

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Part 1261**

[Docket No. CPSC–2023–0015]

Safety Standard for Clothing Storage Units**AGENCY:** Consumer Product Safety Commission.**ACTION:** Direct final rule.

SUMMARY: In November 2022, the U.S. Consumer Product Safety Commission 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. In December 2022, the President signed into law the STURDY legislation, which 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. If the Commission determines that a timely issued voluntary standard satisfies STURDY's criteria, then STURDY requires the Commission to promulgate a final consumer product safety standard that adopts the applicable performance requirements of the voluntary standard, to supersede any existing CSU rule. On April 19, 2023, the Commission determined that ASTM F2057–23, Standard Safety Specification for Clothing Storage Units, is a voluntary standard that meets the requirements of STURDY. In light of that determination, this direct final rule adopts the requirements of ASTM F2057–23 as required by STURDY. Because STURDY provides that adoption of the ASTM standard will supersede CPSC's current rule, the current CSU rule, which was added in a final rule published on November 25, 2022, is stayed and will not take effect.

DATES:

Effective date: The rule is effective September 1, 2023, unless the Commission receives a significant adverse comment by June 5, 2023. If the Commission receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date.

Incorporation by reference: The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of September 1, 2023.

Stay and delay of effective date: The CSU rule promulgated as 16 CFR part 1261 in the final rule published at 87 FR

72598 on November 25, 2022, is stayed from May 4, 2023, through September 1, 2023, and the effective date of amendatory instruction 3 (adding 16 CFR part 1261) at 87 FR 72598 is delayed from May 24, 2023, to September 1, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2023–0015, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC–2023–0015, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7945 or (888) 531–9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:**I. Background and Statutory Authority**

On November 25, 2022, the Commission published a consumer product safety standard to protect children from tip-over-related death or injury from CSUs (the current CSU rule), with an effective date of May 24, 2023. 87 FR 72598.

On December 29, 2022, President Biden signed STURDY into law. Public Law 117–328, 136 Stat. 4459, Div. BB, tit. II, sec. 201. STURDY provides that the Commission must assess whether “a voluntary standard exists that meets” the performance and warning requirements in the statute. STURDY sec. 201(d)(1). Specifically, the standard must protect children from tip-over-related death or injury with “tests that simulate the weight of children up to 60 pounds,” “tests that simulate real-world use and account for impacts on clothing storage unit stability that may result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force,” “testing of all clothing storage units, including those 27 inches and above in height,” and warnings. STURDY sec. 201(c)(2).

If the Commission determines that a voluntary standard exists that was published not later than 60 days after STURDY's enactment, was developed by ASTM International or another similar voluntary standards organization, and meets STURDY's requirements for protecting children from tip-over-related death or injury, then the Commission must, within 90 days of its determination, “promulgate a final consumer product safety standard” that adopts the voluntary standard's relevant performance requirements. STURDY sec. 201(d). Those mandatory requirements “will supersede any other existing standard for clothing storage units to protect children from tip-over related death or injury.” STURDY sec. 201(d)(1).

If, however, no mandatory safety standard has been established for CSUs based on a voluntary standard, then by December 29, 2023, the Commission must “promulgate a final consumer product safety standard for clothing storage units to protect children from tip-over-related death or injury.” STURDY secs. 201(c)(1) and (c)(1)(B).

A consumer product safety standard promulgated under STURDY “shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).” STURDY secs. 201(c)(4), (d)(1).¹

¹ On April 19, 2023, the Commission voted (3–1) to publish this direct final rule: <https://www.regulations.gov>.

II. Analysis of ASTM F2057–23

On February 1, 2023, ASTM International approved a revised version of its Standard Safety Specification for Clothing Storage Units, ASTM F2057–23.

A. Consultation With Stakeholders

Over more than five years, CPSC staff has collaborated extensively and received comments from manufacturers and retailers of CSUs, consumer groups, independent product safety experts, and other stakeholders, both within the ASTM standards-setting process and during CPSC's notice-and-comment rulemaking. This consultation continued through the development and balloting of ASTM F2057–23 and after the adoption of STURDY, including a broadly attended set of meetings hosted at CPSC's laboratory in January 2023.

Following ASTM's adoption of ASTM F2057–23, the Commission received recommendations that it determine that ASTM F2057–23 meets the requirements of STURDY. On February 7, 2023, Parents Against Tip-overs (PAT) and the American Home Furnishings Alliance (AHFA) jointly sent a letter to the Commission, in which they made a "request for prompt agency action to review and consider F2057–23 as a mandatory product safety standard for clothing storage furniture." Attachment A to the Staff Briefing Package.² PAT and AHFA asserted that the updated standard "meets the specific requirements of the Act" because:

- It includes performance tests that simulate "real-world" use of clothing storage furniture;

- It includes performance tests that account for the impact of carpeted flooring on CSU stability, as well as the impact of "loaded" drawers, multiple open drawers, and the dynamic force of a child climbing or playing on the unit; and,

- The performance tests simulate the weight of children up to 60 pounds and apply to all clothing storage units 27 inches and above in height.

PAT and AHFA also cited both STURDY and ASTM F2057–23 as "the result of an extraordinary collaborative effort between parents, industry, consumer advocates and child safety experts," that "achieved rare bipartisan backing in Congress."

On February 20, 2023, PAT submitted a second letter to urge "acceptance of ASTM F2057–23 as the final consumer product safety standard for CSUs, according to the guidance provided under The STURDY Act." Attachment B to the Staff Briefing Package. PAT stated in that letter that "[t]he tip-over problem has gone unresolved for far too long, and adopting the new ASTM standard is the solution that will result in much more stable CSUs" than have historically been sold, and thereby "save lives." In addition, PAT reiterated its assertion that ASTM F2057–23 was designed to and does meet the requirements of STURDY.

On March 3, 2023, Donald Mays, an independent product safety expert, sent the Commission an assessment of the ASTM standard. Mr. Mays stated that he analyzed the ASTM standard and the requirements of STURDY and concluded that the Commission should "adopt ASTM F2057–23 and incorporate that standard by reference in their rule." Attachment C to the Staff Briefing Package. On March 6, 2023, Kids in Danger and Consumer Reports jointly sent a letter to the Commission in which they similarly "urge[d] the Commission to promulgate a final consumer product safety standard under the STURDY Act . . . that adopts [ASTM F2057–23's] performance requirements as mandatory." Attachment D to the Staff Briefing Package. Also on March 6, 2023, the Home Furnishings Association (HFA), which stated that it represents 1,550 members and more than 8,000 storefronts across the country, wrote to the Commission urging adoption of ASTM F2057–23. HFA stated, "We strongly believe that the revised ASTM 2057–2023 safety standard for clothing storage units meets the criteria outlined in the STURDY Act and must be adopted by the CPSC as the federal Safety Standard. It achieves everyone's goals of protecting children."

Attachment E to the Staff Briefing Package.

B. Staff Assessment of the Voluntary Standard

Staff assessed the voluntary standard in a Staff Briefing Package. Staff noted that STURDY defines a clothing storage unit as "any free-standing furniture item manufactured in the United States or imported for use in the United States that is intended for the storage of clothing, typical of bedroom furniture." STURDY sec. 201(a). STURDY also provides, however, that CPSC "shall specify the types of furniture items within the scope of subsection (a) as part of a standard promulgated under [STURDY] based on tip-over data as reasonably necessary to protect children up to 72 months of age." STURDY sec. 201(b). For a standard to satisfy the requirements of STURDY, all types of clothing storage units specified by CPSC, "including those 27 inches and above in height," must be tested. STURDY sec. 201(c)(2)(C).

ASTM F2057–23 applies to "free-standing clothing storage units, including but not limited to chests, chests of drawers, drawer chests, armoires, [chiffonobes], bureaus, door chests, and dressers, which are 27 in. (686 mm) or greater in height, 30 lb (13.6 kg) or greater in mass, and contain 3.2 ft³ (90.6 dm³) or greater enclosed storage volume." ASTM F2057–23 sec. 1.1. The standard "does not cover shelving units, such as bookcases or entertainment furniture, office furniture, dining room furniture, jewelry armoires, underbed drawer storage units, occasional/accent furniture not intended for bedroom use, laundry storage/sorting units, or built-in units intended to be permanently attached to the building, nor does it cover 'Clothing Storage Chests' as defined in Consumer Safety Specification F2598." ASTM F2057–23 sec. 1.2.

Although the ASTM voluntary standard does not include all CSUs as defined in section 201(a) of STURDY, staff noted that STURDY contemplates that not all "clothing storage units" would be subject to a mandatory standard and gives CPSC the authority to limit "the types of furniture items" that are within the scope of the rule based on tip-over data. STURDY sec. 201(b). Indeed, STURDY specifies that covered CSUs are limited to those "intended for the storage of clothing, typical of bedroom furniture," which staff noted could further support a finding that the ASTM standard's exclusion of types of furniture that are not free-standing, not intended for clothing storage, and/or not bedroom

www.cpsc.gov/s3fs-public/Meeting-Minutes-Implementation-of-STURDY-201d-Determination-Regarding-ASTM-F2057-23-and-Draft-Direct-Final-Rule.pdf?VersionId=rY0PyWa3BIDDKuarLMDyaZrvms9DKi9X. The Chair and Commissioners issued the following statements: <https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Statement-of-Chair-Alexander-Hoehn-Saric-on-the-Commission%E2%80%99s-Favorable-Determination-on-ASTM-F2057-23-and-Adoption-of-a-Final-Clothing-Storage-Unit-Stability-Rule-Under-STURDY>; <https://www.cpsc.gov/About-CPSC/Commissioner/Peter-A-Feldman/Statement/Statement-of-Commissioner-Peter-A-Feldman-on-Sturdy-Act-Determination>; <https://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/CPSC-Makes-Grave-Error-Increasing-Children%E2%80%99s-Risk-Of-Death-From-Furniture-Tip-Over-And-Creating-Legal-Peril-For-Agency>; and <https://www.cpsc.gov/About-CPSC/Commissioner/Mary-T-Boyle/Statement/Commissioner-Mary-T-Boyle-Statement-on-Mandatory-Safety-Standards-for-Clothing-Storage-Units>.

² The Staff Briefing Package is available at https://www.cpsc.gov/s3fs-public/Implementation-of-STURDY_201dDeterminationRegardingASTMF2057_23andDraftDirectFinalRule.pdf?VersionId=sg.kGfSKseJHE9WZ5ClnlaJYKcSeH5Y.

furniture meets the requirements of STURDY. STURDY sec. 201(a).

The ASTM standard excludes units weighing less than 30 pounds empty. The Commission has previously noted an absence of known incidents causing death or serious injury for CSUs that weigh less than 30 pounds empty (see 87 FR 72628, Table 1). Therefore, staff assessed that based on known tip-over data, the Commission could find that testing units of less than 30 pounds is not “reasonably necessary” to protect children from injury or death. STURDY sec. 201(b).

Similarly, staff noted that while there are data on nonfatal incidents associated with tip-overs of CSU having a storage volume less than 3.2 cubic feet, ASTM based this volume on the lowest known volume of a fatal incident-involved CSU with a height of 27 inches or above. Staff therefore concluded that the Commission could find that, based on tip-over data, testing units having a storage volume less than 3.2 cubic feet is not “reasonably necessary” to protect children from injury or death. STURDY sec. 201(b).

STURDY section 201(d)(2) establishes a checklist of requirements that a voluntary standard must meet to become a mandatory standard. The first requirement is that the standard “protects children up to 72 months of age from tip-over-related death or injury.” STURDY sec. 201(d)(2)(A). Section 7.1 of the ASTM standard states: “The test methods in this safety specification are intended to simulate the reaction of a clothing storage unit on carpet, loaded drawers, multiple open drawers, and a dynamic force from possible interaction of a child up to 72 months.” 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.

Section 201(d)(2)(B) of STURDY requires that a voluntary standard must meet requirements described in subsection (c)(2). Subsection (c)(2) in turn requires:

- Tests that simulate the weight of children up to 60 pounds;
- 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 result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force;
- Testing of all clothing storage units as specified by the Commission, including those 27 inches and above in height; and

- Warning requirements based on ASTM F2057–19, or its successor at the time of STURDY’s enactment, provided that the Commission may strengthen the warning requirements of ASTM F2057–19 or its successor if reasonably necessary to protect children from tip-over-related death or injury.

Staff assessed that the Commission could find that the ASTM standard includes tests that simulate the weight of children up to 60 pounds. 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. According to the 2000 Centers for Disease Control Clinical Growth Charts, which ASTM members used as a reference for ASTM F2057–23, 60 pounds is the approximate weight of a 95th percentile 72-month-old child.

STURDY requires tests that simulate the weight of children up to 60 pounds, and ASTM F2057–23 has a set of three stability tests to simulate the capability of a child weighing up to 60 pounds interacting with a CSU. The first stability test, Section 9.2.1 Simulated Clothing Load, loads drawers with simulated clothing loads. The CSU must not tip over with all doors and extendible elements (movable load-bearing storage components including, but not limited to, drawers and pull-out shelves) open. Staff assessed that it would be reasonable to conclude that a child weighing up to 60 pounds would be able to open loaded drawers and that the Commission could conclude that this is a test that simulates the weight of children up to 60 pounds.

The second stability test, Section 9.2.2 Simulated Horizontal Dynamic Force, applies a 10-pound horizontal force over a period of at least 5 seconds at a “hand-hold” not to exceed a 56-inch height, and then holds the force for at least 10 seconds. The Staff Briefing Package cites a study that found the elbow pull strength of children 2 to 5 years old to be in the range of 6.14 to 26.0 pounds. Staff assessed that the Commission could conclude that this second stability test simulates the pull force of children up to 60 pounds.

The third stability test, Section 9.2.3 Simulating a Reaction on Carpet with Child Weight, uses 60 pounds of weight placed on the edge of an open drawer or pull-out shelf, while the CSU is tilted forward using a 0.43 inch test block to simulate placement on a carpeted surface, with all doors and extendible elements open. Based on the requirements of STURDY, staff assessed that the Commission could conclude

that this is a test that simulates the static weight of children up to 60 pounds.

STURDY also requires “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 result from placement on carpeted surfaces, drawers with items in them, multiple open drawers, and dynamic force.” STURDY sec. 201(c)(2)(B). Staff noted that the ASTM F2057–23 test methods describe the steps to take, specifications for test apparatus, load, dimension, and tolerances for dimensions and loads, all of which are consistent with accepted practices. Because all of these test methods are specified in the ASTM standard, staff assessed that the Commission could conclude that the tests in ASTM F2057–23 are objective, repeatable, reproducible, and measurable.

Staff assessed that the ASTM stability tests utilize tests or a series of tests that represent real-world conditions. For example, section 9.2.1 Simulated Clothing Load tests the CSU with multiple open and loaded drawers on a flat surface. Section 9.2.3 of ASTM 2057–23, described above, is a stability test that simulates placement on a carpeted surface with open drawers. The use of a 0.43-inch thick test block (as specified in section 8.2.3) is consistent with the carpet simulation in CPSC’s final CSU rule. See 87 FR 72636. Staff assessed that the Commission could, therefore, conclude that ASTM F2057–23 includes a stability test that simulates interaction with a CSU on a carpeted surface, which is a real-world condition.

Section 9.2.1 of the ASTM standard, Simulated Clothing Load, is a test conducted on a hard, level, and flat test surface with extendible elements and doors open and, if 50 percent or more of the storage volume is extended, the unit is to be filled with a “simulated clothing load.” The fill weight in extendible elements is calculated using a density of 8.5 pounds per cubic foot of volume, which is the same density used by the Commission in its November 2022 rule. See 87 FR 72610–11. All extendible elements are opened and must remain open for 30 seconds without tip over. Based on this test, staff assessed that the Commission could conclude that ASTM F2057–23 includes a test that simulates drawers with items in them and multiple open drawers, which is another scenario reflecting real-world use.

STURDY section 201(c)(2)(D) requires warnings based on ASTM F2057–19 (the predecessor standard to ASTM F2057–

23). Many of the warning requirements in section 10 of ASTM F2057–23, Marking and Labeling, are substantively identical to those in the 2019 version. Product safety expert 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. Mays Letter at 4. Therefore, staff assessed that the Commission could conclude that ASTM F2057–23 meets the warning requirements of STURDY.

Lastly, under STURDY section 201(d)(2)(C) and (D), a voluntary standard must be “developed by ASTM International” or another voluntary standards organization that the Commission deems appropriate, and such standard must be published not later than 60 days after STURDY’s enactment, *i.e.*, by February 27, 2023. STURDY sec. 201(d)(2)(C) and (D). ASTM F2057–23, which ASTM International published on February 6, 2023, satisfies these requirements.

C. Commission Determination

Based on the Commission’s assessment of ASTM F2057–23 and for the reasons stated in the Staff Briefing Package, on April 19, 2023, the Commission determined that ASTM F2057–23 meets the requirements of STURDY. Therefore, as required by STURDY, this direct final rule adopts the requirements of that voluntary standard as a consumer product safety standard. Because STURDY provides that adoption of the voluntary standard “will supersede any other existing standard for clothing storage units,” the current CSU rule would only be in effect for about two months before being superseded by this new standard. Therefore, the Commission finds good cause to stay the current CSU rule from May 4, 2023, through September 1, 2023, so that it will not take effect.

The Commission’s determination to adopt ASTM F2057–23 is based on the specific provisions of that standard and the unique history of its adoption in conjunction with the STURDY legislation. 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. After December 2027, moreover, STURDY allows the Commission “to modify the requirements of [an adopted voluntary] standard or to include additional provisions if the Commission makes a determination that such

modifications or additions are reasonably necessary to protect children from tip-over-related death or injury.” STURDY sec. 201(f)(1).

III. Incorporation by Reference

In accordance with regulations of the Office of the Federal Register (OFR), 16 CFR part 51, section II. of this preamble summarizes ASTM F2057–23. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy is available for viewing on ASTM’s website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/READINGLIBRARY>. Additionally, interested parties can purchase a copy of ASTM F2057–23 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; www.astm.org. Interested parties also can schedule an appointment to inspect a copy of the standard at CPSC’s Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: cpsc-os@cpsc.gov.

IV. Testing and Certification

Section 14(a) of the Consumer Product Safety Act (CPSA) includes requirements for certifying that children’s products and non-children’s products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children’s products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children’s products.

A “children’s product” is a consumer product “designed or intended primarily for children 12 years of age or younger.” *Id.* 2052(a)(2). The following factors are relevant when determining whether a product is a children’s product:

- Manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- The Age Determination Guidelines issued by CPSC staff in September 2002, available at <https://www.cpsc.gov/>

content/2002-Age-Determination-Guidelines, and any successor to such guidelines.

Id. “For use by children 12 years and younger” generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children’s products may be decorated or embellished with a children’s theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

This rule requires CSUs that are not children’s products to meet the certification requirements under section 14(a)(1) of the CPSA and requires CSUs that are children’s products to meet the certification requirements under section 14(a)(2) and (a)(3) of the CPSA. The Commission’s requirements for certificates of compliance are codified at 16 CFR part 1110. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers) of a non-children’s product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a)(1). Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children’s product that is subject to a children’s product safety rule to certify that, based on a third-party conformity assessment body’s testing, the product complies with the applicable children’s product safety rule. *Id.* 2063(a)(2). Section 14(a) also requires the Commission to publish a notice of requirements (NOR) for a third-party conformity assessment body (*i.e.*, testing laboratory) to obtain accreditation to assess conformity with a children’s product safety rule. *Id.* 2063(a)(3)(A). Because some CSUs are children’s products, the rule is a children’s product safety rule as applied to those products.

The Commission published a final rule, codified at 16 CFR part 1112, Requirements Pertaining to Third Party Conformity Assessment Bodies, which established requirements and criteria concerning testing laboratories. Part 1112 includes procedures for CPSC to accept a testing laboratory’s accreditation and lists the children’s product safety rules for which CPSC has published NORs. The stability standard for CSUs is on the list of children’s product safety rules for which CPSC has issued a NOR. 87 FR 72598 (Nov. 25, 2022); 16 CFR 1112.15(b)(54). Testing laboratories that apply for CPSC acceptance to test CSUs that are children’s products for compliance with the rule must meet the requirements in

part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1261, Safety Standard for Clothing Storage Units, in the laboratory's scope of accreditation listed on the CPSC website at www.cpsc.gov/labsearch.

The requirements of ASTM F2057–23 are sufficiently similar to the current CSU rule that firms approved to test to the current rule can also test to ASTM F2057–23. Therefore, the existing NOR will remain in place. CPSC-accepted third party labs are expected to update the scope of their accreditations to reflect the revised standard in the normal course of renewing their accreditations.

V. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA), 5 U.S.C. 551–559, generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B).

The purpose of this direct final rule is to adopt the applicable performance requirements of ASTM F2057–23. STURDY requires that once the Commission 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 sec. 201(d)(1). Because the Commission 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. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C.

553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. In accordance with ACUS's recommendation, the Commission 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 FR 43108, 43111. Depending on the comment and other circumstances, the Commission 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.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply.

VII. Paperwork Reduction Act

The current CSU rule includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). This revised mandatory standard contains similar warning and labeling requirements compared to the current rule, but does not require a hang tag. Therefore, this rule does not increase the burden of these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1261, including obtaining approval and a control number. Because the warning and labeling burden is similar and there is no increase in the information collection burden but only a reduction, the revision does not affect the information collection requirements or approval related to the standard.

VIII. Environmental Considerations

The Commission's regulations provide for a categorical exclusion from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

IX. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. STURDY deems a rule issued under that Act to be a “consumer product safety standard.” Therefore, once this takes effect, it will preempt in accordance with section 26(a) of the CPSA.

X. Effective Date

Under STURDY, this rule “shall take effect 120 days after the date of the promulgation of the rule, or such a later date as the Commission determines appropriate.” Manufacturers of CSUs have been aware of new stability requirements since the current CSU rule was published in November 2022, and the instant rule is based on a voluntary standard published in February 2023. The Commission accordingly will make this rule effective 120 days after promulgation. Unless the Commission receives a significant adverse comment within 30 days of this direct final rule's publication, the rule will become effective on September 1, 2023. 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).

XI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states

that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA has determined that this rule is a “major rule” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1261

Consumer protection, Imports, Incorporation by reference, Information, Labeling, Safety.

- The Commission revises 16 CFR part 1261 to read as follows:

PART 1261—SAFETY STANDARD FOR CLOTHING STORAGE UNITS

Sec.

- 1261.1 Scope and purpose.
1261.2 Requirements for clothing storage units.

Authority: 15 U.S.C. 2058; Div. BB, tit. II, sec. 201, Pub. L. 117–328, 136 Stat. 4459.

§ 1261.1 Scope and purpose.

(a) *Scope and purpose.* This part, a consumer product safety standard, prescribes safety requirements for clothing storage units, as defined in paragraph (b) of this section. The requirements in this part are intended to protect children up to 72 months of age from tip-over-related death or injury.

(b) *Application.* Clothing storage unit means any free-standing furniture item manufactured in the United States or imported for use in the United States that is intended for the storage of clothing, typical of bedroom furniture. All clothing storage units that are manufactured after September 1, 2023, are subject to the requirements of this part.

§ 1261.2 Requirements for clothing storage units.

Each clothing storage unit that is subject to ASTM F2057–23, *Standard Safety Specification for Clothing Storage Units*, approved on February 1, 2023, shall comply with ASTM F2057–23. ASTM F2057–23 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814,

telephone (301) 504–7479, email: cpsc-os@cpsc.gov. For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to www.archives.gov/federal-register/cfr/ibr-locations.html. A free, read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; www.astm.org.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–08997 Filed 5–3–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0216]

RIN 1625–AA00

Safety Zone; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 487.0 to MM 489.0. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by Duke Energy’s Static Wire Crossing operation taking place on the Ohio River from MM 487.0 to MM 489.0. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Ohio Valley.

DATES: This rule is effective without actual notice from May 4, 2023, through May 15, 2023. For the purposes of enforcement, actual notice will be used from May 1, 2023, until May 4, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0216 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Thomas Harp, MSD

Cincinnati, U.S. Coast Guard; telephone 513–921–9033, email Thomas.L.Harp@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COPT Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this regulation by May 1, 2023, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the static wire crossing operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Duke Energy Static Wire Crossing operation occurring from May 1, 2023, through May 15, 2023, will be a safety concern for all navigable waters on the Ohio River from MM 487.0 to MM 489.0. The purpose of this rule is to ensure the safety of life and vessels on these navigable waters before, during, and after the event.

IV. Discussion of the Rule

This rule establishes a safety zone from May 1, 2023, through May 15,