***Consumers Union ***
Consumer Federation of America
*** Kids in Danger ***

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Office of the Secretary
Consumer Product Safety Commission
Room 502
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Comments of Consumers Union, Consumer Federation of America, and Kids in Danger to the U.S. Consumer Product Safety Commission on "Safety Standard for Infant Bath Seats" 16 CFR Part 1215

Introduction

Consumers Union of U.S., Inc. (CU), Consumer Federation of America (CFA), and Kids in Danger (jointly "We") submit the following comments in response to the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") in the above-referenced matter.[1]

Background

Section 104(b) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3018 ("CPSIA"), requires the CPSC to promulgate consumer product safety standards for certain durable infant and toddler products. In this Notice of Proposed Rulemaking ("NPR") the CPSC is seeking comment on its proposed safety standard for baby bath seats. The proposed standard is "substantially the same" as voluntary standard ASTM F 1967-08a,

[1] "Safety Standard for Infant Bath Seats," 74 Fed. Reg. 45719 (September 3, 2009).

"Standard Consumer Safety Specifications for Infant Bath Seats," but includes some modifications.[2]

Recommendations

Bath seats are inherently unsafe products and we reiterate our previous call for the products to be banned under the Federal Hazardous Substances Act. Based upon the history of these products, and despite warnings and educational efforts, bath seats continue to give caregivers a false sense of security and infants continue to die. The vast majority of drowning incidents while a bath seat is in use occur when a caregiver leaves an infant unattended, albeit for just a brief period. Promulgating a mandatory standard, as proposed, will not address this primary hazard pattern.

The dilemma created by baby bath seats is that the sturdier and safer-looking the seat, the greater the false sense of security, increasing the likelihood that the child may be left unattended. 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. 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."

Bath seats continue to fail to keep children safe and unless the CPSC developed performance and safety requirements requiring a caregiver to be within arm's reach of a bath seat while in use, more preventable drowning will occur.

[2] Id.

CPSC's analysis of incident data underestimates the hazards associated with bath seats. The count of non-fatal incidents is extremely unreliable because only situations where emergency medical services are summoned are likely to be reported to the CPSC. Furthermore, the numbers of fatalities published in the *Federal Register* do not reflect the increased fatality rate of recent years. The CPSC reported in the Federal Register that there have been 171 reported fatalities involving bath seats from 1983 through 2008. That represents an average of 6.6 reported deaths per year over the 26 year period. But an analysis of the most recent years for which there is complete data, specifically 1998 through 2007, shows an average of 9.7 reported deaths per year – nearly 50 percent more than stated. In comparison, baby bath tubs (a popular alternative) showed an average fatality rate of only 1.7 deaths per year during this same time period.

This analysis of risks relating to bath seats when compared to risks relating to baby tubs supports two conclusions: First, the ASTM F 1967 standard, which was first published in 1999, has not been effective in reducing infant deaths in bath seats. Second, bath seats are inherently more dangerous than infant bath tubs. These conclusions are based on the premise that the market share for both bath seats and bath tubs are about equal and have remained unchanged over the years. In doing this type of analysis one must be mindful that the utility of a bath seat lasts for only about 5 months of an infant's life where an infant bath tub is likely to be used for up to 24 months. Therefore the exposure in infant bath tubs is much greater -- making the dichotomy in drowning incidents between bath seats and bath tubs even more glaring.

The new clamp-on bath seat design heralded by its manufacturer, and others, as having a safer design than those that use bottom-mounted suction cups for stability, still poses serious safety risks. There have been

failures and deaths in this design and no matter what the design, the products provide a false sense of security that leads caregivers to take riskier behaviors which pose drowning risks to infants.

In the absence of a total ban, we support the CPSC's effort to propose mandatory rules to improve the safety of bath seats. The standard must address the primary hazard pattern with these products -- leaving an infant unattended. We encourage the CPSC to explore technology to ensure that it would be difficult to use a bath seat unless a caregiver is in close proximity to the product. The system should be designed so that it could not be easily defeated by the user. Although this likely would increase the cost of bath seats, it could help reduce submersion incidents.

We agree with the Commission staff that the pass/fail criteria specified in the stability requirements ASTM F 1967-08a needs clarification so that laboratories conducting compliance testing will not misinterpret results. However, we do not agree that setting the maximum rotation at a somewhat arbitrary angle of 12 degrees provides the level of confidence required to know that a seat will not slip out of position and endanger an infant. Instead, we recommend that the Commission consider any movement from its originally fixed position to be a failure.

We support the Commission staff's recommendation regarding water levels to weight the seat down in order to obtain an accurate water level reading. We recommend that all bath seats be clearly labeled with a maximum water level to be used. Since 96% of all deaths, injuries, and other incidents involve bath seats used in water depths greater than 1 or 2 inches, we recommend that the fill line demarcation be specified at depths of no greater than 2 inches.

We agree that a smaller torso probe should be used to gauge whether an infant can slip through leg openings. Incident data indicate that leg openings on models that currently meet the ASTM standard may still pose this hazard. A new torso probe that represents a smaller infant is required and tests should be conducted in all orientations to determine if any position can create a slip-through or entrapment hazard.

Conclusion

For the foregoing reasons, we urge the Commission to adopt these recommendations in its implementation of Section 104(b) of the CPSIA.

Respectfully submitted,

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