

The dimensions of the shoulder probe represent the shoulder breadth and buttock depth of the smallest intended occupant. During the test, the shoulder probe is inserted into each leg opening and a force is applied to the "shoulder" end of the probe in an attempt to push it through the opening, or to have it touch the seat base. Prohibiting the probe from contacting the seating surface is intended to prevent an occupant from sliding and rotating in the bath seat to a point where the occupant's shoulder and face is under water. The interior volume of current bath seats can be reduced to prevent an infant from lying down (and possibly becoming entrapped underwater) without preventing older users from occupying the seat.[2&4]

This leg opening performance requirement was recently approved by ASTM and is included in ASTM F 1967-03, published in April of 2003.[2] The Commission is including it in this NPR because, at this time, the leg opening requirement of the voluntary standard has not been implemented. According to relevant legislative history, a voluntary standard is implemented when "substantial industrywide production of products that comply with the standard has begun." H.R. Cong. Rep. No. 208, at 875; U.S. code cong. & Admin. News, 97th Cong., 1st Sess. 1982, Vol. 2 at 1237. This has not yet occurred.

3. Labeling Requirement

As discussed above, 35 reported incidents involved children coming out of bath seats (22 deaths and 13 non-fatal incidents or complaints). The Commission staff considered the incident reports to determine whether performance criteria could be developed that would address this hazard scenario.

For the reasons explained below, the staff concluded that no performance criteria could effectively address the hazard scenario of children coming out of the bath seats at this time.

The Commission is concerned that adding an effective restraint system to the seat may change the utility of the bath seat. It could change the product from a bath aid to a bath restraint, making it impractical for its intended purpose of aiding caregivers when bathing children. Essentially, current bath seats maintain the children's seated posture as loosely as possible, so that caregivers have room for their hands to wash children without worrying that the children will fall over or slip down. Bath seats are "loose supports." They are poorly adapted to restraining functions because it is difficult to make an effective "loose restraint." Preventing children from coming out of a bath seat requires a restraint system that is reasonably comfortable and still allows washing. Moreover, in a bathing environment it is easier for children to escape because they are naked and wet. Restraining their slippery bodies comfortably, with room to wash, is extremely difficult because humans are so flexible and jointed.[2&5]

The Commission is also concerned that making the bath seat's seating area smaller by requiring a standard size will not prevent all users from coming out of the bath seat. One approach for a restraint might be simply to reduce the occupant retention area so that it is "tighter" on the child. However, this would not be effective for all users because children who may use the bath seat range greatly in size. For example, bath seats that fit large 6-month-old children may still allow small 10-month-old children ample clearance to fit into the seat and come out. Moreover,

the large variability in sizes among same-age children in this age range is greater than the growth from age 5 months to 10 months. Thus, requiring that bath seats be made in a smaller, standardized size would be insufficient to create an effective passive restraint system for bath seats.[2&5]

Because a restraint performance requirement does not appear to be a practical approach for preventing children from coming out of a bath seat, the Commission proposes a forceful warning label to warn about the need for constant caregiver attendance.

The Commission believes that the label currently specified in the ASTM standard (see above) needs to be stronger so that consumers understand that the danger of drowning is a real possibility. Some consumers report that leaving a child unattended momentarily is "understandable," to get a towel, answer the phone or doorbell, or help another child, even though some admit they understand that it is a risk to the infant. They may rationalize that they are still "attending" to the child if they can "hear what's going on," or if they are "just in the next room" and will soon return. Caregivers reading the current warning label may admit that drowning is possible, but may rationalize that it has never happened before. Since they think the event is unlikely, they feel comfortable ignoring the warning and believing the hazard is unlikely. They trust the bath seat and over-apply the success of their prior experiences with it when their child did not come out. A strong warning may counteract some of this behavior. The Commission proposes strengthening the ASTM warning label with statements that expressly explain the danger. The Commission proposes the following language:

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.

G. Response to Comments

The Commission received ten comments from nine individuals during the ANPR comment period. Eight of the 10 comments supported a ban of the product. One of the 10 supported a mandatory performance standard, and the other commenter supported the development of a voluntary standard. In addition, four individuals submitted

written testimony before the Commission's public briefing and gave oral testimony at the briefing. Three of these supported a ban of all bath seats and one supported voluntary standards. After the briefing, the Commission received six additional comments, two supporting a ban of all bath seats, one supporting a mandatory standard, and one supporting terminating the

rulemaking (the other two did not express support for any of the options).

Responses to the primary issues raised by the comments follow. The numbers found in parentheses after a comment refer to the commenter number assigned by the Office of the Secretary.