



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: March 17, 2004

TO : Patricia Hackett, ES
Through: Todd A. Stevenson, Secretary, OS
FROM : Martha A. Kosh, OS
SUBJECT: Baby Bath Seats

ATTACHED ARE COMMENTS ON THE CH 04-2

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CH 04-2-1	3/09/04	Paul Ware Chair, ASTM F15.20 Sub- Committee	PW Resources, Inc. 34 McNamara Street Stoughton, MA 02072
CH 04-2-2	3/12/04	Rachel Weintraub Assistant General Counsel	Consumer Federation of America 1424 16 th St, NW Suite 604 Washington, DC 20036
CH 04-2-3	3/15/04	Alan Korn Director of Public Policy	National Safe Kids Campaign 1301 Pennsylvania Ave NW Suite 1000 Washington, DC 20004
CH 04-2-4	3/15/04	Nancy Cowles Exec. Director	Kids In Danger 116 W. Illinois St. Suite 5E Chicago, IL 60610
CH 04-2-5	3/16/04	R. David Pittle Sr Vice President Technical Policy	Consumers Union 1666 Connecticut Ave, NW Suite 310 Washington, DC 2009
		Janell M. Duncan Legislative & Regulatory Counsel	
		Jeffrey Martin Director, Consumer Sciences	
		Werner Freitag Child Product Safety Engineer	

PWResources

PW Resources, Inc. - 34 McNamara Street, Stoughton, MA 02072 USA
781-341-2488 - Fax 781-341-5012 - pware@worldnet.att.net - www.pwresources.com

Paul Ware
Chair, ASTM F15.20 Subcommittee on Bath Seats

March 9, 2004

The Honorable Harold Stratton, Chair
The Honorable Thomas Moore, Commissioner
The Honorable Mary Gall, Commissioner
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

Dear Commissioners:

Re: Comments to the Commission Regarding the Notice of Proposed Rulemaking for Bath Seats published in the Federal Register December 29, 2003

As Chair of the ASTM Subcommittee F15.20 on Bath Seats, I am providing the following comments regarding the Notice of Proposed Rulemaking issued by the CPSC on December 29, 2003. Please enter these comments into the record and consider them in your deliberations with respect to this NPR.

Executive Summary

The second revision of the ASTM standard for Bath Seats, F1967-03, was published in April, 2003. It includes a total of five separate revisions, one of which is identical to the proposed requirements for leg openings in this NPR to prevent entrapment and submersion. This standard revision is now fully in effect for all manufacturers and has been incorporated into the JPMA Juvenile Product Certification Program.

The results of recent balloting on additional revisions to the F1967-03 standard have confirmed that the balloted stability requirements, which are identical to the proposed requirements for stability in this NPR, have been approved for inclusion and publication in the standard immediately after the subcommittee meets on March 31, 2004.

In addition, the recent ballot also included proposed warning changes. Although negative votes were cast for this revision, the subcommittee will undoubtedly find the two outstanding negative votes non-persuasive at its meeting on March 31st. The revised warnings will then be included in the standard and published in the standard immediately after the subcommittee meets on March 31, 2004.

With these completed revisions, the ASTM subcommittee will have implemented into the F1967 standard the same two product performance requirements proposed by the NPR, thus obviating the need for these to be promulgated through the rulemaking process.

The subcommittee will also have implemented into the standard a revised warning statement to be required on the product.

Thus, the three major proposals of the NPR will have already been implemented into the ASTM standard, and will become fully effective by the end of this year.

The two additional labeling requirements proposed by the NPR do not justify a need to proceed with the rulemaking process. However, these proposals could be placed on a future agenda for the ASTM subcommittee to address.

Based on these facts and their bearing on the conditions that must be found to exist in order for a rule to be issued, **I recommend that the Commission terminate the rulemaking process.**

Detailed Comments – Status of the Current Standard

Leg Opening Requirements

The current version of the ASTM standard F1967-03 for Bath Seats was approved at the subcommittee meeting on March 4, 2003, and published in April, 2003. It includes performance requirements and test methods to address incidents of sliding down and out through leg openings. These requirements are identical to those proposed in the NPR.

Frankly, it is difficult to understand why staff would continue to propose these leg opening requirements for inclusion in a proposed rule when identical requirements are already in the published standard. And contrary to statements made in the NPR notice, these requirements HAVE been implemented into the published standard and are now in effect for all manufacturers. It is completely redundant and unnecessary that such requirements be proposed for, or included with, any current or future rulemaking recommendations.

ONE IMPORTANT NOTE: Figure 3 in the NPR has an incorrectly drawn shape for the side view of the Shoulder Probe. The side view of this probe should be rectangular without any narrowing of the sides. The correct view of this probe is shown in the current ASTM F1967-03 standard.

Stability Requirements

Balloting was conducted recently to revise the performance requirements for stability

and specify that all bath seat products be tested on a slip-resistant surface. These proposed requirements were approved, and the standard will be revised to include these new requirements and test methods. Publication of the revised standard should take place immediately after the ASTM subcommittee meets on March 31, 2004, and the revised standard should become fully effective by the end of this year.

These requirements are identical to those proposed in the NPR. Therefore, it is completely unnecessary that such requirements be proposed for, or included with, any current or future rulemaking recommendations.

Warnings to Address Climbing Out

Balloting was also conducted recently to update the ASTM standard and require revised warnings on the product and package. Although two negative votes remain outstanding, these will be addressed and undoubtedly found to be non-persuasive at the ASTM subcommittee meeting on March 31, 2004. With such findings, the revised warning requirement should be implemented and published immediately thereafter, becoming effective by the end of this year.

Although the balloted revised warnings are not exactly the same as those proposed by the NPR, it should be pointed out that these warning revisions were developed by a task group of subcommittee members which INCLUDED two members of the CPSC staff. The balloted warnings were agreed upon by a consensus of this task group, as well as by a vote of the entire subcommittee.

As has been pointed out by CPSC staff, it is not at all clear or definitive that the warning statements in the NPR will be more effective than these revised warning statements to be included in the next publication of the F1967 standard. In addition, it is unclear as to whether warnings are the most effective way to address the issue of a child climbing out of a bath seat.

Therefore, it is unnecessary at this time to propose new warnings for the product and package which may only tend to further confuse and confound caregivers.

Possible alternatives that may be considered to further address these issues include the following:

- Implement the revised warnings as balloted and monitor actual field experience to determine their effectiveness. Allow for an adequate monitoring time period prior to any consideration of further action by either the CPSC or the ASTM subcommittee
- Have the ASTM subcommittee find persuasive the current negatives on the recently balloted warning revision. This would leave the currently required warnings of the standard "as is" and would justify further discussion and/or research to develop the most appropriate and effective revisions to implement into the F1967 standard at a future date. Such research could be conducted

jointly by the CPSC, the subcommittee and/or third parties.

- Some combination of the above.

Comments on Two Additional Proposed Requirements

Based on comments received previously, the NPR also proposes to require a regulatory compliance statement on both product and package, as well as to place warning statements on both the front and back of each package.

It is unclear, and unexplained, as to why these requirements should be imposed. They would seem to be afterthoughts to the more important requirements that have already been, or shortly will be, implemented into the ASTM standard itself. Their effect and benefit is unknown.

That being said, these two proposals can certainly be considered at future meetings of the ASTM subcommittee, and a decision can be reached as to their effectiveness and potential to be included into ASTM F1967 in the near future.

Summary

In summary, the ASTM subcommittee has acted, and will continue to act, in the interests of infants at risk when using bath seats. The current ASTM standard for bath seats has been further strengthened with the inclusion of requirements for leg openings, stability, and revised warnings.

Mandatory rulemaking is not necessary for, and is completely redundant to, the implementation of adequate requirements for bath seat safety through the voluntary standards process.

Respectfully submitted,



Paul Ware
Chair, ASTM F15.20 Subcommittee on Bath Seats



Consumer Federation of America

Baby
Bath
Seats

March 12, 2004

Secretary Todd Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, DC 20207

RE: NPR for Bath Seats

Dear Secretary Stevenson:

Consumer Federation of America is writing to offer our comments on the U.S. Consumer Product Safety Commission's Notice of Proposed Rule Making for baby bath seats. As the Commission is well aware, in August of 2000 Consumer Federation of America and eight other groups filed a petition with the Consumer Product Safety Commission to ban baby bath seats. We have not wavered in our opinion that the best way to reduce the deaths and injuries caused by baby bath seats is to ban these products.

Since we filed our petition with CPSC in August 2000, 40 more children have been killed and 126 more children have been injured in baby bath seats. Unfortunately, the total deaths and injuries now stand at 106 deaths and 163 non-fatal near-drowning incidents.

Our recommendation to CPSC today is consistent with that of our petition of three years ago- we urge CPSC to ban baby bath seats because these products, intended for use by children, present a mechanical hazard and, therefore, are hazardous substances. Accordingly, we urge CPSC to consider baby bath seats a banned hazardous substance.

I. Ban of Baby Bath Seats is Necessary

We are not confident that the standards set forth in the Notice of Proposed Rulemaking (NPR) will adequately address our concerns about baby bath seats. CFA believes that a ban of baby bath seats is necessary for the following reasons:

1) There are currently 106 incidents of drowning and 163 reports of near drowning identified by CPSC staff. There have been an additional 92 documented deaths reported in the nine years since the Commission made their decision to abandon rulemaking in 1994. This is almost six times the number of deaths identified at the time of the previous decision. This large number of additional drowning deaths (since the 1994 CPSC decision) alone justifies re-examination of this issue and the need for CPSC to take action to eliminate bath seat deaths and injuries.

Each year, almost five babies die and almost eight are injured as a result of a drowning or near-drowning associated with bath seat use. Additionally, infants who experience “near miss” incidents may experience traumatic injuries. Drownings typically occur when the infant tips over, climbs out of, or slides through the product. In cases where the bath seat tips over with the child in the product, it is believed that the seat may contribute to the drowning because the child is unable to get free of the seat and/or the parent or caregiver is unable to extricate the child from the seat.

2) **False sense of security:** Parents or caregivers who suffer the tragic loss of a child in a bath seat-related drowning are thought to have ignored the warning label printed directly on the product, which warns against leaving a child unattended while using a bath seat. This argument indicts the parent or caregiver for their supposed irresponsible actions and absolves the product of having any causal role in the drowning incidents. However, research findings suggest that the inherent design of bath seat products induces a “false sense of security” among users that may over-shadow the message printed on warning labels. This “sense of security” leads to increased risk-taking behavior among those using the product even when the irresponsible nature of caregivers is taken into account. Thus, not only product design but commonly held perceptions among users must be considered when assessing the safety of this consumer product.¹

The research was conducted under the auspices of the Intermountain Injury Control Research Center at the University of Utah. Dr. Clay Mann reported those findings at the National Congress on Childhood Emergencies meeting in Baltimore, MD on March 27, 2000.² The research compared 32 drowning incidents with a baby bath seat to 32 drowning incidents without any bath seat. Two statistically significant differences were found between these two groups:

¹ Previous research conducted by CPSC found, among other things, that:

- “[A]lthough parents acknowledge intellectually the hazards involved, they do not truly believe something bad will happen to their child (if left alone in a bath seat). Lack of a direct personal experience with a drowning seems to increase the chance that a parent might engage in high risk behavior.”
- “Successful experiences with leaving a child unattended in the bath tend to encourage parents to repeat the high risk behavior.”
- “The sturdier, more luxury looking baby bath ring/seat models are preferred by parents and perceived to be safer than the more basic models. Parents indicated that if they were to leave their child unattended in the bathtub they would feel more confident in leaving if the child was in one of the luxury models. Therefore, certain models, more so than some others, potentially make parents feel over-confident that their children will be safe in the bath while using these particular baby bath rings/seats.” “A Focus Group Study to Evaluate Consumers Use and Perceptions of Baby Bath Rings/Seats, CPSC-R-93-5839, prepared for CPSC by Shugoll Research.

² “Infant Seat Bathtub Drownings: Who’s to Blame?” NC. Mann, R. Rauchschalbe, L. Olson, NZ. Cvijanovich, Intermountain Injury Control Research Center, University of Utah, Salt Lake City, UT and U.S. Consumer Product Safety Commission, Washington, DC.

- a. **Water Depth:** The water was significantly deeper in the incidents involving baby bath seats. Median depth in baby bath seat incidents was 7.0 inches and 4.5 inches among incidents with no bath seat involvement.
- b. **Willful versus Impulsive Decision to Leave an Infant Alone:** Dr. Mann reported that 75% of the incidents involving baby bath seats resulted from willful decisions to leave the infant unattended, while only 45% of the incidents without bath seats involved willful decisions. Willful decisions were those considered to be premeditated or thought out in advance by the caregiver (e.g., perform household chores, watch television). While the preponderance of infant drownings with no bath seat involvement were judged to result from impulsive decisions, (25% with bath seat and 55% no bath seat). Impulsive decisions were those judged to be sudden interruptions of the infant's bath, (i.e. answer telephone, and respond to another distressed child).

This research demonstrates that parents and caregivers of infants that use baby bath seats engage in more risk taking behavior than parents and caregivers not using baby bath seats. Caregivers using bath seats prepare baths with deeper water and are more likely to leave a child unattended in the bath for conscious, willful reasons (e.g., to perform household chores). This study shows that enhanced risk taking behavior persists even when the "irresponsible" nature of caregivers is taken into account. There is a false sense of safety that is propagated by having a mechanical aid to "help" to hold a slippery baby upright. This "sense of security" promotes the idea that a child could be left alone in the bath for "just a minute."

CFA does not agree that banning bath seats would increase the risk of drowning in "alternative bathing settings." Rather, because the bath seat offers caregivers a false sense of security, caregivers will more likely bathe their children while holding up the baby and will therefore not be tempted to leave the baby unattended. In addition, the alternative to a bath seat is not solely a bathtub, as CPSC and the study CPSC relies upon assumes. In fact, no data was presented to support this conclusion. In reality, alternatives to bath seats could be a baby bathtub, a sink or a caregiver entering the bathtub with the child. Further, CFA notes that CPSC has been unable to predict how the proposed performance requirements will impact consumer's perception of the bath seat as a restraint or safety device.

CFA agrees with CPSC staff analysis that the aggregate risk analysis that concludes that for babies five to ten months old, the risk of drowning in a bathtub is higher than in a bath seat results in a misleading conclusion. This aggregate grouping, as articulated by CPSC staff, ignores the distinct and significant differences in a child's development and size as they use the bath seat throughout the 5 to 10 month age range.

In addition, the study relied upon by CPSC, by Dr. Kimberly Thompson makes a number of significant assumptions that have implications on the ultimate conclusion of the study. For example, the study is based on bath seat ownership data and not bath seat usage data, which could vary significantly. Assumptions were made; therefore, to estimate the bath

seat user population and the accuracy of the estimation will affect the accuracy of the results. If in fact, more younger infants, those between five and seven months, use baby bath seats than infants between eight and ten months, the increased risk for younger infants could offset the perception of a lower risk for older infants. Finally, Dr. Thompson's study is based on a review of children between five and ten months, thus incidents occurring to children outside of that age range are not addressed by this analysis.

3) **Baby bath seats have very limited utility.** Bath seats are not recommended for use until 6 months of age and when the child can sit upright unassisted. Once an infant can pull up or attempt to stand while holding onto objects, baby bath seats should be discontinued, since the infant could climb from the seat. The current standard for childhood development (i.e., the Denver Developmental Screening Test) indicates that infants begin attempts to pull themselves up to a standing position between 7 and 9 months of age. This time interval indicates that bath seats have a useful product life of approximately 2 months. CPSC staff, however, use the age range of 5 to 10 months as an acceptable user population because "some" babies can sit up by 5 months and "some" babies can't pull themselves up by 10 months. This analysis is overly broad and does not serve to protect the most vulnerable infants. In addition, many consumers use the bath seat longer than they should- past the point their child can pull themselves up.

II. Mandatory Standards

In the Notice of Proposed Rulemaking, CPSC has proposed a rule that would ban baby bath seats that do not meet specified requirements for 1) a stability performance requirement to address tip-over hazards; 2) a leg opening performance requirement to address entrapment and submersion hazards; and 3) a labeling requirement to deal with the fact that children come out of the bath seat.

CFA believes that there is ample evidence that baby bath seats are hazardous substances worthy of banning and that there is no standard that would adequately reduce the risk posed by bath seats. However, if CPSC does pass a mandatory standard, which we prefer over inaction or deferring to the voluntary standard, we have the following recommendations:

- 1) The standard should include a requirement that there be a water-line on the bath seat to indicate that the bath water should not be higher than that level. While children can drown in even just an inch of water, knowing that bath seats give parents a false sense of security suggests that such an additional demarcation should be included.

While CPSC has rejected this suggestion in the Notice of Proposed Rulemaking, we are not convinced that an inclusion of a water mark will consistently be interpreted by consumers to mean that there is a safe water level at which children do not drown, especially with the current ASTM standard which, as CPSC notes, requires the following statement on instructions accompanying the bath seat:

“Babies can drown in as little as 1 inch of water. ALWAYS bathe your infant using as little water as necessary.” Given this statement as well as a water-line we are hopeful that these two factors will encourage consumers to use less water. In CPSC’s response to this recommendation, CPSC does not provide rationale nor data to support its ultimate conclusion to reject this suggestion.

- 2) CPSC staff is proposing a labeling requirement to attempt to deal with the problem of children coming out of bath seats, a known cause of 19 fatalities. CPSC staff developed a labeling requirement for this hazard because CPSC staff has been unable to come up with a “reasonable performance requirement that effectively addresses this hazard.” CFA believes that it is counterintuitive to come up with a warning label to address this hazard as opposed to a ban. A ban could effectively prevent this hazard from occurring while it is unclear that a label would be sufficient. Such a predicament illustrates one of the inherent problems with this product and supports banning it rather than further labeling it.

While CPSC addressed this comment and rejected it in the Notice of Proposed Rulemaking, CFA has not been persuaded that a label is preferable to a ban. In addition, CPSC has not offered data to support its conclusion.

However, while we strongly believe that a ban is the best way to deal with the coming out hazard, the current language in the proposed label is vastly clearer and more demonstrative than the current ASTM standard. While it appears that CPSC is continuing to reject our recommendation for a ban, the language of this label is a significant improvement over the status quo.

- 3) The rule should include a requirement that the warning label be “readable” when tested for permanence. CPSC responded in the Notice of Proposed Rulemaking, that the ASTM standard requiring readability after submersion in water for twenty minutes is adequate. CFA is not persuaded that twenty minutes realistically reflects the amount of time that a bath seat may be submerged in bath water. We continue to be concerned that a consumer may not be able to permanently read critical safety warnings included in labels.

CFA supports the two performance requirements addressing stability to avoid tip-over hazards and a leg-opening requirement to address entrapment and submersion hazards. Again, while our preference is a ban, we believe that these two requirements significantly improve upon the current voluntary standards. In addition, we applaud the CPSC for making two recent changes to the Noticed of Proposed Rulemaking, in particular:

- 1) That CPSC will require a clear indication on new baby bath seats that new standards are met so that the new bath seats can be distinguished from the old models.
- 2) That CPSC will require that the warning label be prominent on both the front and back of the package in addition to the bath seat, itself.

In addition to strengthening the mandatory standards, as we have suggested above, CFA believes that if CPSC does not decide to ban baby bath seats, then CPSC **must** also engage in the following activities:

- 1) **CPSC must recall all non-compliant baby bath seats.** CPSC staff has documented the increasing numbers of deaths and injuries caused by baby bath seats. The recommendation of a mandatory standard implicitly acknowledges the hazards posed by this product. To best protect consumers from these hazards, baby bath seats that do not meet the new standards should be recalled.
- 2) **CPSC must create and aggressively pursue an educational campaign for parents** a) alerting them to the fact that they should never leave their child unattended while using a baby bath seat; and b) recommending that they remove the older bath seats from their homes.

III. Voluntary Standards are Inadequate

CFA agrees with CPSC staff that the voluntary standards have proven to be inadequate--especially at curbing the increase of death and injuries associated with baby bath seats.

The American Society for Testing & Materials' (now ASTM International) voluntary standard for bath seats has been established.³ Although first published in 1999 and updated in 2001 and 2003, this standard had been under development for more than five years. Despite knowledge of drowning deaths in bath seats relating back to at least the early 1990s, no changes to products made have resulted in a decreased number of deaths associated with this product. Instead, the number of deaths has increased during this period.

The first version of the ASTM standard- ASTM F 1967-99 included marking, labeling, and literature requirements as well as performance requirements excluding suction cup integrity and leg opening size. In 2001, a new suction cup integrity and a durability requirement for latching/locking mechanisms was published, and in March 2003 this standard was revised to include a new test procedure of all openings in the bath seat, a performance requirement for the size of the leg openings and the occupant seating space, and a warning label modification. However, concerns over the adequacy of this standard continue. Of great concern is the incompatibility of bath seat products currently being sold with their use in bathtubs with textured, non-skid surfaces.⁴ The mandatory standard

³ F 1967-99, Standard Consumer Safety Specification for Infant Bath Seats, American Society for Testing and Materials (June 1999); F 1967-01 (June 2001), F 1967-03 (March 2003).

⁴ In 1979, ASTM published a standard for Slip-Resistant Bathing Facilities. (F 462-79, Standard Consumer Safety Specification for Slip-Resistant Bathing Facilities, ASTM) This standard was re-approved in 1994. Virtually all new homes and homes with remodeled baths have the benefit of this slip resistant feature in the bathtub basin. It is expected that this standard will be (and has been) effective in reducing fall injuries in bathrooms, which is a very serious injury problem to the general population and even a more serious injury problem to vulnerable populations, (i.e. elderly, disabled, infants and young children). Specifically,

CPSC is proposing would improve upon the ASTM standard by requiring that the bath seats be tested on a non slip-resistant bath facility.

Even if changes were made to the voluntary standard to address the above and any other concerns, we do not believe that the risk of drowning would be eliminated. Others share this concern: “Finally, no design modification can address the major issue that leads to most of the drowning deaths, namely that the child was left unattended, apparently because the care giver thought that it was safe to do so. If anything, making the product more robust may only increase the perception that the child will be safe if left alone for a few moments.”⁵

CFA agrees with CPSC that ASTM 1967-03 does not adequately address the drowning risks presented by bath seats, specifically tip-over and coming out hazards. CFA further agrees that the CPSC’s mandatory standards, if put into affect, would be a significant improvement for consumer safety regarding bath seat hazards.

IV. Conclusion

CFA strongly urges CPSC to ban baby bath seats. CPSC has the authority to determine that baby bath seats cannot be designed to adequately reduce the risk of injury to the young infants who are placed in them. We believe that baby bath seats cannot be designed in such a way to adequately reduce the risk of injury to children nor can a design or performance standard adequately reduce the false perception of safety that these products mistakenly instill in the parents and caregivers who use them. However, if CPSC does pass a mandatory standard, which we prefer over inaction or deferring to the voluntary standard, we urge CPSC to make some modest changes to the standard as we have suggested. In addition, CFA urges CPSC to recall bath seats that do not meet the new mandatory standards—this is critical to removing the potential hazard from people’s homes and thus decreasing injuries and deaths due to bath seats.

Sincerely,



Rachel Weintraub
Assistant General Counsel

the standard states that it is intended to “reduce accidents to persons, especially children and the aged, resulting from the use of bathing facilities.” (See section 1.3, F 462-79) Although this is a performance standard, it is our understanding that most if not all of the leading manufacturers of bathtubs choose to use textured surfaces to meet the performance requirements.

⁵ Rauchschalbe et. al, Pediatrics, 8 (electronic copy).

Stevenson, Todd A.

From: Rachel Weintraub [rweintraub@consumerfed.org]
Sent: Friday, March 12, 2004 3:56 PM
To: Stevenson, Todd A.; Stevenson, Todd A.
Subject: CFA's Comments on NPR for Bath Seats

Todd,
Attached are CFA's comments on the NPR for Bath Seats.
Have a great weekend.
Thanks,
-Rachel Weintraub

Rachel Weintraub
Assistant General Counsel
Consumer Federation of America
1424 16th St, NW Suite 604
Washington, DC 20036
ph: (202) 939-1012 fax: (202) 797-9093

*Edy
Buckland*
3



1301 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20004-1707
(202) 662-0600
(202) 393-2072 Fax

www.safekids.org

President
Martin R. Eichelberger, M.D.

Executive Director
Heather Paul, Ph.D.

March 15, 2004

Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207-0001

RE: Notice of Proposed Rulemaking (NPR) for Bath Seats

Dear Mr. Stevenson:

On behalf of the National SAFE KIDS Campaign, I am writing in regard to the Consumer Product Safety Commission's (CPSC) notice of proposed rulemaking for bath seats, as published in the December 29, 2003 issue of the *Federal Register*. The National SAFE KIDS Campaign is in support of a mandatory safety standard for bath seats, as failure of some mechanical features, such as suction cups and leg openings, may have been contributing factors in some deaths and injuries. SAFE KIDS believes that implementation of a bath seat performance standard will go a long way toward eliminating the risk of injury and death associated with the current form of the product. However, SAFE KIDS hopes that the CPSC will reconsider the following suggested additions/changes to the NPR as previously noted in our comment letter dated August 22, 2003.

Suggested Recommendations to the NPR: Warning Label Improvements

➤ **Label Permanence Requirement**

In the proposed rule, there is no additional requirement for ensuring the permanence of the bath seat's label other than the limited requirements contained in the present ASTM standard. SAFE KIDS had recommended that the CPSC include an effective permanence requirement, building upon the ASTM standard, into the mandatory standard. The ASTM standard calls a label permanent if it can withstand a one-time, 20-minute submersion test in water only. Given the high use and environmental exposures for bath seats, SAFE KIDS believes that the label and its inherent safety information must be permanent to continue its communicative value throughout the useful life of the product. Bath seats are used frequently in an environment of warm water and soaps, and as a result, the label should be able to withstand the high use and bath time elements.

Furthermore, the NPR cited an American Baby Group survey indicating, "46 percent of bath seats or rings owned by new or expectant mothers were obtained after being used for an older child or borrowed." (*Federal Register*, page 74879)

A Member Of



www.safekidsworldwide.org

Founded By



As a large number of bath seats are being used repeatedly by different children over a period of several years, a more stringent permanence requirement would make certain that the valuable nature of the label would remain constant over time. In the NPR, the CPSC supports its decision to not include an additional permanence requirement by noting that it is unaware of any consumer complaints or incidents in this area. SAFE KIDS feels that the mere absence of a documented problem is not sufficient enough reason for the CPSC to omit a stronger label permanence requirement. As the CPSC believes a forceful warning label is critically important to alert parents to the potential dangers associated with bath seats, then ensuring the permanence of that safety label should also be a priority. We believe that the present ASTM test does not meet that goal. A long-lasting label tells the parent that no matter the age of the product or its usage history, he/she will always have access to critical safety information.

➤ **Enhanced Conspicuousness Requirement**

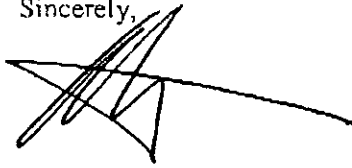
In its current form, the CPSC's bath seat rule (§ 1514.5 Marking and Labeling) states that the wording on the warning label should be "in contrasting color to the background on which they are located." SAFE KIDS still believes that this requirement should be improved to better communicate important safety messages. Based on our history monitoring the marketplace for toys' small parts warning labels, we have seen how warning labels can, in some instances, be communicated ineffectively – but yet are still in compliance with federal regulations. For instance, the regulations require that the small parts warning for toys be in a contrasting color to the background. As a result, SAFE KIDS has seen toy labeling packaging in one shade of blue with the warning label in a lighter shade of blue – contrasting, but not necessarily conspicuous. The CPSC bath seat standard, in its present form, would also allow this same marketplace result. SAFE KIDS believes that the bath seat safety labels should be contrasting and conspicuous by requiring the warnings to be in a completely different color from the packaging or the product itself.

➤ **Requirement of Safety Warning on Accompanying Descriptive Materials**

The CPSC's proposed standard does not require the bath seat safety warning to appear on the product's accompanying descriptive materials. SAFE KIDS had recommended that the warning label be conveyed on the product and packaging, and we are pleased that the CPSC will be incorporating the label on both places – including the front and back of the packaging per our suggestion. However, we would like to reiterate the need for the safety warning to appear on all descriptive materials, such as product instructions. This would give the manufacturer another opportunity to convey important safety instructions required for proper use. SAFE KIDS notes that the toy labeling regulations require safety information on all descriptive materials; this requirement should also apply to bath seats. We believe that the ASTM standard regarding "instructional literature" provides excellent guidance if the CPSC decides to add this into the bath seat rule.

We appreciate the CPSC's efforts to make bath seats safer, and we hope that our suggestions are reconsidered for inclusion into the standard. As always, SAFE KIDS looks forward to working with the Consumer Product Safety Commission on this and other issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to be 'Alan Korn', written over a horizontal line.

Alan Korn, J.D.
Director of Public Policy

Commons
Bath
Seats
msh
P.2
4



KIDS IN DANGERSM

A nonprofit organization
dedicated to protecting children by
improving children's product safety

March 15, 2004

Linda E. Ginzel, Ph.D.
Boaz Keysar, Ph.D.
Co-Founders

Secretary Todd Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, DC 20207

Kristine Anderson
Leslie M. Batterson
Sonny Garg
Howard Haas
Jill C. Rasmussen
Heather Shinn
Linda Stone
Steven W. Swibel
Robert R. Tanz, MD
Board of Directors

RE: *NPR for Bath Seats*

Dear Secretary Stevenson:

Nancy A. Cowles
Executive Director

I am writing on behalf of Kids In Danger (KID) to offer our comments on the US Consumer Product Safety Commission's (CPSC) Notice of Proposed Rule Making for baby bath seats. As you know, KID joined an August 2000 petition to ban baby bath seats. We still believe that is the safest approach to take with these very high-risk products. However, in light of the CPSC's reluctance to take that step, comments on your proposed mandatory standard follow.

First, let me say I am pleased to see CPSC set mandatory standards for children's product. We believe all children's products should be held to mandatory standards. This is what most parents and caregivers already believe is the case.

Comments on the proposed rules:

1. In addition to the strongly worded warning, KID believes that the seats should be marked with an appropriate water level not to exceed. Combined with the instruction warning that "Children can drown in as little as one inch of water," a water mark on the seat would serve as a reminder not only to the primary caregiver who has read the instructions, but also sitters and relatives who may only occasionally use the seat. The level need not indicate that that is a 'safe' level', but that anything more is an 'unsafe' level.
2. KID believes that CPSC's strong warning label including the information that children have died in bath seats is imperative, but a warning cannot adequately address the climbing out hazard. It could be made stronger by adding language to the instructions to warn caregivers that in addition to the developmental milestone of pulling to a stand, *any* attempt by an occupant to climb out of the product should signify the end of its use for that child.

116 W. Illinois Street, Suite 5E
Chicago, IL 60610-4532
312-595-0649 Phone
312-595-0939 Fax

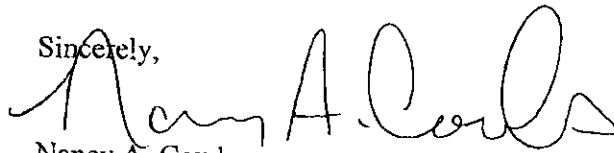
DON'T LEARN ABOUT RECALLS FROM YOUR BABY

www.KidsInDanger.org
email@KidsInDanger.org

3. KID strongly urges CPSC to recall all noncompliant bath seats to minimize their continued use. Bath seats are one of the most common items seen at garage sales and resale shops. It is unconscionable to know that a product has led to over 100 deaths, call for improvements, but leave the deadlier version available for consumers.
4. While KID supports the use of a mark to indicate that the product meets the new standards, we would ask that CPSC require certification by an independent testing laboratory that the standard has actually been met. As have seen over the past year with numerous recalls of children's product containing lead, having a mandatory standard will not ensure that all products are tested to meet that standard.

We believe that these proposed rules will prevent some of the hazards associated with bath seats, but do not address the significant hazard of a false sense of security parents have in using the seats. KID still supports a ban of bath seats.

Sincerely,



Nancy A. Cowles
Executive Director

**Consumers
Union**

NONPROFIT
PUBLISHER OF
CONSUMER REPORTS

Letter Comments
rec'd 3/16/09
Baby bath seats 5

Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207-0001
Telefacsimile (301) 504-7923
Cpsc-os@cpsc.gov
Docket No. 02-2

**Comments of Consumers Union of the U.S. Inc.,
to the
Consumer Product Safety Commission
In Response to the Notice of
Proposed Rulemaking for Baby Bath Seats
(68 Fed. Reg. 74878)**

Introduction

These comments are submitted by Consumers Union¹ (CU), non-profit publisher of *Consumer Reports* magazine. They are in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") request for comment on a Notice of Proposed Rulemaking ("NPR") to ban bath seats that do not meet certain requirements under the authority of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 et seq.

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, *ConsumerReports.Org*, its other publications and from noncommercial contributions, grants and fees. *Consumer Reports* has four million paid circulation; total readership is approximately 16 million, and www.ConsumerReports.org has more than one million paid subscribers. In addition to reports on Consumers Union's own product testing, these resources regularly carry articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare.

Background

In October of 2001, CU submitted comments in response to the Advanced Notice of Proposed Rulemaking ("ANPR") relating to baby bath seats and rings (66 Fed. Reg. 39692, August 1, 2001). CU recommended to the CPSC that it issue a rule declaring baby bath seats to be "banned hazardous substances" under the FHSA.

CU stated in its October 2001 comments that:

[u]sing baby bath seats and rings encourages caregivers to leave children alone in the bathtub - a 'misuse' of the product. . . Parents and caregivers using these products develop a false sense of security because the products appear to be able to hold a child upright, and in place. In addition, these products pose a hazard even when used in a manner consistent with their purpose as a bath aid - evidence collected by the CPSC reveals three deaths have been reported where a caregiver was present in the bathroom. In addition, 41 non-fatal incidents have been reported with the products while the caregiver was present.

In our comments filed in October 2001 (excerpted above), we agreed with the Commission's findings contained in its August 2001 ANPR on baby bath seats: "The Commission has reason to believe that baby bath seats and rings, as currently designed, may present an unreasonable risk of injury." At the time, the Commission noted that it was "aware of 78 deaths and 110 non-fatal incidents and complaints from January 1983 through May 2001 involving baby bath seats and rings. Forty-one of these non-fatal incidents complaints occurred when a caregiver was present."

On July 28, 2003, CU filed "Consumers Union Comments to Consumer Product Safety Commission on Staff Briefing Package Recommendations on Baby Bath Seats," in which we commented on the CPSC Staff's recommendations and options for Commission action. In our comments, we commended the staff for its careful review of the options. However, we renewed our request for a ban, and raised concerns that

based upon past experience with these products, any other approach besides a ban would be inappropriate. We stated, however, that in the absence of a total ban, we supported the CPSC's effort to propose a mandatory rule.

After review of the current NPR, CU continues to believe that, based upon the history of these products, the most prudent approach would be to ban all bath seats. There is some evidence, based upon the research of Dr. Kimberly Thompson, that the use of bath seats may, on balance, result in fewer deaths among children aged 6 to 9 months.² However, this study's conclusions are based upon many unproven assumptions which render them unpersuasive.

In the study, Dr. Thompson attempts to quantify the relative risks of unintentional infant drowning deaths in bathtubs with and without bath seats. Dr. Thompson focused on infants ages 6-10 months, and assumes that 45% of the "19,455,025 infants ages 6-10 months in the 1994 through 1998 time period used bath seats, and the remainder did not."³ She states that the data suggests that the "population of infants that died while using bath seats appeared to be similar to the population that died while not using bath seats." She concludes that "the existing data are not consistent with the hypothesis that bath seats increase the risks of infant bathtub drowning overall or the assumption that without a bath seat the caretaker will be in constant attendance."⁴ However, she bases this conclusion on the assumption that consumers who own bath seats use them to bathe their children. She highlights this as a limitation of the study, because if, in fact, a portion of consumers own, but do not use bath seats, this would change the

² Thompson, KM, "The Role of Bath Seats in Unintentional Infant Bathtub Drowning Death. Medscape General Medicine, March 26, 2003, <http://www.medscape.com/viewarticle/450989>.

³ Id.

⁴ Id.

estimated number of bath seats in use -- and indicate a smaller number of bath seats in use -- and a corresponding higher risk of drowning when a bath seat is present.

Dr. Thompson also assumes that children not bathed with a bath seat are bathed in the bathtub. However, caregivers who do not use a bath seat may be bathing the child in a sink, or in some type of infant bathtub. If this is true, then of all children bathed in bathtubs, the risk of a child drowning in a bathtub may be greater in the presence of a bath seat.

Finally, Dr. Thompson was unable to address the question of why parents leave a child unattended, and whether parents might leave children unattended because they are lulled into a false belief that a bath seat will keep a child safe when left unattended in a bathtub. However, the possibility that caregivers may develop a false sense of security when they use bath seats is a factor that cannot be discounted or ignored. Professor Clay Mann, of the Intermountain Injury Control Research Center at the University of Utah Medical school, studied drownings with bath seats and drownings in bathtubs. Dr. Mann found two significant differences between the groups: 1) caregivers filled the bathtub higher when they used a bath seat, and 2) they were more likely to make a *willful* decision to leave a child unattended in a tub when a bath seat was being used.⁵

The false sense of security manifested in caregivers that the product will aid in a child's safety, coupled with the higher bath water level observed by Dr. Mann represent serious observable risks associated with the use of these products that are difficult to control. Safe use of the product is highly dependent on caregivers reading and

⁵ NC. Mann, R. Rauchschalbe, L. Olson, NZ., "Infant Seat Bathtub Drownings: Who's to Blame?" presented at the National Congress on Childhood Emergencies meeting, Baltimore, MD, March 27, 2000.

adhering to instructions on the warning label. The recommended age range is very short, and if a caregiver uses the product with a child who can pull to standing, the child faces a higher risk of drowning.

Another factor that seems to play a role in increased drowning risk is the presence of a sibling in the bathtub. This risk factor is not addressed by the proposed standard. Even if the CPSC issues a mandatory standard for baby bath seats, the existence of these other risk factors makes continued sales of the product unreasonable. Therefore, because of the dangerous history pertaining to these products, and in the absence of conclusive evidence that there is an overall benefit in all age groups from the use of the product, we continue to urge that the Commission issue a ban of all bath seats.

In the event that the Commission proceeds with issuing a mandatory standard instead of a complete ban, below is our analysis of the proposal, including suggested improvements to the proposed mandatory standard.

CU Analysis of Proposed Rule

On December 23, 2003, the Commission proposed this NPR. In it the Commission informed that, as of the date of publication, the use of bath seats has been associated with 106 infant and child deaths, and 163 non-fatal incidents since 1983 (68 Fed. Reg. 74878). For the period from 1994 through 2003 an annual average of 8.8 deaths and 12.5 serious, but non-fatal incidents were recorded. In an effort to reduce these deaths, the Commission proposes to continue to allow the sale of bath seats, but to permit sales only of those products that meet its requirements for stability, leg openings, and labeling. Bath seats not meeting requirements will be considered to be

"banned hazardous substances." While we commend the Commission for this effort to mandate the creation and sale of a safer bath seat, we are concerned that the new standard will not be sufficient to address risky behaviors that occur during the use of bath seats. We believe that the risk will be reduced, but not enough to warrant the continued use of bath seats.

Stability Requirements

In the absence of a complete ban, we support requiring, as part of the mandatory standard, that bath seats pass tests on a slip-resistant surface (See 68 Fed. Reg. 74888). We believe that this is a significant improvement over the testing requirements under the voluntary ASTM standard (ASTM 1967-03). This standard currently requires testing on a smooth (non-slip resistant) surface, but on a slip-resistant surface only if a bath seat is labeled to include its use on such a surface. Since a large number of household bathtubs have a slip-resistant surface and child bath seats on the market are not designed for such a surface, these bath seats represent a risk to children bathed in them.

We do, however, caution that the proposed test is to be conducted in a laboratory setting, on a clean surface, and may not appropriately reproduce the conditions in a consumer's household bathtub in terms of the presence of soapy water, grime and residual soap scum, and varying water level during use.

Recommended Improvements to Proposed Rule:

Static Load Requirement

We recommend that the Commission make mandatory certain requirements found in ASTM F 1967 - 03. The current ASTM standard requires static load testing of a bath seat with a 30-lb load. We recommend the inclusion of such a test, but we believe the CPSC should require the test to be conducted with a 100-lb load, in order to offset any force that might be exerted on the product if a caregiver partially leans on the bath seat.

Suction Cup Degradation Performance

We are concerned that if a product is stored for an extended period of time (such as between infants born into a household) the suction cups may degrade, and later fail to adhere to a bathtub surface. We therefore recommend that the Commission include a requirement -- for any product that has suction cups -- for the testing of suction cups for resistance to degradation over time. Such a test should ensure that a bath seat stored in an area of changing environmental conditions (e.g. temperature or humidity), would still provide effective adherence to slip-resistant bathtub surfaces.

Suction Cup Attachment Performance

We recommend that the Commission make mandatory -- for any product that has suction cups -- the testing requirements found in ASTM F 1967 - 03 for suction cup attachment performance of the seat to the product, and of the product to the bathtub surface. The test includes application of a 25-lb tensile vertical force on each suction cup, a cycling test of installing/uninstalling each seat (2000 cycles), and a subsequent

vertical 25-lb. tensile force on the bath seat to check the attachment of the product to the bathtub surface.

Leg Openings

In the absence of a complete ban, we support the Commission's proposal to narrow the leg openings, to prevent submarining of smaller and/or younger children.

Warning Label

We support the Commission's efforts to strengthen the wording on the warning label, and urge the Commission to require the warning to appear in both English and Spanish. However, we are concerned that the warnings on the label will be insufficient to deter caregivers from leaving an infant alone in the bathtub because, based on the history of these products, bath seats appear to allow caregivers to develop a false sense of security. Despite the fact that the device is not intended to be a safety device, caregivers seem to feel that the device will help keep the child safe in the tub, and will be more likely to leave the child unattended, or fill the tub to a higher water level. This is not conjecture, but rather the tragic truth that threads its way through the history of these products.

Permanency Requirement for Warning Labels:

We support requirements that the bath seat, and the front and back of its packaging contain the safety alert language and symbol in proposed 16 C.F.R. §1514.5. Because the potential hazards relating to bath seats will not diminish over time, we strongly urge the Commission also to add a permanency and readability requirement for

the warning label. The proposed standard lacks any permanency requirement. The current ASTM standard only requires that the label withstand immersion for 20 minutes.

In informal tests conducted by CU on products that claimed to comply with the ASTM standard, our testers observed that the labels on two models floated free after submersion in water for far less than 20 minutes. This occurred the first time the products were submerged in water. We consider this to be a considerable deficiency, especially since the proposed standard relies heavily on the caregiver following those instructions.

We strongly believe that because, as we observed, certain models purporting to comply with the voluntary ASTM standard do not, in fact, meet the standard, it is even more important that the Commission issue a mandatory standard in this area. We urge the Commission to strengthen the testing requirements to include permanence and legibility requirement to ensure the important warning will be available and decipherable to all caregivers. Otherwise, whatever benefit the labels might provide will be fleeting.

Labeling -- Compliance with CPSC Standard

We support the Commission requirements in proposed 16 C.F.R. § 1514.4(d), that "Each bath seat and its packaging shall display a label stating the bath seat complies with U.S. CPSC Requirements for bath seats." There remains, of course, the attendant concern that consumers will continue to view the product as a safety device.

The proposed warning reads (graphic omitted):

WARNING

Children have drowned while using bath seats.

ALWAYS keep baby within arm's reach.

This bathing aid is NOT a safety device.

Stop using when a child is able to pull to a standing position.

(68 Fed. Reg. 74881).

In addition, in order to clarify for consumers the approximate age at which a child is able to pull to a standing position, we recommend that the end of the last line of the warning label contain the parenthetical "(9 months)."

Recommended Improvements to Proposed Rule

We recommend that the Commission require a disclosure of the manufacture date on each bath seat. In addition, as is required for cribs, we urge the Commission to mandate that only identical products may carry the same identifying number. We recommend that the Commission adopt the following requirement that is in effect for cribs, *i.e.*, the creation by all manufacturers of:

A model number, stock number, catalog number, item number, or other symbol expressed numerically, in code or otherwise, such that only [products] of identical construction, composition, and dimensions shall bear identical markings. (See 16 C.F.R. §§1508.9(b)(2) and 1509.11(a)(2)).

Additional Recommended Improvements to Proposed Standard

Reduce age range recommendation

Because the staff review of drowning data summarized in the NPR (68 Fed. Reg. at 74886) indicates that children younger than 8 months are more likely to drown in the presence of a bath seat, we urge that the recommended age for use of the bath seats be limited to between 6 and 9 months of age.

Recall of All Non-Complying Bath Seats

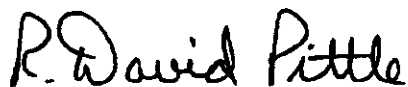
By proposing a ban of all bath seats that do not comply with the Commission's Proposed Rule as "banned hazardous substances," the Commission acknowledges the acute hazards associated with products that do not meet the standard. CU shares this concern, and urges the Commission to work closely with industry and other stakeholders to find ways to remove products that do not comply with any future mandatory standard from consumers' homes.

Conclusion

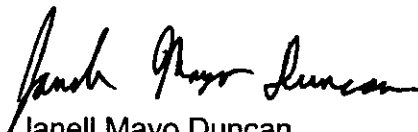
For the reasons stated herein, CU renews its request that the Commission ban baby bath seats as "banned hazardous substances." In the absence of such a ban, CU supports the CPSC's efforts to issue a mandatory rule banning bath seats that do not meet the requirements set forth under this NPR. CU requests, however, that the Commission include in its final rule the recommendations set forth in these comments.

March 15, 2004

Respectfully submitted,



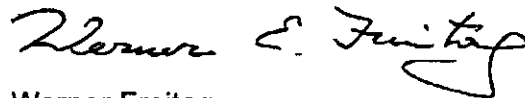
R. David Pittle
Senior Vice President, Technical Policy



Janell Mayo Duncan
Legislative and Regulatory Counsel



Jeffrey Martin
Director, Consumer Sciences



Werner Freitag
Child Product Safety Engineer