra* note 2 at 6255.

¹⁰ Congress.gov, “H.R. 4266 - Katie Elise and Meghan Agnes Act” (introduced in House on Dec. 4, 2007) (online at: www.congress.gov/bill/110th-congress/house-bill/4266?s=1&r=89); Congress.gov, “H.R.2211 - Stop Tip-overs of Unstable, Risky Dressers on Youth Act” (introduced in House on Apr. 10, 2019) (online at: www.congress.gov/bill/116th-congress/house-bill/2211).

Parent advocates and consumer groups have stated for years that the existing voluntary standard is too weak to protect children.¹¹ In the case of at least one incident where a dresser was linked to a child's death, the manufacturer told CR it was not being recalled because the product met the voluntary standard.¹² In the notice of proposed rulemaking, CPSC staff determined that because the current voluntary standard fails to account for several relevant factors that are associated with tip-overs, it is not adequate to protect children.¹³ We agree.

II. The Scope and Definitions of the Proposed Rule Are Adequate

We support the CPSC's proposed definition of "clothing storage unit" and the scope of the proposed rule. The agency's reasons for exempting from the scope of the proposed rule certain types of furniture, such as clothes lockers and portable storage closets, are sensible.

CR does not hold a position on whether the scope of the rule should be modified to exclude lightweight plastic units; however, we do see clear differences between the product types, and we are comfortable with a proposal currently under consideration at the ASTM Furniture Safety Subcommittee to exclude a unit from the scope of the standard if it weighs less than 30 pounds. Whether the CPSC includes or excludes these units from the scope of the proposed rule, the agency should continue to monitor incident data to determine whether the scope of the rule, as it ultimately applies to products, is appropriate, or should be modified at some point after the current rulemaking is finalized to protect children.

III. The Proposed Performance Requirements Would Adequately Reduce the Risk of Injury to Children, and Certain Further Refinements Would Help the CPSC Implement the Rule

We find the proposed stability requirements to be adequate in that they account for the forces generated by children and key hazard patterns involved in CSU tip-overs, and thus implementing these requirements would likely result in a significant reduction in incidents, injuries, and deaths. With regard to the proposed testing procedure, we consider it feasible for furniture manufacturers to implement—and we recognize that the CPSC seeks compliance testing that applies fairly across the marketplace, including when testing units with various dimensions, features, weights, and weight distributions. However, we think it is possible for the CPSC to implement a rigorous and fair standard using a simpler test procedure that requires no calculations.

The test conditions, similar to what is proposed by the agency, would include simulating the impact of carpeted surfaces (a 1.5 degree forward tilt) with all drawers, pull-out shelves, or doors positioned in their least stable configuration. With certain units, this may necessitate bypassing outstops, including a unit's final outstop, if doing so is possible with normal use, and

¹¹ Consumer Reports, "Joint letter urging furniture makers to strengthen dresser safety standard to reduce tip-over injuries and deaths" (Jan. 14, 2019) (online at: www.advocacy.consumerreports.org/research/joint-letter-urging-furniture-makers-to-strengthen-dresser-safety-standard-to-reduce-tip-over-injuries-and-deaths).

¹² Consumer Reports, "Ikea Still Sells a Hemnes Dresser Linked to a Child's Death" (Jan. 9, 2019) (online at: www.consumerreports.org/furniture/ikea-still-sells-hemnes-dresser-linked-to-childs-death-a1257353985).

¹³ CPSC, *supra* note 2 at 6255.

is necessary for the least stable configuration to be achieved. Once the unit has been configured for testing, testers would simply hang a weight over the unit's uppermost fully extended drawer, pull-out shelf or door, and observe over a period of at least five seconds whether the unit tips under the applied test weight. The weight should be an amount determined by the CPSC to appropriately protect the vast majority of children at the ages when they would be developmentally expected to engage in behaviors that can lead to a tip-over. In any event, the weight should be no less than sixty pounds, a level of stringency that CR testing has demonstrated is feasible for manufacturers at all price points to pass. We hold that this alternative test procedure would make for a more straightforward, easily-reproducible test that the furniture industry could readily perform while still ensuring a high level of protection.

We offer the following additional comments on the agency's proposed testing procedure:

- *Proposed test methods for calculating tip-over moment:* The proposed rule provides two test methods for applying force to a CSU in order to determine its tip-over moment, either of which can be used. We understand the CPSC's rationale for offering the two methods; however, we propose that the agency require a single tip-over test method, Test Method 1 (Figure 9a in the CPSC staff Briefing Memorandum), which involves gradually applying a vertical force to the face of the uppermost extendible element of a CSU.¹⁴ Based on our ongoing discussions with furniture manufacturers, it is clear that the industry, generally, is best situated to perform a vertical load test, which better mirrors a simple hanging weight test, rather than a horizontal load test. As we have observed at ASTM meetings where these tests have been demonstrated, it has proven difficult for industry parties to reliably measure a horizontal force and therefore to consistently reproduce horizontal load tests. Using a single test method – Test Method 1 – to calculate a unit's tip-over moment would help standardize the testing procedure.
- *Pull force as a comparison moment:* The second of the three comparison tip-over moments proposed by the CPSC is based on the moment associated with a 2-to-5-year-old child pulling on a CSU handhold while opening or attempting to open a drawer.¹⁵ Given that measuring a “pull force” consistently has proven challenging for industry, we anticipate that this comparison moment could be difficult for the furniture industry to implement.

IV. Interlock Systems Should Be Tested with a Horizontal Pull Force and All Units Should Undergo Stability Testing with Available Extendible Elements Fully Open

CSUs with interlock designs should be subject to a performance requirement to ensure that the interlocks cannot be easily defeated or overridden by consumer use. We find the proposed 30-pound performance requirement—given the absence of any superior method of evaluation—adequate to assess this, agree that the testing of interlocks should be conducted prior to stability testing, and further agree that if an interlock is damaged during the 30-pound

¹⁴ CPSC, “Staffing Briefing Package Draft Notice of Proposed Rulemaking for Clothing Storage Units,” at 292 (July 14, 2021) (online at: www.cpsc.gov/s3fs-public/Proposed%20Rule-%20Safety%20Standard%20for%20Clothing%20Storage%20Units.pdf)

¹⁵ *Id.* at 6278.

horizontal pull force testing, it should be disabled or bypassed for stability testing. To prevent incorrect installment and misuse that could result in tip-over incidents, we agree with the NPR that all CSUs with interlock designs, including ready-to-assemble units, should be pre-installed and automatically engage when a consumer installs a unit's drawers.¹⁶

It is an essential component of stability testing that a CSU be set up in the condition in which it is most likely to tip-over. This includes all of a CSU's available extendible elements being open to their maximum extension, as the proposed rule stipulates. In the case of units with interlocks that have passed the 30-pound pull test, all extendible elements that are not locked by the interlock system must be fully extended to their least stable configuration.

V. To Maintain Rigor of Carpet Simulation and Minimize Variability, the CPSC Should Require Consistency in Adjustment of Leveling Devices

The proposed rule would allow leveling devices on clothing storage units to be adjusted in accordance with the manufacturer's instructions both before and after a CSU has been tilted forward 1.5 degrees (to simulate carpeting). Based on ongoing discussions with furniture manufacturers, we are concerned that allowing such adjustments would enable manufacturers to overcome the 1.5 degree, tilt-forward test condition simply by producing written instructions that state a unit should be leveled to account for placement on various surfaces. To maintain the intent behind a test condition that simulates placement on carpet, we propose that the CPSC require that when CSUs are configured for performance testing, leveling devices must be fully retracted, with no allowances for adjustments to leveler positions either during configuration or the testing procedure.

An exception, which we find to be reasonable, reflects discussions happening at the ASTM Furniture Safety Subcommittee. One proposal would allow for minimal leveling to occur before a unit's rearmost floor support is placed on a rigid test block to simulate the effect of carpeting (with no additional leveling permitted after this initial adjustment), if such leveling is necessary for a unit to function as intended. In other words, if a unit's extendible elements cannot be placed in their least stable configuration, as required to execute performance testing, without minimal left-to-right adjustments to leveling devices, we would consider those adjustments acceptable.

VI. Hang Tags Should Be Accompanied By Permanent Stickers Affixed to CSUs

Used in conjunction with strong, safety-minded performance requirements for stability, hang tags could serve as a helpful tool to assist consumers in making informed decisions about the products they buy for their homes. However, information of this kind has its limitations. It is improbable that hang tags will be retained after a CSU is purchased and set up, and thus buyers of second-hand units, or renters of a furnished home, are unlikely to benefit from the included information. If the CPSC requires such hang tags, we recommend that the agency additionally require the inclusion of a permanent sticker affixed to the CSU itself that contains the same information as the hang tag. This type of sticker would be most useful in a location that is neither hidden from view in anticipated placement (for example, the rear of a CSU against a wall), nor

¹⁶ CPSC, *supra* note 2 at 6276.

likely to prompt immediate removal, such as on the outer surfaces of a unit. The logical location is for such a sticker to be inside drawers or doors.

VII. Anti-Tip Restraints Are Important But Not Adequate to Reduce Tip-Over Injuries and Deaths

CR recognizes the importance of anchoring, and recommends that all consumers properly restrain their furniture. Among other materials, CR has created an article and video to explain clearly how to properly anchor furniture to a wall.¹⁷ Although the furniture industry has emphasized the use of anti-tip restraints and the role of consumers in preventing tip-overs, we know that anti-tip restraints are neither fail-safe, nor a viable option for everyone.¹⁸ We also know that many consumers do not anchor furniture to the wall.¹⁹ In some cases, this is because they do not have the tools or knowledge necessary for proper installation, or, in the case of some renters, they are not permitted to drill holes in their walls. Even when installed correctly, anchors do not always hold.²⁰

We agree with CPSC staff's determination (noting that anti-tip restraints have proven ineffective as a "primary method" for preventing tip-overs) that CSUs "should be inherently stable," including to account for the lack of consumer use of anti-tip restraints and additional barriers to their proper installation and use.²¹ Ultimately, it is the responsibility of manufacturers to produce CSUs that are not prone to tipping over, rather than leave most of the responsibility for safety on their customers. Safety communications urging consumers to anchor their furniture are best viewed as a supplement to rigorous performance requirements, not as a substitute.

VIII. Economic Analysis May Underestimate Net Benefits of Proposed Rule

We find compelling CPSC staff's determination that several considered alternatives to the proposed rule – including no regulatory action (for example, relying on voluntary recalls, compliance with the 2019 voluntary standard, and education campaigns) and requiring only performance and technical data but no performance requirements for stability – would fail to adequately reduce the risks posed to children. We agree with the agency that strong performance requirements for stability are essential and that CSUs simply need to be manufactured to be inherently more stable.²²

¹⁷ Consumer Reports, "How to Anchor Furniture to Help Prevent Tip-Overs" (March 22, 2018) (online at: www.consumerreports.org/furniture/how-to-anchor-furniture-to-help-prevent-tip-overs-a4328328212).

¹⁸ Consumer Reports, "Furniture Anchors Not an Easy Fix, as Child Tip-Over Deaths Persist" (Nov. 5, 2018) (online at: www.consumerreports.org/furniture/furniture-anchors-not-an-easy-fix-as-child-tip-over-deaths-persist-a453749773).

¹⁹ Consumer Reports, "Two-Thirds of Americans Don't Anchor their Furniture" (Aug. 28, 2021) (online at: www.consumerreports.org/furniture-tip-over/two-thirds-of-americans-dont-anchor-their-furniture-a7535427466).

²⁰ Consumer Reports, "Two Tip-Overs in One Week Highlight Continued Threat of Unstable Furniture" (March 17, 2021) (online at: www.consumerreports.org/furniture-tip-over/tip-overs-highlight-continued-threat-of-unstable-furniture-a1203536855).

²¹ CPSC, *supra* note 2 at 6255.

²² *Id.* at 6294.

Using \$9.2 million as the value of a statistical life (VSL), CPSC staff estimated that the monetized net benefits (e.g., aggregate benefits minus aggregate costs) of the rule, as proposed, would be more than \$50 million per year.²³ However, societal benefits may be greatly underestimated. In March 2022, Professor Adam Finkel of the University of Michigan submitted comments on the agency’s cost-benefit analysis for its proposed safety standard for operating cords on custom window coverings. In his comments, Finkel has outlined why the CPSC’s methods for estimating costs and benefits of a proposed rule may warrant re-examining.²⁴ We find many of those comments to be relevant to this proposed rule, and encourage agency staff to seriously consider them before finalizing the rule’s economic analysis.

First, Finkel has noted that because the CPSC’s incident rate estimates are based on NEISS data which “only enumerates injuries from approximately 100 hospitals” and thus necessitates “scaling up the sample to the population,” the estimations are “surrounded by statistical uncertainty.”²⁵ Injuries and deaths may be far more numerous than agency estimates suggest, highlighting the need for a strong mandatory standard that would address higher-than-estimated societal costs. Finkel also has noted that the CPSC’s analysis may underestimate and under-value the benefits of the proposed rule for window coverings. Finkel has recommended that the CPSC should use for “benefits-valuation purposes plausible upper-bound estimates of fatal and non-fatal injuries derived from an improved analysis of the NEISS data” that better reflects the benefits of a proposed rule, and avoids erring on the side of “underprotection.” He has stated that doing so would “acknowledge that analytical errors [could] result in needless human suffering.”²⁶ We encourage the CPSC to assess the proposed rule for clothing storage units with a particular emphasis on avoiding “underprotection.”

Finkel also has raised concerns that societal costs related to product-linked deaths may be undervalued, considering the “special value society may place on the life of an infant or very young child.”²⁷ In the proposed safety standard for operating cords on custom window coverings, the VSL used for children is \$27.6 million. Agency staff noted that this figure reflects “a review of literature conducted for the CPSC” which suggests the VSL for children “could exceed that of adults by a factor of 1.2 to 3.”²⁸ Given that the vast majority of victims in fatal CSU tip-over incidents are young children, it is unclear why the same consideration was not made in this proposed rule, and a VSL of only \$9.2 million is used in cost-benefit estimations. Finkel has contended that even a VSL of \$27.6 million, three times the amount used for CSU-linked child fatalities, undervalues the lives of infants and very young children, and rather, the “CPSC should supplement its benefits estimate per fatality with one that makes use of the literature estimating the value of a year of potential life lost (YPLL).” As life expectancy in the U.S. is “now

²³ *Id.* at 6305.

²⁴ Finkel, Adam M., Sc.D., CIH, “Comments on CPSC 2013-0028: Proposed Safety Standard for Operating Cords on Custom Window Coverings” (Mar. 23, 2022) (online at: www.regulations.gov/comment/CPSC-2013-0028-3579).

²⁵ *Id.* at 3.

²⁶ *Id.* at 5.

²⁷ *Id.* at 5.

²⁸ CPSC, “Notice of Proposed Rulemaking: Safety Standard for Operating Cords for Custom Window Coverings,” (Jan. 7, 2022) (online at: www.regulations.gov/docket/CPSC-2013-0028).

approaching 80 years,” doing so would “yield a value of \$39.2 million per infant’s/child’s life.”²⁹ We strongly encourage CPSC staff to reconsider the VSL used for child victims of CSU tip-over incidents, as it is likely significantly undervalued, and net benefits of the rule may be far greater than current estimates suggest.

Finally, Finkel has contended that the CPSC likely overestimates costs associated with implementing the proposed rule for window coverings, and has stated, “case after case of *post hoc* cost accounting reveals that compliance simply becomes more efficient and cheaper due to technological learning, economies of scale (which can’t be manifested in pre-regulatory unit cost estimates), and other factors.”³⁰ We encourage the CPSC to revisit Professor Finkel’s full comments on this subject and consider them as it works toward a final rule for CSUs.

IX. The Effective Date and Anti-Stockpiling Provisions Properly Task Manufacturers with Maximizing Timely Implementation

We find the adopted Commission amendment imposing stricter limits on stockpiling, which is reflected in the proposed rule, to be reasonable and in the best interest of consumers. Given the CPSC’s determination that CSUs should be manufactured to be inherently more stable, it would be counterintuitive to allow manufacturers to ramp up their current production rate by 20 percent, and pour that many more soon-to-be-noncompliant CSUs into the market, knowing the serious safety hazards associated with such units. Ideally, production rates would undergo no substantial increase, however, we consider it acceptable to permit manufacturers to increase their production rates by five percent. We also find the proposed basis for calculating normal production, based on one month out of the most recent 13 months, to be far more standardized and sensible than the original provision allowing manufacturers or importers the ability to define, as their production base period, any period of 365 days during the five-year period preceding the promulgation of the final rule.

Regarding the adopted amendment that has shortened the proposed effective date from 180 days to 30 days after issuance of the final rule, this change is entirely consistent with the Commission’s general intention to propose shorter implementation periods on rules, in order to limit sales of products that insufficiently account for safety. If industry entities submit comments documenting the need for a certain additional amount of time for implementation, we would welcome the opportunity to review them and consider which effective date is most appropriate, and encourage the agency to do the same.

X. Conclusion

Consumer Reports thanks the CPSC for issuing the notice of proposed rulemaking. The 2019 ASTM F2057 voluntary standard, anti-tip restraints, warning labels, and information campaigns have all proven inadequate, alone, to substantially reduce tip-over deaths and injuries.³¹ It is clear that strong, mandatory performance requirements for stability are urgently

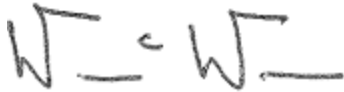
²⁹ Finkel, *supra* note 22; HHS’s 2016 Guidelines for Regulatory Impact Analysis recommends a value of \$490,000 per life-year extended.

³⁰ Finkel, *supra* note 22.

³¹ CPSC, *supra* note 2

needed to protect children from preventable tip-over tragedies, and years of testing and research by independent groups, including CR, underscore the feasibility of manufacturers meeting them. We urge the CPSC to carefully consider our comments and recommendations in the development of a final rule. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Wallace'.

William Wallace
Associate Director, Safety Policy

A handwritten signature in black ink, appearing to read 'Gabe Knight'.

Gabe Knight
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