

significant effect on a substantial number of small entities.

K. Environmental Considerations

Pursuant to the National Environmental Policy Act, 15 U.S.C. 4321–4347, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, 40 CFR part 1500 and 16 CFR part 1021, the Commission has assessed the possible environmental effects associated with the proposed rule banning certain bath seats.

The Commission's regulations state that rules providing design or performance requirements for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation.

The transition to bath seats that meet the proposed rule is not expected to have an adverse environmental impact, especially if the effective date of a rule enables the firms to substantially deplete existing non-complying inventory. The U.S. manufacturers are already aware of the Commission's actions, and since there is a proposed one-year lead-time (after issuance of a final rule) before the rule becomes effective, no environmental impact is expected. Moreover, any existing inventory in manufacturers' stocks has the potential to be recycled, *i.e.* reground in order to reuse the plastic components, which constitute the bulk of the seat's construction.[8]

Therefore, because the proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

L. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) Provides a higher degree of protection from the risk of injury or illness than the FHSA standard

and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the proposed rule banning certain bath seats would preempt non-identical State or local requirements applicable to bath seats designed to protect against the same risk of injury.

The Commission has also evaluated this proposed rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the proposed rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

M. Effective Date

The rule would become effective one year from publication of a final rule in the **Federal Register** and would apply to bath seats entering the chain of distribution on or after that date. The two U.S. manufacturers are aware of the Commission's proposed requirements. At least one manufacturer has begun product development on a bath seat that meets the proposed requirements. Thus, one year should allow sufficient time for the manufacturers to develop a product that meets the requirements.[2&8]

N. Proposed Findings

When the Commission issues a rule under section 2(q)(1) of the FHSA classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include these findings in the regulation. 15 U.S.C. 1262(i)(2). The Commission proposes the following findings.

Voluntary standard. The FHSA requires the Commission to make certain findings concerning compliance with and adequacy of a voluntary standard if a relevant voluntary standard has been adopted and implemented. 15 U.S.C. 1262(i)(2). The voluntary standard, ASTM F 1967–03, as it is currently adopted and implemented does not adequately reduce the risk of injury. The current stability provisions do not require testing on slip-resistant surfaces. The

current label prescribed by the ASTM standard does not state a strong enough warning. The leg opening requirement has been adopted, but at this time has not yet been implemented. Thus, the Commission proposes to find that the voluntary standard, as it is currently adopted and implemented, does not adequately reduce the risk of injury.

Relationship of benefits to costs. The FHSA requires the Commission to find that the benefits expected from a regulation bear a reasonable relationship to its costs. The Commission estimates the potential benefits of its proposed changes to bath seats to be elimination of 2.8 to 4.1 deaths annually. The Commission estimates that the costs of the rule will be about \$10 million per million bath seats sold. If the proposed rule eliminates all of the tipover and entrapment/submersion deaths, the cost per life saved would range from about \$2.4 million to about \$3.6 million. Even if the proposal were only 50% effective, then the cost per life saved would be from about \$4.9 to \$7.1 million. Thus, the Commission proposes to find that there is a reasonable relationship between the expected benefits of the rule and its costs.

Least burdensome requirement. The FHSA requires the Commission to find that a regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* The Commission considered proposing only two requirements (stability and labeling requirements), but not a leg opening requirement), banning all bath seats, or taking no action and following the ASTM voluntary standard. The Commission is proposing three requirements because at this time, the leg opening requirement in the ASTM standard has not been fully implemented. The Commission will reconsider this issue when it considers a final rule. As discussed above, it is not clear that a ban of all bath seats would reduce drowning deaths any more than the proposed three requirements, and could have the effect of increasing bathtub-related drowning deaths. Thus, the Commission proposes that a ban of bath seats that do not meet the proposed requirements for stability, leg openings and labeling is the least burdensome alternative that would adequately reduce the risk of injury.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.