

to be strengthened to more effectively alert caregivers to possible hazards associated with bath seats.[1]

H. Alternatives

The Commission has considered other alternatives to address the drowning hazard posed by bath seats. As discussed below, the Commission does not believe that any of these would adequately reduce the risk of injury.

1. *Propose only two requirements.* The Commission could issue a proposed rule that requires bath seats to comply only with a stability requirement and labeling requirement (or else they would be banned hazardous substances). The Commission considered proposing a rule without a leg opening requirement because the ASTM standard approved in March 2003 includes a leg opening requirement that is identical to the one the staff recommended to the Commission.[2] However, the Commission believes it is appropriate to propose all three requirements since the industry has not had time yet to produce bath seats that comply with the ASTM leg opening requirement. The Commission will re-examine the question of including a leg opening requirement in its rule when the Commission considers whether to issue a final rule.

2. *Ban of all bath seats.* The Commission considered proposing a rule declaring that all bath seats are hazardous substances and therefore banned. However, at this time, it is unclear what the effect of removing all bath seats from the market would be. Available information cannot predict whether fewer children would drown if bath seats were unavailable or if more would drown. CPSC staff examined bath seat-related deaths and bath tub-related deaths for the period 1994 through 1999. The staff's analysis suggests that children ages 5 to 7 months are more at risk from drowning when bathed in bath seats as opposed to being bathed in a bathtub. However, children ages 8 to 10 months, as a group are at a higher risk of drowning when bathed in a bathtub than when bathed in a bath seat. The staff concluded that it could not measure the effect a ban would have on bathing-related drowning because: (1) The analysis suggests that bathing while using a bath seat is riskier for younger bathers, while bathing in bathtubs without a bath seat is riskier for older bathers; (2) the staff necessarily made assumptions to estimate a bath seat user population—these assumptions could affect the accuracy of the results; and (3) the analysis cannot be applied to children younger than 5 months and older than 10 months, so deaths in those

age groups are not addressed by the analysis.[2&3]

In contrast to these questions about the possible effect of a total ban on drowning deaths, the Commission believes that the three requirements it proposes should make bath seats safer. The proposed requirements are directed to addressing the specific hazard scenarios that are identified in most fatal incidents.

3. *Voluntary Standard.* The current voluntary standard, ASTM F 1967–03, contains many provisions that the CPSC staff has recommended, including a leg opening requirement. However, it does not require stability testing on slip-resistant surfaces. As discussed above, the suction cups currently used to attach bath seats to a tub's surface do not reliably adhere to slip-resistant surfaces. Many of today's bath tubs have slip-resistant surfaces, and they can be difficult for consumers to identify.[2] The Commission believes that bath seats should be stable when used on the surfaces that are likely to be in consumers' homes. The existing ASTM standard is not adequate in this respect.

The label currently specified in the ASTM F 1967–03 standard may not advise caregivers forcefully enough that a child can drown in a bath seat. The Commission believes that the proposed label would send a stronger message that the caregiver should remain with the child by expressly stating that children have drowned in bath seats and that the bath seat is not a safety device.

I. Preliminary Regulatory Analysis

The Commission has preliminarily determined to ban bath seats that do not meet specified requirements for stability, leg openings, and labeling. Section 3(h) of the FHSA requires the Commission to prepare a preliminary regulatory analysis containing a preliminary description of the potential benefits and costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms; an identification of those likely to be affected; discussion of existing or developing standards submitted in response to the ANPR; and a description of reasonable alternatives. 15 U.S.C. 1261(h). The following discussion addresses these requirements.[8] The preliminary regulatory analysis is based on incident data that was reported in the staff's briefing package of May 8, 2003. Since that time there have been additional incidents reported which are included in the incident data discussion at section D.1 of this notice.

Discussion of Proposed Rule

The proposed rule would require bath seats to meet certain requirements, some of which are not currently covered by the voluntary standard. The requirements involve additional criteria for stability, openings, and labeling.

The proposed stability requirement will require the product to resist tip-over when the bath seat is installed on a smooth surface to which commercially available adhesive backed slip resistant tread strips (for bathtub use) have been applied.

In addition to the stability requirement, two probe tests are being proposed that would limit the size of the product's leg openings as well as the seating space, to address the hazards of submersion and entrapment below the water surface. This requirement is part of the newly approved ASTM voluntary standard, but currently marketed bath seats do not meet it.

The labeling requirement would change from what is currently specified in the voluntary standard. The proposed labeling requirement specifies that the product and its packaging be labeled with the safety alert symbol (exclamation mark within an equilateral triangle), the single word WARNING in all capital letters, as well as the following: "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 child is able to pull up to a standing position."

Potential Costs of the Proposed Rule

Efforts are underway by at least one U.S. manufacturer to develop a bath seat that will conform to the requirements of the proposed rule. Costs to manufacturers to meet the proposed rule include product development costs and increased costs of production. Product development costs involve costs associated with redesign of the product and retooling of manufacturing equipment. According to an industry representative, new molds for the redesigned product are estimated to cost about \$350,000. Product development overhead costs include product design, development and marketing staff time, product testing and focus group expenses. However, these "product development costs" will be treated as with any new product development and be amortized over time.

Manufacturers report that there will be an increase in the cost of production associated with additional material, labor and shipping. According to an industry representative, its redesigned bath seat will be larger, heavier, and