

consumer utility. If some consumers do not accept the redesigned seats, or use them less frequently (or for a shorter period), and decide instead to bathe their children by other means, the risk of drowning from these alternative bathing methods will be substituted for the bath seat drowning risk.

Alternatives

As discussed above, alternatives to the regulation include a total ban of infant bath seats, relying on a voluntary standard, promulgating a subset of the requirements of the above proposed rule and taking no action.

Option To Ban

The Commission considered the option of proposing a ban that would eliminate bath seats from the marketplace entirely. With this option, the costs would consist of the lost use value, or utility, that consumers derive from the product. Money not spent on bath seats will be spent on other products that provide utility, but there is expected to be some loss in utility that cannot be quantified.

The benefits of a total ban would be the net reduction in deaths that would be prevented by the action. The primary alternative to a ban is the proposed rule for baby bath seats already discussed. Since the proposed rule addresses about half of the child drownings, the additional drownings addressed by a ban would be only a subset of all bath seat drownings—the remaining half.

Furthermore, while a ban would effectively address (on net) only about half of the bath seat drownings, it would expose all bath seat users (*i.e.*, those who would be precluded from using bath seats) to the drowning risks in alternative bathing settings. The risk in alternative settings is not trivial. For example, the analysis by the Directorate for Epidemiology suggests that, for some restricted age groups (*e.g.*, drownings involving children age 8–10 months), the risk of drowning in a bath seat may be substantially lower than in alternative bathing settings. Moreover, when all children age 5–10 months were grouped together in the analysis (the age group for which bath seats are generally recommended), the average bath seat drowning risk was almost 40 percent lower than that of alternative bathtub scenarios. While grouping children across the 5 to 10 month age categories may mask the drowning risk disparities associated with the developmental differences between the younger and older children, as noted by the Directorate for Epidemiology, it nonetheless highlights the fact that the risks associated with alternative bathing

methods are substantial and should not be ignored.

If the proposed rule were fully effective in preventing the deaths it addresses, it would likely reduce the risk of drowning in a bath seat by about 50 percent. On the other hand, while a ban would address all bath seat drownings (by eliminating bath seats), it would also expose all the children who would have been bathed in bath seats to the drowning risks in other bathing settings.

In summary, a ban of all bath seats from the marketplace would result in some reduction in consumer utility; however, the impact on child drownings is uncertain, and fatalities could increase.

A Subset of the Performance Requirements: Excluding the Leg Opening Requirement in the Proposed Rule

The Commission considered a subset of the three requirements developed by the staff and discussed earlier as a proposed rule. One reasonable alternative is to publish as a proposed rule the stability and labeling requirements and not the leg opening performance requirement.

If this alternative were proposed, the costs and benefits which were discussed in the foregoing analysis of the proposed rule would change little. Because the entrapment and submarining deaths accounted for only two of the 57 deaths for which the cause was known, exclusion of the leg opening requirement would reduce the benefits by only about 3.5 percent (*i.e.*, 2/57). At the same time, the elimination of the leg opening requirement will not reduce the costs of the proposed rule by much. Based on discussions with the manufacturers of bath seats, the stability requirement requires product redesign and will drive most, if not all, the cost increase associated with the proposed rule. The leg opening requirement, by itself, would not necessitate a product redesign, but would require “modification” to the current design, resulting in perhaps a small increase in the product’s retail price. Therefore, the elimination of the leg opening requirement would have, at most, a very small impact on the overall cost of the proposed rule as well as on its potential benefits.

No Action

A decision by the Commission to take no action would eliminate the retail price increase associated with making baby bath seats safer. At the same time (and assuming no change in the voluntary standard), absent any

intervention by the Commission, additional preventable deaths will likely continue as new parents buy and use baby bath seats that are currently available in the marketplace.

Voluntary Standards

As an alternative to a proposed rule, the Commission has the option of finding that the voluntary standard is adequate and terminating rulemaking. ASTM has recently revised the voluntary standard to address hazards associated with bath seat submersion and entrapment. It is possible that later revisions might incorporate tip-over and labeling requirements that are similar to the proposed rule. If the voluntary standard addresses the same tip-over hazards that are addressed in the proposed rule with equivalent effectiveness, and all suppliers of baby bath seats comply with the voluntary standard, the net benefits of the voluntary standard would be virtually the same as those of the proposed rule. However, at this time, the voluntary standard does not address the tip-over deaths. Nor does it require the stronger label that the staff recommended.

J. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (“RFA”), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact that the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. *Id.* 605(b).

No available information indicates that the proposed bath seat requirements will have a significant adverse impact on a substantial number of small businesses. Currently, three companies, two U.S. manufacturers and one importer, are known to supply bath seats in the U.S. Two of the firms (one of the manufacturers and the one importer) are small, meeting the U.S. Small Business Administration’s definition of small businesses. The two U.S. manufacturers are aware of the progress of this rulemaking, and at least one manufacturer is in the process of developing bath seats to meet the requirements of the proposed rule. The third firm, an importer, may have to find another source for baby bath seats that would meet the proposed rule.[8]

For these reasons, the Commission certifies that the proposed rule banning bath seats that do not meet the specified requirements would not have a