

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Bath Seats; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a rule to ban bath seats that do not meet certain requirements under the authority of the Federal Hazardous Substances Act. Bath seats are used to support infants in a tub or sink while they are bathed. The Commission is aware of 106 deaths and 163 non-fatal incidents and complaints from January 1983 through October 2003 involving bath seats. The Commission proposes three requirements with which bath seats must comply.

DATES: Written comments in response to this document must be received by March 15, 2004.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-7923. Comments also may be filed by telefacsimile to (301) 504-0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned "NPR for Bath Seats."

FOR FURTHER INFORMATION CONTACT: Patricia Hackett, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-7577.

SUPPLEMENTARY INFORMATION:

A. Background

In July 2000, the Consumer Federation of America and eight additional organizations petitioned the Commission to ban bath seats under the Federal Hazardous Substances Act ("FHSA").¹ In August 2000, an additional organization, U.S. Public Interest Research Group, submitted a letter requesting to be added to the list of petitioners. On May 30, 2001, the

Commission voted to grant the petition and issue an advance notice of proposed rulemaking ("ANPR") to begin a rulemaking proceeding. The ANPR was published in the **Federal Register** on August 1, 2001. 66 FR 39692. The Commission received 10 comments on the ANPR. The Commission held a public briefing on bath seats on July 28, 2003. Four people submitted written testimony and gave oral testimony at the briefing. Since the briefing, the Commission received six additional written comments. Significant issues raised by these comments and the Commission's responses are discussed in section G below. On October 16, 2003, the Commission voted to issue a notice of proposed rulemaking ("NPR") proposing that bath seats meet requirements for stability, leg openings and labeling or be considered banned hazardous substances.²

When the ANPR was published, the Commission had reports of 78 deaths and 110 non-fatal incidents and complaints associated with bath seats (or bath rings, which are no longer marketed in the U.S.) between January 1983 and May 2001. 66 FR 39693. When the staff presented a briefing package to the Commission in May 2003, the Commission had reports of 96 deaths and 153 non-fatal incidents involving bath seats that occurred from January 1983 to December 2002.³ As of October 2003, the Commission has reports of 106 deaths and 163 non-fatal incidents involving bath seats. As discussed more fully below, the staff identified three major scenarios that were related to the bath seats' design and materials: (1) The bath seat tipping over during use; (2) the child coming out of the bath seat; and (3) the child becoming entrapped and/or submerged in the leg openings of the bath seat.

B. Statutory Authority

This proceeding is conducted pursuant to the FHSA, 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when

subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard can include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (8) because of instability, or (9) any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)-(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding began with an ANPR. 66 FR 39692. After considering the comments submitted in response to the ANPR, the Commission is now issuing a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. The Commission will then consider the comments received in response to the proposed rule and decide whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i)(1). Before the Commission can issue a final rule it must find: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* 1261(i)(2).

C. The Product

Bath seats are used in a tub or sink to support a seated infant while he/she is bathed. They are marketed for use only by infants capable of sitting upright unassisted and who cannot yet pull to a standing position. Current bath seats contain a seating area and are usually held in place by suction cups located at the bottom of the seat. When the Commission first began looking at this issue, bath rings were also being manufactured and marketed in the U.S. Bath rings consisted of a plastic ring with three or four legs with suction cups. The infant would sit directly on the tub or on a sponge pad that was fitted within the ring. Such bath rings are no longer manufactured for the U.S. market, but they would be covered

¹ The other petitioners are Drowning Prevention Foundation; Danny Foundation for Crib and Child Product Safety; Intermountain Injury Control Research Center; California Coalition for Children's Safety and Health; California Drowning Prevention Network; Contra Costa County Childhood Injury Prevention Coalition; Greater Sacramento SAFE KIDS Coalition; and Kids in Danger.

² Commissioners Mary Sheila Gall and Thomas H. Moore issued statements. Copies of these statements are available from the Commission's Office of the Secretary or from the Commission's Web site, <http://www.cpsc.gov>.

³ Numbers in brackets refer to documents listed at the end of this notice.