



UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

MINUTES OF COMMISSION MEETING

Decisional Matter: Implementation of STURDY § 201(d): Determination Regarding ASTM F2057-23 and Draft Direct Final Rule
(Briefing package dated March 22, 2023)

April 19, 2023

Chair Alexander Hoehn-Saric convened the April 19, 2023, meeting of the U.S. Consumer Product Safety Commission in open session at 10:04 a.m. The meeting was held remotely and in person at CPSC Headquarters in Bethesda, MD. Commissioners Peter A. Feldman, Richard Trumka Jr., and Mary T. Boyle were in attendance. The Chair made welcoming remarks, and summarized the agenda item for the meeting.

Chair Hoehn-Saric introduced the decisional matter pending before the Commission and introduced staff that was present to address questions from the Commission: DeWane Ray, Deputy Executive Director; Daniel Vice, Assistant General Counsel; Jason Levine, Executive Director; and Austin Schlick, General Counsel.

Chair Hoehn-Saric advised that by a prior unanimous consent agreement, each Commissioner would have ten minutes to ask questions of staff or make statements, with multiple rounds as necessary, followed by consideration of any amendments and motions. Before the questioning session, the Chair stated that it was not appropriate to discuss legal advice given to the Commission by the Office of the General Counsel outside of Executive Session.

Chair Hoehn-Saric called for questions for staff or statements. The Chair, Commissioners Feldman and Boyle did not have any questions for staff. Commissioner Trumka spoke extensively about the requirements of STURDY and argued that, based on staff's past assessments of tip-over injury data, ASTM F2057-23 failed to meet the requirements of STURDY.¹ He also argued that staff's assessments showed that ASTM F2057-23 would not adequately protect children from tip-over related injury and death. After two rounds, Commissioner Boyle recommended that Commissioner Trumka be allowed to speak without the ten-minute limitation. Commissioners informally agreed to proceed according to the recommendation.

Upon conclusion of Commissioner Trumka's comments, the Chair excused staff and commenced consideration of staff's draft direct final rule on the determination that ASTM F2057-23 meets the requirements of STURDY, as well as any amendments to staff's proposal.

¹ Commissioner Trumka's submission for the public record concerning the implementation of STURDY has been associated with the dockets concerning this matter and is available on www.Regulations.gov.

The Chair did not have any amendments and recognized each Commissioner by order of seniority for amendments or other motions. Commissioners Feldman and Boyle did not have any amendments or other motions.

The Chair recognized Commissioner Trumka for a motion (Trumka Motion 1). Commissioner Trumka moved to return the pending package to staff with instructions to present an updated briefing package containing further analyses under STURDY. (See attachments for complete text of Trumka Motion 1.)

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions. The Commissioners discussed and expressed their respective positions on the motion. Hearing no further discussion or questions, the Chair called for a vote on the motion. The Commission voted (3-1) to not adopt the motion. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the motion. Commissioner Trumka voted to approve the motion.

The Chair recognized Commissioner Trumka for a second motion (Trumka Motion 2). Commissioner Trumka moved to return the pending package to staff with instructions to prepare for the Commission's consideration a draft Notice of Proposed Rulemaking with a 75-day comment period and questions for comment concerning whether ASTM F2057-23 meets each requirement under STURDY. (See attachments for complete text of Trumka Motion 2.) Commissioner Trumka explained his view that a Direct Final Rulemaking proceeding is an inappropriate process for controversial rulemakings where the Commission has broad discretion to take a range of actions.

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the motion. The Commission voted (3-1) to not adopt the motion. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the motion. Commissioner Trumka voted to approve the motion.

The Chair recognized Commissioner Trumka for a third motion (Trumka Motion 3). Commissioner Trumka moved to return the pending package to staff with instructions to prepare for the Commission's consideration a draft Notice of Proposed Rulemaking that maintains the definition of CSU as adopted by the Commission under the existing CSU rule. (See attachments for complete text of Trumka Motion 3.)

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the motion. The Commission voted (3-1) to not adopt the motion. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the motion. Commissioner Trumka voted to approve the motion.

The Chair recognized Commissioner Trumka for an amendment (Trumka Amendment 1). Commissioner Trumka offered an amendment to remove the stay of the CSU rule and set an effective date for the direct final rule of 5 years from the date of publication in the *Federal Register*. (See attachments for complete text of Trumka Amendment 1.) Commissioner Trumka explained his amendment, stating that there is legal uncertainty as to whether courts would uphold a Commission decision to adopt ASTM F2057-23 and the need to allow time for the industry to comply with the Commission's existing CSU Rule before transitioning to a new standard.

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on

the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for a second amendment (Trumka Amendment 2). Commissioner Trumka offered an amendment to remove the stay of the Commission's CSU rule. (See attachments for complete text of Trumka Amendment 2.) Commissioner Trumka explained his amendment, stating that there is legal uncertainty as to whether courts would uphold a Commission decision to adopt ASTM F2057-23 and the need for a backstop to ensure that an effective standard would remain in effect.

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for a third amendment (Trumka Amendment 3). Commissioner Trumka offered an amendment to state that the Commission will not accept updates to the ASTM standard that reduce safety. (See attachments for complete text of Trumka Amendment 3.) Commissioner Trumka explained his amendment, stating that STURDY establishes a statutory baseline for safety.

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for a fourth amendment (Trumka Amendment 4). Commissioner Trumka offered an amendment to strike the section of the draft direct final rule entitled "consultation with stakeholders." (See attachments for complete text of Trumka Amendment 4.) Commissioner Trumka explained his amendment, citing what he viewed as an unusual private consultation process preceding this rulemaking.

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for a fifth amendment (Trumka Amendment 5). Commissioner Trumka offered an amendment to delete the identification of an interested member of the public as an "independent product safety expert." (See attachments for complete text of Trumka Amendment 5.)

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for a sixth amendment (Trumka Amendment 6). Commissioner Trumka offered an amendment to accurately phrase the draft direct final rule's description of staff's assessment concerning the adequacy of ASTM standard F2057-23 to protect children up to 72 months of age from tip-over-related death or injury. (See attachments for complete text of Trumka Amendment 6.)

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for a seventh amendment (Trumka Amendment 7). Commissioner Trumka offered an amendment to remove the following statement from the draft direct final rule: "Staff noted that STURDY appears to use 72 months and 60 pounds interchangeably; this and the structure of STURDY, suggest that Congress considered 60 pounds a representative weight for a 72-month-old child." (See attachments for complete text of Trumka Amendment 7.) Commissioner Trumka expressed disagreement with the legal conclusion that Congress intended these phrases to be interchangeable.

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair recognized Commissioner Trumka for his eighth and final amendment (Trumka Amendment 8). Commissioner Trumka offered an amendment to change the draft direct final rule's description of staff's assessment of the ASTM standard's stability tests. (See attachments for the complete text of Trumka Amendment 8.)

Chair Hoehn-Saric called for a second and Commissioner Feldman seconded the motion. Chair Hoehn-Saric recognized each Commissioner in order of seniority for questions, and hearing none, called for a vote on the amendment. The Commission voted (3-1) to not adopt the amendment. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to not approve the amendment. Commissioner Trumka voted to approve the amendment.

The Chair called for any other amendments or motions and hearing none, moved to determine that ASTM F2057-23 satisfies the requirements of STURDY § 201(d), and to publish staff's draft direct final rule reflecting the same in the *Federal Register*. The Chair called for a second and Commissioner Feldman seconded the motion. The Commission voted (3-1) to determine that ASTM F2057-23 satisfies the requirements of STURDY § 201(d) and to publish staff's draft direct final rule in the *Federal Register*. Chair Hoehn-Saric, Commissioners Feldman and Boyle voted to approve staff's proposal as drafted. Commissioner Trumka voted to not approve staff's proposal as drafted.

Chair Hoehn-Saric stated that each Commissioner would have up to ten minutes for closing remarks. The Chair provided his closing remarks and then recognized each Commissioner for closing remarks. In their closing remarks, Commissioners Feldman and Boyle recognized and thanked victims' families, advocacy groups and staff for their collaborative and diligent work in this area. Commissioner Trumka expressed support for staff's work on the tip-over issue and his disappointment with adoption of the ASTM standard.

There being no other business, Chair Hoehn-Saric adjourned the meeting at 11:03 a.m.

For the Commission:

Alberta E. Mills

Attachments: 1. Motions and Amendments Proposed by Commissioner Trumka (not adopted by the
Commission)
2. Statement by Chair Hoehn-Saric
3. Statement by Commissioner Feldman
4. Statement by Commissioner Trumka
5. Statement by Commissioner Boyle

Trumka Motions

NOT ADOPTED BY THE COMMISSION

Motion 1: Remand to Staff to Prepare Required Analyses under STURDY

I move to return the pending package to staff with instructions to present an updated briefing package on “Implementation of STURDY § 201(d): Determination Regarding ASTM F2057-23 and Draft Direct Final Rule” that adds analyses addressing the following questions:

- (1) Does STURDY compel the Commission to adopt ASTM F2057-23?
- (2) If the Commission is not compelled to adopt ASTM F2057-23, should the Commission nonetheless adopt ASTM F2057-23?
- (3) How do the safety effects of ASTM F2057-23 differ from the safety effects of the existing CSU rule, particularly concerning the safety of children up to 72 months of age?
- (4) If the Commission is not compelled to adopt ASTM F2057-23, does the existing CSU rule meet the requirements for a rule promulgated by CPSC under STURDY?
- (5) If not, what modifications would be required for the existing CSU rule to meet the substantive requirements under STURDY and what would be the safety effect of those modifications?

Motion 2: Remand to Staff to Prepare NPR with 75-day Notice and Comment Period and Questions for Comment

NOT ADOPTED BY THE COMMISSION

I move to return the pending package to staff with instructions to prepare for the Commission's consideration a draft Notice of Proposed Rulemaking with a 75-day comment period and the following questions for comment, at a minimum, regarding adoption of the ASTM F2057-23 standard pursuant to STURDY:

1. The appropriate definition of CSU under the requirements of STURDY.
 2. Whether ASTM F2057-23 includes tests of all CSUs.
 3. Whether ASTM F2057-23 protects children up to 72 months of age from tip-over related death or injury.
 4. Whether ASTM F2057-23 protects children generally from tip-over related death or injury.
 5. Whether ASTM F2057-23 includes tests that adequately simulate dynamic force.
 6. Whether ASTM F2057-23 includes tests that adequately simulate real-world use conditions.
 7. Whether ASTM F2057-23 includes tests that adequately simulate the weight of children up to 60 pounds interacting with CSUs.
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Motion 3: Remand to Staff to Prepare NPR that Maintains the Commission’s Definition of CSU

I move to return the pending package to staff with instructions to prepare for the Commission's consideration a draft Notice of Proposed Rulemaking that maintains the definition of clothing storage unit that was adopted by the Commission under the existing CSU Rule.

Trumka Amendments

Amendment 1: Remove stay of CSU rule and make effective date 5 years from date of publication in the Federal Register

NOT ADOPTED BY THE COMMISSION

OS 3:

In the sentence beginning “If the Commission determines that a timely issued,” delete the clause “to supersede any existing CSU rule.”

Delete the sentence beginning “Because STURDY provides that”

OS 4:

In line 1, delete “120 days” and replace with “5 years”

Delete the sentence beginning “The CSU rule promulgated by CPSC”

OS 6:

Delete the sentence beginning “Those mandatory requirements ‘will supersede’”

OS 15:

Delete the sentence beginning “Because STURDY provides”

Delete the sentence beginning “Therefore the Commission finds good cause”

OS 21:

Delete the paragraph beginning “Under STURDY” and replace with “The Commission will make this rule effective 5 years after promulgation. Unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on [INSERT DATE 5 YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As a consumer product safety standard under the CPSA, this rule applies to CSUs manufactured after the effective date. 15 U.S.C.§2058(g)(1).”

OS 23:

Replace “120 days” with “5 years”

Amendment 2: Remove stay of CSU rule

NOT ADOPTED BY THE COMMISSION

OS 3:

Delete the sentence beginning “Because STURDY provides that”

OS 4:

Delete the sentence beginning “The CSU rule promulgated by CPSC”

OS 6:

Delete the sentence beginning “Those mandatory requirements ‘will supersede’”

OS 15:

Delete the sentence beginning “Because STURDY provides”

Delete the sentence beginning “Therefore the Commission finds good cause”

NOT ADOPTED BY THE COMMISSION

Amendment 3: Confirm Commission’s commitment to safety – we will not accept updates to the ASTM standard that reduce safety

OS 15:

In line 9, delete “The Commission does not anticipate approving through the standard-revision process of STURDY section 201(e) any changes to ASTM F2057-23 that would reduce the level of protection for children up to 72 months of age from tip-over-related death or injury.” and replace with the following:

“Because ASTM F2057-23 provides the lowest level of protection that is compatible with the requirements of STURDY, the Commission will not approve through the standard-revision process of STURDY section 201(e) any changes to ASTM F2057-23 that would reduce the level of protection for children up to 72 months of age from tip-over-related death or injury.”

NOT ADOPTED BY THE COMMISSION

Amendment 4: Delete inappropriate reliance on industry-backed validators

OS 7:

Delete Section A. Consultation with Stakeholders

NOT ADOPTED BY THE COMMISSION

Amendment 5: Delete unsubstantiated characterization of individual’s credentials

OS 8:

In line 11, delete “an independent product safety expert” so that the sentence reads “On March 3, 2023, Donald Mays sent the Commission an assessment of the ASTM standard.”

OS 14:

In line 9, delete “Product safety expert” so that the sentence reads “Donald Mays has opined that the ASTM F2057-23 warning requirements differ from the F2057-19 requirements by being ‘more specific,’ adding requirements for conspicuous placement, and warning against defeating drawer interlocks.”

NOT ADOPTED BY THE COMMISSION

Amendment 6: Conform Preamble to Briefing Memo re Staff Assessment

OS 11:

Delete “Staff therefore assessed that the Commission could conclude that the standard ‘protects children up to 72 months of age from tip-over-related death or injury, as further described below.’” and replace with “Staff therefore assessed that the Commission could take what the standard says it does at face value and thus conclude that the standard ‘protects children up to 72 months of age from tip-over-related death or injury,’ as further described below.”

NOT ADOPTED BY THE COMMISSION

Amendment 7: Remove unsubstantiated assumption about Congressional intent

OS 11:

Delete the sentence “Staff noted that STURDY appears to use 72 months and 60 pounds interchangeably; this and the structure of STURDY, suggest that Congress considered 60 pounds a representative weight for a 72-month-old child.”

NOT ADOPTED BY THE COMMISSION

Amendment 8: Accurately represent staff assessment of ASTM stability tests

OS 13:

Delete the sentence “Staff assessed that the ASTM stability tests utilize tests or a series of tests that represent real-world conditions.” and replace with “Staff assessed that, if one reads STURDY section 201(c)(2)(B) as allowing tests or a series of tests that separately and independently simulate real-world conditions including carpeted surfaces, loaded drawers, multiple open drawers, and dynamic force (rather than requiring testing for all these conditions

simultaneously), the Commission could conclude that ASTM F2057-23 satisfies section 201(c)(2)(B).”



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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CHAIR ALEXANDER D. HOEHN-SARIC

**Statement of Chair Alexander HoeHN-Saric on the Commission's Favorable
Determination on ASTM F2057-23 and Adoption of a Final Clothing Storage Unit Stability
Rule Under STURDY**

April 19, 2023

Today's vote to adopt the stability requirements of ASTM F2057-23 (the ASTM standard) as a mandatory safety standard to protect children against furniture tipovers is the culmination of decades of work on this issue. And it is parents who have been leading the charge. Parents who suffered immeasurable loss. Parents who turned their tragedies into triumph for millions of other unsuspecting parents, caregivers, and children. Parents Against Tipovers championed this effort, and worked with safety advocates, industry, and Members of Congress to forge a path forward to push industry to make safer furniture and save children's lives. I applaud them and their efforts.

CPSC staff also deserve special recognition and our deep appreciation for a job well done. Prior to the Commission's decision today, CPSC staff worked tirelessly to develop a strong mandatory safety rule to address furniture tipovers, which the Commission approved in October 2022, and I was proud to support. Segments of industry fought against the implementation of this strong safety rule refusing to build safer furniture to the standard and creating significant legal uncertainty.

Following the adoption of CPSC's rule and the industry challenge, Congress passed STURDY as part of the omnibus appropriations bill in December 2022. The bill required the Commission to review the ASTM standard and, should that standard meet STURDY's requirements for protecting children from tipover-related death or injury, to adopt the ASTM standard as a mandatory safety standard.

As Congress intended, we moved quickly to analyze the ASTM standard, make a determination, and issue a final rule that will require manufacturers to make safer clothing storage units starting 120 days after its publication in the *Federal Register*. With the implementation of STURDY, I expect industry to shift their efforts to quickly complying with these new safety requirements. CPSC will be actively monitoring the marketplace and enforcing this important safety standard.

The step we've taken today could not have been done without years of work by advocates and Commission staff. CPSC's new rule backed by STURDY will significantly reduce tipover-related deaths and injuries and provides peace of mind to families across the country.



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COMMISSIONER PETER A. FELDMAN

**STATEMENT OF COMMISSIONER PETER A. FELDMAN
ON STURDY ACT DETERMINATION**

April 19, 2023

The U.S. Consumer Product Safety Commission (CPSC) has taken an important step toward implementing the Stop Tip-overs of Unstable, Risky Dressers on Youth (STURDY) Act. By a 3-1 vote finding that ASTM standard F2057-23 meets the requirements of STURDY, the Commission has cleared the way for adoption of the consensus standard as the new mandatory standard for clothing storage units (CSUs). It has been a long time coming.

First, I want to recognize the families who lost children to furniture tip-overs, including those involved with Parents Against Tip-overs (PAT). The Commission's action is a direct result of their tireless advocacy over the years. Of course, nothing we do will ease the loss these families have endured. I am nevertheless hopeful today's action will help others avoid such tragedies and that the families of PAT may find solace in that.

The ASTM consensus standard sets clear guidelines to protect children from unreasonable risk of tip-over related death or injury and to establish new obligations for furniture makers. I have long supported a mandatory standard, including my 2019 [effort](#) to proceed with a notice of proposed rulemaking, which resulted in meaningful reengagement by industry in the ASTM process. That is why we are where we are today.

Last October, I [opposed](#) the Commission's decision to adopt its own CSU rule, which lacked the broad consensus that the ASTM standard now enjoys. By then it was clear that Congress was prepared to speak on the subject, as the Senate had already passed STURDY unanimously. I argued that we should pause to see the outcome of that effort and to address other legal vulnerabilities that could subject a final rule to challenge. At the time, I cautioned against the significant litigation risk. My colleagues disagreed, [arguing](#) the litigation risk was minimal. The Commission did not wait, and we were sued almost immediately. Shortly thereafter, STURDY was enacted into law. This led to significant confusion, costly litigation, and wasted Commission resources, all of which we could have avoided.

Nevertheless, now that the Commission has heard from the parents of children who died in tip-over accidents, safety advocates, furniture makers, and members of Congress who all support adoption of the ASTM consensus standard, we have begun the final steps to do that. This means an end to the uncertainty of litigation, a strong and durable safety standard, and fewer tragedies. While I wish we had chosen this course last year, I am pleased that we are here now.



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COMMISSIONER RICH TRUMKA JR.

CPSC MAKES GRAVE ERROR, INCREASING CHILDREN'S RISK OF DEATH FROM FURNITURE TIP-OVER AND CREATING LEGAL PERIL FOR AGENCY

APRIL 19, 2023

I am disappointed and saddened by today's vote. Today, the Consumer Product Safety Commission is ignoring the recommendation of its own scientists and leaving children in danger.

On October 19, 2022, and in response to the almost-200 child deaths that occurred between January 2000 and April 2022,¹ CPSC approved a final rule to protect children from dressers tipping over and killing them. Today, the agency has abandoned that highly protective dresser tip-over rule that CPSC scientists developed after years of rigorous testing and decades of failed negotiations with industry. The Commission rejected the recommendation of agency staff and instead caved to outside pressure, rubberstamping a rule that the furniture industry wrote for itself (ASTM F2057) and that our scientists vigorously opposed.²

Consumers are now forced to accept that more children will be crushed to death in tip-over accidents. Those deaths will have been preventable. Specifically, we anticipate that at least one child will die every year as a result of today's decision.³ That breaks my heart. And I wonder who is going to explain today's decision to their parents. Who will explain that the Commission

¹ Final Rule briefing package, PDF page 269 (Table 2)(available at: <https://www.cpsc.gov/s3fs-public/Final-Rule-Safety-Standard-for-Clothing-Storage-Units.pdf?VersionId=X2prG3G0cqngUwZh3rk01mkmFB40Gjf>).

² Letter from CPSC staff to Richard Rosati, Chair, ASTM F15.42 Furniture Safety Subcommittee, Re: Negative Vote for ASTM Ballot F15 (22-06), Item 8 (June 3, 2022).

³ In a chart provided by email from CPSC Technical Staff to Commissioner Richard Trumka Jr. on Sept. 26, 2022, CPSC staff estimated that 75% of 2-year-olds, 50% of 3-year-olds, 10% of 4-year-olds, 5% of 5-year-olds, and 0% of 6-year-olds would be protected from dresser tip-over by the industry rule whereas greater than 95% of 2-year-olds, 95% of 3-year-olds, 90% of 4-year-olds, 50% of 5-year-olds, and 50% of 6-year olds would be protected by the CPSC rule. Applying the percentages in the table above to the 199 tip-over-related child fatalities recorded between 2000 and 2022, CPSC's rule would have prevented 102 of those deaths whereas the industry-written rule would only have prevented 81. Final Rule Briefing Package, PDF page 271 (available at: <https://www.cpsc.gov/s3fs-public/Final-Rule-Safety-Standard-for-Clothing-Storage-Units.pdf?VersionId=X2prG3G0cqngUwZh3rk01mkmFB40Gjf>).

failed them because it chose the path of least resistance, instead of the path that would have saved their child’s life.

On December 29th, 2022, Congress enacted a law called the STURDY Act which directs CPSC to review whether any industry standard for dresser stability meets certain exacting standards. CPSC can adopt the latest industry-written rule only if it meets a rigorous test—at a minimum, it must “protect children up to 72 months of age from death or injury” with—

- (A) Tests that simulate the weight of children up to 60 pounds;
- (B) Objective, repeatable, reproducible, and measurable tests or series of tests that simulate real-world use and account for impacts on clothing storage unit stability that may results from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force;
- (C) Testing of all clothing storage units, including those 27 inches and above in height.”

The industry-written rule fails each of those requirements, and CPSC lacks the authority to override Congress. The industry rule does not protect children up to 72 months of age and also fails (A), (B), and (C).

Protects children up to 72 months of age?	<div>No. ⁴</div> <div>Percentage of children protected from furniture tip over:</div> <table><tr><td></td><td>CSU configuration</td><td>2 Year Olds</td><td>3 Year Olds</td><td>4 Year Olds</td><td>5 Year Olds</td><td>6 Year Olds</td><td>7 Year Olds</td></tr><tr><td>Current draft ASTM</td><td>all drawers open and EMPTY, on carpet (less protective scenario)</td><td>75%</td><td>50%</td><td>10%</td><td>5%</td><td>0%</td><td>0%</td></tr><tr><td>CPSC's proposed rule</td><td>all drawers open and FILLED with clothing, on carpet</td><td>>95%</td><td>95%</td><td>90%</td><td>50%</td><td>50%</td><td>25%</td></tr></table>		CSU configuration	2 Year Olds	3 Year Olds	4 Year Olds	5 Year Olds	6 Year Olds	7 Year Olds	Current draft ASTM	all drawers open and EMPTY , on carpet (less protective scenario)	75%	50%	10%	5%	0%	0%	CPSC's proposed rule	all drawers open and FILLED with clothing, on carpet	>95%	95%	90%	50%	50%	25%
	CSU configuration	2 Year Olds	3 Year Olds	4 Year Olds	5 Year Olds	6 Year Olds	7 Year Olds																		
Current draft ASTM	all drawers open and EMPTY , on carpet (less protective scenario)	75%	50%	10%	5%	0%	0%																		
CPSC's proposed rule	all drawers open and FILLED with clothing, on carpet	>95%	95%	90%	50%	50%	25%																		
Simulates the weight of children up to 60 pounds?	<div>No. The industry-written rule uses a 60-pound static weight placed on an open dresser drawer to simulate the weight of a child. CPSC staff found that method to be an invalid simulation.⁵</div>																								

⁴ Chart provided by email from CPSC Technical Staff to Commissioner Richard Trumka Jr. (Sept. 26, 2022).

⁵According to CPSC’s staff, “the Center of Mass of a child climbing would be outboard of the drawers. Static body weight in line with the edge of the drawer (as proposed in Section 9.2.3) substantially underestimates the forces generated during child climbing interactions. Incident data shows climbing interactions to be among the most common interactions during incidents.” Likewise, CPSC staff found that “The ASTM-balloted 60-pound test weight and associated stability test do not account for or simulate the forces from a dynamic child climbing interaction, which is a critical component of adequately addressing the tip-over hazard.” Letter from CPSC staff to

Simulates real-world use?	<p>No. The industry-written rule fails to simulate real-world use because multiple conditions occur simultaneously in the real world, such as dressers that are (a) filled with clothing <i>and</i> (b) situated on carpeted floor <i>and</i> (c) subject to the simulated weight of a child pulling on a drawer.</p> <p>The industry-written rule assesses each of these stability elements separately, which does not reflect reality.⁶</p>
Simulates dynamic force?	<p>No. CPSC staff determined that the industry-written rule’s horizontal pull test using a 10-pound static force “is lower than demonstrated child strength, and does not appear to be a simulated dynamic force, as claimed.”</p> <p>CPSC staff also determined that the industry-written rule’s test with a static 60-pound weight placed on an open dresser drawer fails to simulate dynamic forces and “substantially underestimates the forces generated during child climbing interactions.”⁷</p>
Requires testing of all clothing storage units?	<p>No. The industry-written rule excludes dressers that are 30 pounds or lighter <i>unloaded</i>, even though clothing adds weight to a dresser and dresser-weight is a critical risk factor in tip-overs. Dressers with less than 3.2 cubic feet of enclosed storage and certain arbitrary product categories that are at the seller’s marketing/labeling discretion are also excluded.</p>

In the real world, outside of the furniture industry’s labs, dresser tip-overs occur when multiple common factors occur at the same time—the drawers are filled with clothing, and a child climbs up on a dresser sitting on carpet. Under those multi-factor scenarios, our staff assessed that 0% of typical weight 6-year-olds would be protected and only 10% of typical weight 4-year-olds would be protected by the rule we adopted today⁸:

Richard Rosati, Chair, ASTM F15.42 Furniture Safety Subcommittee, Re: Negative Vote for ASTM Ballot F15 (22-06), Items 7 & 8 (June 3, 2022).

⁶ Letter from CPSC staff to Richard Rosati, Chair, ASTM F15.42 Furniture Safety Subcommittee, Re: Negative Vote for ASTM Ballot F15 (22-06), Item 8 (June 3, 2022).

⁷ For the 10-pound pull test, staff found: “The [10-pound] pull force in the test in Section 9.2.2 is lower than [the] demonstrated child strength, and does not appear to be a simulated dynamic force, as claimed. For the 60-pound static weight test, staff similarly found that the weight placement “substantially underestimates the forces generated during child climbing interactions” and does not “simulate[] a child’s interaction force. Letter from CPSC staff to Richard Rosati, Chair, ASTM F15.42 Furniture Safety Subcommittee, Re: Negative Vote for ASTM Ballot F15 (22-06), Item 8 (June 3, 2022).

⁸ Chart provided by email from CPSC Technical Staff to Commissioner Richard Trumka Jr. (Sept. 26, 2022).

Percentage of children protected from furniture tip over:

	CSU configuration	2 Year Olds	3 Year Olds	4 Year Olds	5 Year Olds	6 Year Olds	7 Year Olds
Current draft ASTM	all drawers open and EMPTY , on carpet (less protective scenario)	75%	50%	10%	5%	0%	0%
CPSC's proposed rule	all drawers open and FILLED with clothing, on carpet	>95%	95%	90%	50%	50%	25%

That's why less than a year ago, CPSC's own scientists wrote that the industry-written rule⁹ is inadequate to address the hazard of unstable furniture, saying that the tests included in that rule: "would not adequately address the hazards because they fail to address multiple real-world conditions simultaneously; and they fail to ... simulate the interactions seen in the hazard patterns, based on the climbing forces identified by the child climbing study and pull forces in child strength literature."¹⁰

On June 3, 2022, CPSC staff articulated three key safety deficiencies in the industry-written rule:

1. *Tests do not simulate multiple simultaneous factors that are demonstrated to decrease stability and to simultaneously exist during known incidents—i.e., multiple open/filled drawers, carpet, and forces from children's dynamic interactions.*
2. *The test in Section 9.2.3, Simulating a Reaction on Carpet with Child Weight, uses a 60-pound test weight placed on the edge of an open drawer. The balloted language implies that the 60-pound test weight represents the body weight of a child, and that the test simulates a child's interaction force. However, the Child Climbing Study (Tab R) and analysis in the CPSC staff briefing package demonstrates that the Center of Mass of a child climbing would be outboard of the drawers. **Static body weight in line with the edge of the drawer (as proposed in Section 9.2.3) substantially underestimates the forces generated during child climbing interactions.** Incident data shows climbing interactions to be among the most common interactions during incidents.*

⁹ CPSC staff were commenting on balloted changes to ASTM F2057-19, the iteration of the industry-written voluntary standard that was finalized in 2019. The most recent iteration of that standard, ASTM F2057-2023, adopted the relevant balloted changes, so staff's comments are applicable to the 2023 standard.

¹⁰ Final Rule Briefing Package, PDF page 245 (available at: <https://www.cpsc.gov/s3fs-public/Final-Rule-Safety-Standard-for-Clothing-Storage-Units.pdf?VersionId=X2prG3G0cqngUwZh3rk01mkmbFB40Gjf>).

3. ***The pull force in the test in Section 9.2.2 is lower than demonstrated child strength, and does not appear to be a simulated dynamic force, as claimed.***¹¹

CPSC's vote today puts this rule in serious legal jeopardy by attempting to override the criteria set by Congress. It could fail as arbitrary and capricious if challenged in court and leave children without protection from tip-overs.

¹¹ Letter from CPSC staff to Richard Rosati, Chair, ASTM F15.42 Furniture Safety Subcommittee, Re: Negative Vote for ASTM Ballot F15 (22-06), Item 8 (June 3, 2022).



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY BETHESDA, MD 20814
COMMISSIONER MARY T. BOYLE

**Commissioner Mary T. Boyle Statement on Mandatory Safety Standards for
Clothing Storage Units**

April 19, 2023

In October 2022, the Commission voted to issue mandatory safety standards for clothing storage units. This important rule, incorporating strong protections for children and for consumers more broadly, was the product of tremendous work by dedicated and talented CPSC staff. I'm incredibly proud of that work and of the unwavering advocacy for safety that our team of professionals, led by Dr. Kristen Talcott, brings to this longstanding problem. Their efforts have laid essential groundwork for progress, as the Commission navigates the complicated legal landscape we now confront.

After the CPSC rule was finalized but before its effective date, Congress enacted a law: the *Stop Tip-overs of Unstable, Risky Dressers on Youth* ("STURDY") Act. That law does not align with the rule the Commission adopted. Instead, Congress chose to give CPSC a new set of directions governing both substantive requirements for protecting children from the hazards of furniture tip-overs and the process for developing a tip-over safety standard.

The new set of directions from Congress is not what I anticipated when I voted to adopt the Commission's rule. Nevertheless, we must now pivot from our expectations to implement the statutory mandate. To facilitate the process STURDY requires, our staff, including our legal experts, have spelled out the ways in which the Commission could reasonably conclude that the performance requirements in ASTM F2057-23 protect children from tip-over related death or injury. Their assessment differs from the analysis that supported the CPSC rule because it follows the process and the criteria mandated by Congress in STURDY.

As I considered the question now before the Commission, I balanced many factors that a policymaker must take into account, including staff's assessment. Based on these factors, and recognizing fully that people of good will could decide otherwise, I have concluded that it is reasonable to determine that ASTM F2057-23 meets the requirements of STURDY. Accordingly, I have voted to promulgate a consumer product safety standard incorporating those requirements.

Let me repeat: we would not be here today without the incredible staff work that spurred improvements to the ASTM standard, which, for example, now incorporates real-world

scenarios, such as tests to simulate use with carpet and open drawers—requirements absent from previous versions of the industry standard. That is progress, and what we are doing today will make a meaningful difference for safety. We will now be protecting children who were not before protected.

Making a difference today does not stop us from making a difference tomorrow. Protecting consumers—especially children—does not end here. Indeed, the rule simply sets the baseline for what happens next. That means ensuring that the agency pursues vigorous enforcement using all the tools at our disposal, including robust e-commerce surveillance, heightened activity at the ports, and stepped-up compliance inspections. Firms that fail to comply with this mandatory standard should bear the full weight of the law, including penalties and any other available sanctions.

Many parents who suffered the unthinkable support this action today and have, to some degree, placed their trust in industry. It is up to industry to live up to that trust. To industry stakeholders, I say: Don't delay production. Don't wait for the effective date. Don't parse words to avoid responsibility. Don't do the bare minimum. Bring your products into compliance now, and continue to innovate and improve safety. The excellent staff work in support of CPSC's rule provides a roadmap to go beyond the standard we are adopting today, and I, for one, will be very disappointed if the furniture industry and other stakeholders fail to give serious consideration going forward to staff's scrupulous analysis of the potential hazards for consumers and especially for children. We will be watching, and I urge those in the consumer advocate community to be watching too.

Finally, the five-year waiting period STURDY imposes on additional mandatory rulemaking should not be taken as a green light to maintain the status quo. We cannot experiment with the lives of children and wait to see what happens. We must—the agency, industry, and consumer advocates—be vigilant. We cannot let down our guard. We owe it to our children to do nothing less. The stakes could not be higher.