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June 20, 2023

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Consumer Product Safety Commission: Safety Standard for Clothing Storage Units*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Consumer Product Safety Commission (CPSC) entitled "Safety Standard for Clothing Storage Units" (CPSC-2023-0015). We received the rule on June 6, 2023. It was published in the *Federal Register* as a direct final rule on May 4, 2023. 88 Fed. Reg. 28403. The effective date is September 1, 2023.

According to CPSC, this direct final rule adopts the requirements of ASTM F2057-23, a voluntary standard adopted by ASTM International. In November 2022, CPSC published a consumer product safety standard for clothing storage units (CSUs) to protect children from tip-over-related death or injury, with an effective date of May 24, 2023. 87 Fed. Reg. 72598. In December 2022, the President signed into law the Stop Tip-overs of Unstable, Risky Dressers on Youth Act (STURDY), which, according to CPSC, requires CPSC to either develop and promulgate a new consumer product safety standard for CSUs that meets certain requirements specified in STURDY, or determine that a voluntary standard exists that meets STURDY's requirements. Pub. L. No. 117-328, 136 Stat. 4459, div. BB, title II, § 201 (Dec. 29, 2022). As stated by CPSC, if CPSC determines that a timely-issued voluntary standard satisfies STURDY's criteria, then STURDY requires CPSC to promulgate a final consumer product safety standard that adopts the applicable performance requirements of the voluntary standard, to supersede any existing CSU rule. CPSC stated that on April 19, 2023, it determined that ASTM F2057-23, Standard Safety Specification for Clothing Storage Units, is a voluntary standard that meets the requirements of STURDY. CPSC expressed that in light of that determination, this direct final rule adopts the requirements of ASTM F2057-23 as required by STURDY. According to CPSC, the current CSU rule, which was added in a final rule published on November 25, 2022, is stayed and will not take effect because STURDY provides that adoption of the ASTM standard will supersede CPSC's current rule.

Enclosed is our assessment of CPSC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Daniel Vice
Assistant General Counsel
Regulatory Affairs Division
Consumer Product Safety Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
CONSUMER PRODUCT SAFETY COMMISSION
ENTITLED
“SAFETY STANDARD FOR CLOTHING STORAGE UNITS”
(CPSC-2023-0015)

(i) Cost-benefit analysis

In its submission to us, the Consumer Product Safety Commission (CPSC) indicated that it considered preparation of an analysis of the costs and benefits of this direct final rule to be not applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

In this direct final rule, CPSC stated that the Act does not apply to the rule. CPSC determined that notice and comment are unnecessary for the rule because the Act applies to rules subject to 5 U.S.C. § 553 of the Administrative Procedure Act, and this rule is exempted from 5 U.S.C. § 553 due to the statute’s good cause exception. 5 U.S.C. § 553(b)(B).

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, CPSC is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

CPSC stated that under the Administrative Procedure Act’s good cause exception in 5 U.S.C. § 553(b)(3)(B), notice and comment are unnecessary for the rule. According to CPSC, the purpose of this direct final rule is to adopt the applicable performance requirements of ASTM F2057-23. CPSC stated that the Stop Tip-overs of Unstable, Risky Dressers on Youth Act¹ (STURDY) requires that once CPSC has determined that ASTM F2057-23 “exists” and “meets the requirements” of STURDY section 201(d)(2), it must adopt the applicable performance requirements of ASTM F2037-23, which “shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act.” STURDY, § 201(d)(1). According to CPSC, because it made this determination on April 19, 2023, the adoption of ASTM F2057-23 as a mandatory standard is required by law, and public comments would not lead to substantive changes to the standard or to the effect of the standard as a consumer product safety rule. CPSC stated that under these circumstances, notice and comment are unnecessary.

¹ Pub. L. No. 117-328, 136 Stat. 4459, div. BB, title II, § 201 (Dec. 29, 2022).

CPSC expressed that if it receives a significant adverse comment, CPSC will withdraw this direct final rule. CPSC clarified that it considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion undermining “the rule's underlying premise or approach,” or a showing that the rule “would be ineffective or unacceptable without change.” 60 Fed. Reg. 43108, 43111. According to CPSC, depending on the comment and other circumstances, CPSC may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CPSC determined that this direct final rule contains no information collection requirements under the Act. According to CPSC, there is no increase in the information collection burden associated with the consumer product safety standard for clothing storage units that this direct final rule supersedes, but only a reduction, so this direct final rule does not affect the information collection requirements or approval related to the standard under the Act.

Statutory authorization for the rule

CPSC promulgated this direct final rule pursuant to section 2058 of title 15, United States Code, as well as section 201 of STURDY. Pub. L. No. 117-328, 136 Stat. 4459, div. BB, title II, § 201 (Dec. 29, 2022).

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, CPSC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, CPSC is not subject to the Order.