

6. Water Level Mark

Comment: Two statements submitted at the Commission briefing (by Rachel Weintraub for CFA and Jack Walsh for the Danny Foundation) recommended putting a water level mark on the bath seat to indicate that the bath water should not be higher than that level. One of the commenters discussed incident data that he claimed supported his opinion. The other commenter recommended that the following be added to the warning label or instructional literature: "ALWAYS use the least amount of water necessary when bathing a child."

Response: The Commission is concerned that a water level mark may be interpreted by some caregivers to mean there is a safe water level at which children do not drown. There is no such level. Therefore, the Commission does not support this recommendation. The current ASTM standard requires the following wording on instructional literature: "Babies can drown in as little as 1 inch of water. ALWAYS bathe your infant using as little water as necessary." The Commission believes this is adequate. With regard to incidents cited by the commenter, many of those involved overflowing bath tubs where parents or siblings turned on the water and failed to turn it off. The Commission does not believe that the presence of a water level mark on the product would have addressed these incidents.

7. Labeling

Comment: One statement at the Commission briefing (by Rachel Weintraub for CFA) and one comment submitted after the briefing (by Paul Ware, Chair of ASTM F15.20 Subcommittee) commented on the proposed warning label for bath seats. One stated that it is counterintuitive to come up with a warning label to address the coming out hazard. Another commenter stated that he does not believe that there is adequate rationale for changing the wording from what is currently in the ASTM standard to the wording the Commission is proposing.

Response: As discussed in section F.3 above, the staff explored whether a performance requirement could be developed that would address the coming out hazard, but concluded that no practical and effective performance criteria were possible. As for the need for improvements to the label required by the ASTM standard, the Commission believes that the current label allows parents to rationalize that children have not actually drowned while using a bath seat. The Commission believes its

proposed warning label is an improvement because it uses language to warn parents that children actually have drowned while using a bath seat. Incidents involving the absence of caregivers continue to occur, and no other strategy directly addresses this caregiver behavior. The Commission believes that strengthening the label may more strongly influence caregiver behavior and thereby reduce drowning incidents.

Comment: Two commenters (Ms. Weintraub of CFA and Heather Paul of National Safe Kids Campaign) asked that the Commission require a label on bath seats that indicates the product meets the mandatory rule.

Response: The Commission has included such a requirement in other CPSC regulations, such as bike helmets, and believes that this is a reasonable suggestion. Therefore the Commission proposes this requirement in the NPR.

Comment: One commenter (Ms. Weintraub of CFA) requested that there be a requirement that the warning label be "readable" when tested for permanence. Another commenter recommended a stronger permanency test for labels than what is currently required in the ASTM standard.

Response: The ASTM standard for bath seats contains a requirement for labels to withstand submersion in water for 20 minutes. CPSC is not aware of any consumer complaints or incidents with regard to illegible labeling on bath seats. Therefore the Commission has no basis to propose a change to the current ASTM test.

Comment: One commenter (Ms. Paul of Safe Kids Campaign) recommends that the warning label on the product also be required to be on the front and back of the packaging.

Response: The Commission believes this is a reasonable suggestion to better ensure that consumers are made aware of the hazards associated with bath seats. Therefore the Commission is including this in the NPR.

8. Data Regarding Bathing Environments of Infants

Comment: One commenter (CH 03-3-5) presented data on bathing environments for a group of children age 5 to 10 months old who drowned in bath tubs from 1994-1999. From these data, she drew conclusions about parental behavior, sibling presence, and the potential effects of a ban of bath seats.

Response: The commenter puts forth the contention that bath seats lead parents to leave their babies alone in the bath, which leads to their greater risk of drowning. This conclusion cannot be

drawn from the data she presents. In order to draw conclusions about bath seats leading parents to leave children unattended, we would need to have data on how many bath seat users leave their children unattended and how many non-bath seat users leave their children unattended. These data do not exist.

In addition, in order to draw conclusions about whether bath seat users are at greater or lesser risk of drowning (regardless of the reason), we need data on the number of babies bathed in bath seats and the number bathed without bath seats. These data are not presented by the commenter. The only source of any data on this topic is the Baby Products Tracking Study discussed in the staff's 2001 briefing package and 2003 briefing package. CPSC staff has calculated death data and risk estimates derived from this study.

These data indicate that the risk of drowning in a bathtub is greater with a bath seat than without a bath seat for 5-7 month olds. The risk of drowning with a bath seat is less than that of drowning without a bath seat for 8-10 month olds. Given this analysis, and given that this information alone cannot be used to predict what effect a ban of bath seats may have on caregiver behavior, the Commission concluded that available information cannot predict whether a ban of bath seats would reduce bathtub related drownings.

The Commission is proposing requirements for bath seats that address the mechanical design characteristics that contribute to bath seat drowning incidents. By making bath seats safer, the Commission believes that the number of drowning fatalities can be reduced.

9. Adequacy of ASTM F 1967-03

Comment: Two commenters (Mr. Ware, Chair of ASTM F15 Subcommittee and Frederick Locker, Counsel for the Juvenile Products Manufacturers Association) stated that they believed the existing voluntary standard is adequate and addresses issues previously raised by the Commission.

Response: The Commission believes that the current ASTM standard for bath seats (ASTM F 1967-03) is not adequate. Specifically, there are no performance requirements to ensure that all bath seats are stable on slip-resistant surfaces. This was an issue that was discussed during the May 2001 Commission briefing, and it is not addressed in the newest version of the standard. In addition, it is the Commission's opinion that the labeling requirements of ASTM F 1967-03 need