



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

**STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE FINAL RULE FOR BABY BATH SEATS UNDER
SECTION 104 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT**

May 19, 2010

CPSC was concerned about infant deaths related to baby bath seats even before I came to the Commission 15 years ago. Since 1983, baby bath seats have been associated with 174 drowning deaths, and 300 non-fatal incidents of which approximately 40% were submersions. In October of 2003, I voted for a proposed mandatory standard for baby bath seats that would have required new stability testing, a stronger warning label and smaller leg hole openings to prevent entrapment/submersions. I voted for that proposed rule, in part, because of data suggesting that babies of a certain age might actually be safer being bathed in a bath seat than in a tub alone. The comparative death rate analysis was a key element in my decision not to vote to ban the seats outright in 2003. I now believe, given the limitations of the analysis, that I gave that data too much weight. Except for deaths related to design characteristics we have identified in certain seats, we have no hard evidence to determine whether bath seats increase the risk of drowning deaths or whether they reduce the risk for certain infants who might otherwise be at risk of drowning in bath tubs without the seats.

The Commission never finalized its 2003 proposed rule because the ASTM subcommittee, over a period of years, adopted the Commission's proposals. However, relying on a voluntary standard can have limitations. I was shocked to learn that two of three bath seats/rings on sale today (bath rings were not being sold in the U.S. at the time of the Commission's proposed rule, but they have made a reappearance) rely on the very mechanism to secure the seat to the tub—suction cups—that the Commission had discredited and had proposed to ban. With no mandatory standard in place, manufacturers continued to produce and sell bath seats/rings that use suction cups.

The Consumer Product Safety Improvement Act of 2008 required the Commission to review voluntary standards for baby bath seats and, after determining whether the standard should be made stronger, to issue a rule making the voluntary standard and any improvements to it, a mandatory consumer product safety standard. Thus the focus of the final rule upon which we voted today is not whether the product should be on the market, but whether the current voluntary standard is adequate.

It is a safety advance to have a mandatory standard in place. According to our staff's testing, all of the seats currently on the market initially failed when tested to ASTM standard

F 1967-08a, including a seat certified by the Juvenile Products Manufacturers Association. Therefore, none of those seats would meet our strengthened mandatory standard and would thus be banned once the standard is made final. We will need to be vigilant about keeping the banned seats from continuing to be marketed and sold. We will also have to monitor the marketplace to see if new bath seats/rings are certified to the mandatory standard. We should carefully monitor any incidents relating to them and not wait for 23 more deaths before we take further action. If new seats do come on the market, I would hope the Commission would reexamine this standard in a broader context than just a section 104 review.

My own sense is that the bath seats, particularly as they have become sturdier and safer *looking*, are perpetuating the belief of some parents that their babies are safe and out of harm's way when they are in the seat and that nothing will happen to their baby if they leave the bathroom for a few minutes. We heard parents tell us this as early as 1999, in a focus group our agency conducted. The findings from that study included:

“Parents do leave their young children alone in the bath, albeit infrequently and only for a few moments. Presence of older siblings, use of baby rings/seats...tend to encourage trial of this high risk behavior. This finding suggests that although parents acknowledge intellectually the hazards involved, they do not truly believe something bad will happen to their child.”

“Parents seem more likely to turn away from their child in the bathtub or leave the bathroom for non-emergency reasons than for emergency reasons. The assumption is that minor tasks (e.g., getting a diaper, towel, etc.) take only a few seconds to accomplish. However, people typically do not accurately judge how long they are away from their child. What seems like seconds or one or two minutes might actually be longer.”

“Successful experiences with leaving a child unattended in the bath tend to encourage parents to repeat the high risk behavior.”

“The sturdier, more luxury looking bath ring/seat models are preferred by parents and perceived to be safer.... Parents indicate that if they were ever to leave their child unattended in the bathtub they would feel more confident in leaving if the child was in one of the luxury models.”

I think those findings are as true today as they were in 1999. The investigations into the deaths of babies in the bath seat that was certified as meeting the voluntary standard, confirm it.

I also fear that when we tinker with the standard trying to make it better, we risk creating new hazards. At least seven of the 23 deaths listed in the briefing package occurred in situations where the tub did not properly accommodate the seat. That seat, which has an arm that hooks over the tub side, will not work in a variety of tubs, including oval, free-standing and drop-in tubs, or tubs that are too deep or too shallow or that have a side edge that is too wide or too narrow. Many consumers buy the seat not realizing it will not properly fit their tub, but once they get it home, they attempt to make it work. The Commission issued a Safety Alert on this problem in 2005 because many caregivers were trying to force the seats to fit in their tubs and

the bath seat arms were breaking. We warned consumers then about the seats not fitting in all tubs, but a safety alert will not solve this problem.

It should be a requirement in the mandatory standard that the packaging of bath seats must list in conspicuous, clear language what tubs the seat will **not** fit. Consumers should not have to wait until they get the seat home to find out that it does not fit securely in their tub. This may also discourage friends from giving bath seats as gifts unless they are certain of the parents' tub configuration.

I also think we need to require that any bath seat, when in use, should either sit on the tub bottom or not rest more than a certain (quite small) height above it. The seat with the arm tends to float upwards, hence the need to weigh it down in the test method to get an accurate water measurement for test purposes. As one mother wrote in her review of the product on a popular website:

“Also, if you fill up the tub too much it will float up a bit causing it to tilt forward--even with the elbow pad in place and even with a child that weighs 20 lbs. **BEWARE OF THIS!** Your child could tilt forward while in the seat and, unable to get out, get stuck and drown-- although, of course, you'd **NEVER** leave them unattended.

I just think that because of the elbow pad that goes over the side parents might think they can leave their child safely for a minute to get the phone or something and you **CANNOT!!!!**

I don't like the false sense of security this might give some people.”

Other parents commented that they had to put more water in the tub than they felt comfortable with, just to keep their baby covered with enough water to be warm. The last thing we want to encourage is a bath seat that causes parents to put **more** water in the tub:

“Also, to keep the baby warm you have to fill the tub up which makes the seat float....”

“...requires the bath to be half full to just cover his legs.”

“you have to put a lot of water in the tub to get the baby wet.”

I can't help but believe that the depth of the water was a factor in many of the 23 deaths described in the briefing package. In nearly all the cases where the water depth was known, it was greater than six inches. That strikes me as a lot of water in which to be bathing an eight month old (on average) child. I continue to believe a maximum water fill line on a bath seat (that stays on or near the tub bottom) would serve as a constant reminder to caregivers not to overfill the tub. The statement in the instructions that come with the seat to use “as little water as necessary” does not provide much guidance.

Canada is considering a total prohibition of the product. Health Canada has been quite direct about expressing its concern about bath seats, stating in a fact sheet that “A drowning hazard is associated with the use of infant bath seats and bath rings.” Health Canada has also stated that it believes the seats do give caregivers a false sense of security. The Canadian Paediatric Society discourages the use of any infant bath seat or ring product.

I worry that there is no way to make these products safe enough to prevent the infant bath seat drownings we see every year. I think it is time for the Commission to resolve once and for all, by doing the appropriate research, the issue of whether bath seats add to the drowning deaths we already see in bath tubs, or whether, as the Commission believed in 2003, the seats are more than just a convenience for the caregivers and provide a degree of added safety from drowning for certain infants.

I am voting to approve the final rule as I believe we must remove the current bath seats from the market and this is the quickest way to achieve that. But I hope the Commission will not become complacent and not wait for deaths to occur on any new products that might come onto the market before it tackles the fundamental issue of whether baby bath seats of *any* configuration should continue to be sold in this country.