

Cooley

AHFA Regulatory Summit

“CPSC Update: What’s Next
on the Agency’s Agenda”

August 9, 2023

CPSC in 2023 and 2024

- **Renewed Focus on E-commerce**
 - CPSC's eSafe Team
 - CPSC Chair's meetings with broad range of companies in the ecommerce space
- **Section 15(b) Report Requests Initiated by CPSC**
- **Increased Pressure for “Voluntary” Recalls**
- **Unilateral Press Releases**
- **Further Formalization of Fast Track and Non-Fast Track Recall Processes**
- **Civil and Criminal Penalties for Late Reporting and Sales of Recalled Products**
- **Large Regulatory Push** (but no pending CPSC rules impacting home furnishings)
- **Strong Enforcement of New Laws and Regulations** (F2057, Reese's Law, Infant Sleep Products, etc.)



Furniture Stability Update – STURDY Act

- CPSC’s Prior Final Rule **Stayed** and will not take effect.
- **ASTM F2057-23 becomes mandatory standard effective September 1, 2023**
- **Scope:** “Clothing Storage Units subject to ASTM F2057-23” (CPSC Webinar on 8/17/23)
 - Free-standing furniture items with drawers and/or hinged doors **intended for the storage of clothing typical with bedroom furniture.**
 - 27 inches or taller
 - 30 pounds or heavier
 - Contain 3.2 cubic feet or more of enclosed storage volume
 - Closed storage volume: The amount of storage inside drawers and behind doors. Storage with no door or with a clear door (e.g., clear glass door) is **not** included.
 - **Applies to CSUs *manufactured* after September 1, 2023, regardless of where they are manufactured.**
- **Certification Requirement (GCC for general use, CPC for children’s products)**
 - GCCs are already commonly required due to the lead requirements for furniture articles with surface coatings

CPSC Certification for Furniture Stability - GCCs

- **General Certificates of Conformity (GCCs)**
 - Domestic manufacturers and importers must issue GCCs for non-children's clothing storage units within the scope of ASTM F2057-23
 - GCC must list:
 - Identification of the product
 - List of each product safety regulation/requirement to which product is being certified
 - Identification of importer/domestic manufacturer
 - Contact information for individual maintaining records of test results
 - Date and place of manufacture
 - Identification of any third-party laboratory on whose testing the certificate depends

CPSC's Sample GCC

1. Identification of the product covered by this certificate:

Luxe Mattress Models #456, 789 (Queen, King)

2. Citation to each CPSC product safety regulation to which this product is being certified:

[16 CFR Part 1632](#), Standard for the Flammability of Mattresses and Mattress Pads

[16 CFR Part 1633](#), Standard for the Flammability (Open Flame) of Mattress Sets

In this example, the two standards for mattress flammability are the only applicable requirements.

3. Identification of the importer or domestic manufacturer certifying compliance of the product:

MattressSafety USA Importers

123 Good Sleep Way

Springfield, MA 12345

(549) 456-7890

4. Contact information for the individual maintaining records of test results:

Mary Smith, Compliance and Quality Control

MattressSafety USA Importers

123 Good Sleep Way

Springfield, MA 12345

(549) 456-7890 ext. 99, mary@mattressafety101.net

5. Date and place where this product was manufactured:

May 2011, Guangzhou, China

6. Date and place where this product was tested for compliance with the regulation(s) cited above:

June 2011

Guangzhou, China

General use (non-children's) products must be subjected to actual testing or a reasonable testing program and do not require testing by an accredited, third party laboratory accepted by the CPSC.

7. Identification of an accredited laboratory accepted by the CPSC on whose testing the certificate depends:

Guangzhou Quality Labs

No. 023 Shi Nan Road

Dong Zhou, Pan Zi

Guangzhou City

Guangdong Province, China. 511453

+(86) 20 09 7723 5467



CPSC Certification for Furniture Stability (Con'td)

- GCCs must “accompany” the shipment and be “furnished” to your distributors/retailers.
 - Providing electronic access or other means to access to GCC is sufficient
- GCCs and underlying test reports must be provided to CPSC and/or CBP upon request (ideally within 24 hours)
 - GCCs are “worth the paper they are written on”
- Testing Requirement: Reasonable Testing Program
 - No formal requirements but look to CPSC’s material change and periodic testing for children’s products
 - Must be adequately representative of products being sold

CPSC Certification for Furniture Stability

- Children's Product Certificates (CPCs)
 - For CSUs that are considered children's products (a product designed or intended primarily for children 12 years of age or younger), a certificate of conformity is called a Children's Product Certificate.
 - Same contact as GCC, but **must be based on third-party testing from CPSC accredited lab.**
 - Special Testing Requirements to Ensure "Continued Compliance"
 - Subject to material change and periodic testing requirements
 - Must also have a high degree of assurance that the children's products manufactured after the issuance of a Children's Product Certificate, or since the previous periodic testing was conducted, continue to comply.

CPSC Enforcement of Furniture Stability Rule

- Overall: CPSC will aggressively enforce ASTM F2057-23 on day 1
- Imports: What to do if your shipment gets stopped/inspected at the port?
- Noncompliance: Non-compliance is an automatic Section 15 reporting obligation (likely resulting in recall where CPSC requires refund option)
- Scope: Expectation is *broad* interpretation. While F2057 uses “intended for clothing storage typical with bedroom furniture,” we expect a “know it when you see it” approach and “common consumer use” to be taken into account
 - No “institutional use” exemption (all CSUs assumed within scope and required to comply)
 - What is considered “permanently attached to the building”? Tip-over restraints not sufficient.
- Section 15(b) Reporting: Tip-over incidents, even with a compliant product, still could give rise to a Section 15(b) reporting obligation

CPSC's SNPR on Section 6(b)

- Section 6(b) of the CPSA requires CPSC to take certain steps to ensure accuracy of the information provided to it.
- Commissioners (Hoehn-Saric and Trumka, in particular) increasingly referring to 6(b) as impediment or “gag rule”
- February 2023 SNPR to significantly alter 6(b) – Intent for FR this year
 - Streamline dissemination of “already public” information so long as CPSC discloses the source of the information and they have meet undefined “integrity/journalistic standards”
 - Remove status quo of honoring request for manufacturer comment to be withheld
 - Extraordinary circumstance 6(b) exemption

Questions?

Cooley