

Statement of

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before the

U.S. Consumer Product Safety Commission

Hearing on Notice of Proposed Rulemaking for Baby Bath Seats

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Chairman Stratton, Commissioner Gall, and Commissioner Moore, thank you for providing me with this opportunity to speak to you about CFA's Petition on Baby Bath Seats. I am Rachel Weintraub, Assistant General Counsel at Consumer Federation of America. Today I am offering this testimony on behalf of Consumer Federation of America and Kids in Danger. The petition, filed by Consumer Federation of America and eight other groups in August 2000 urges 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, 30 more children have been killed and 116 more children have been injured in baby bath seats. Unfortunately, the total deaths and injuries now stand at 96 deaths and 153 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 recommendations contained in the staff's 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 96 incidents of drowning and 153 reports of near drowning identified by CPSC staff.** There have been an additional 82 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.
- 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 indict 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

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

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:

- 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

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- ? "[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. Rauchschwalbe, 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.

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. Thus, this added vigilance will serve to decrease the risk of drowning. Further, CFA notes that CPSC staff 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 5-10 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.

3) **Baby bath seats pose an unreasonable risk of injury and death to children.** 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.

4) **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.

II. Mandatory Standards

In the proposed rule, CPSC staff has proposed three draft requirements to attempt to address the hazards associated with bath seats. These requirements include: 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 decide to pass a mandatory standard, which we prefer over inaction or deferring to the voluntary standard, we have the following recommendations:

- 1) The stability performance requirement includes a test that requires the wiping of the bath surface with alcohol before the test is conducted. This requirement is inconsistent with foreseeable consumer use. It is not reasonable to expect that consumers will do this each time they use the seat. The test should better emulate real life conditions.
- 2) 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.
- 3) CPSC must 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.
- 4) 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.
- 5) The rule should require that the warning stating that the product not be used on a slip-resistant surface be on the product as well as on the package.
- 6) The rule should include a requirement that the warning label be “readable” when tested for permanence.

In addition to strengthening the mandatory standards with the previously mentioned elements, 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 have 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. For example, ongoing concerns include: the fact that the warning regarding when the product should not be used on a slip-resistant surface is on the package only and not on the product; the manufacturers' refusal to mark the product with a water depth line to guide consumers and reduce likelihood of filling bath with more water than needed; and a proposal to delete a requirement that the warning be "readable" when tested for permanence.

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, 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

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 staff that ASTM 1967-03 does not adequately address the drowning risks presented by bath seats, specifically tip-over and coming out 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.

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 Rauchschwalbe et. al, Pediatrics, 8 (electronic copy).