



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING
May 19, 2010

Chairman Inez M. Tenenbaum convened the May 19, 2010, meeting of the U. S. Consumer Product Safety Commission at 9:00 a.m. in open session. Commissioners Thomas H. Moore, Nancy A. Nord, Robert S. Adler and Anne M. Northup were also in attendance.

Final Rule for Bath Seats under Section 104(b) of the Consumer Product Safety Improvement Act ("CPSIA")

Chairman Tenenbaum made opening remarks and introduced the pending decisional matter before the Commission. Chairman Tenenbaum explained the final rule being considered at this meeting was a slightly revised version was circulated by the staff to the Commissioners yesterday. Chairman Tenenbaum asked the Commission whether there was any discussion about the final rule for bath seats. There being none, Chairman Tenenbaum asked for any motions. Commissioner Adler moved the adoption of the revised standard that the staff had given to the Commission with one amendment. Commissioner Moore seconded the motion. Commissioner Adler discussed the bath seat issue and called for a public safety campaign to educate and make consumers aware of the hazards of bath seats. Commissioner Adler explained his proposed amendment to increase the size of the warning label in the standard with an explanation in the preamble. The Commissioner discussed the discussed importance of the final standard and the amendment. Chairman Tenenbaum called the question on the motion pending. The Commission voted unanimously (5-0) to approve the motion to amend the draft final rule on bath seats. Chairman Tenenbaum called for a motion to approve publication in the *Federal Register* of the draft final rule on infant bath seats as amended. Commissioner Adler made the motion and it was seconded by Commissioner Moore. Chairman Tenenbaum asked for any discussion. There being none, the Commission voted unanimously (5-0) to adopt the motion. Chairman Tenenbaum made a statement that she endorsed the statements of the other Commissioners about the hazards of baby bath seats and that Commission will explore different ways with private and non-private organizations to educate the public about the hazards of infant bath seats.

Chairman Tenenbaum and Commissioners Moore and Northup submitted the attached statements regarding the matter.

Final Rule for Infant Walkers under Section 104(b) of the CPSIA and Revocation of the Ban of Certain Baby Walkers in 16 C.F.R. §§ 1500.18(a)(6) and 1500.86(a)(4)

Patricia M. Pollitzer, General Attorney, Office of General Counsel, Patricia Edwards, General Engineer, Directorate for Engineering Sciences, and Han Lim, Mechanical Engineer,

Directorate for Engineering Sciences briefed the Commission on the issuance in the *FR* of a draft proposed final rule for safety standards for infant walkers under section 104(b) of the CPSIA and the revocation of the ban of certain baby walkers in the Commission regulations. After their briefing the staff responded to questions from the Commission. No decisions were made during this part of the meeting.

There being no further business on the agenda, Chairman Tenenbaum adjourned the meeting at 9:45 a.m.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is stylized with a large initial "T" and a long, sweeping underline.

Todd A. Stevenson
Secretary to the Commission

Attachments: Statement of Chairman Tenenbaum
Statement of Commissioner Moore
Statement of Commissioner Northup



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**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE COMMISSION
DECISION REGARDING THE FINAL RULE ON THE MANDATORY SAFETY
STANDARD FOR INFANT BATH SEATS**

Today, I am pleased to vote for a final rule establishing mandatory safety standards for infant bath seats. This new mandatory standard is the first of many federal juvenile product rules to come. Under Section 104 of the Consumer Product Safety Improvement Act (CPSIA) of 2008, the Commission has been empowered to assess and develop safety standards for certain durable infant products. Where existing voluntary standards are sufficiently protective we can make them mandatory. Where, however, existing voluntary standards fall short, we are charged with improving on those standards before making them mandatory.

The use of infant bath seat and rings, designed to assist in bathing a child from around 5 months old to around 10 months, has presented a challenge for this agency. There have been cases of injury in the presence of a caregiver. Too often, however, caregivers have stepped away from the child briefly to answer the phone or to retrieve a towel, only to return to find an infant has nearly lost, or lost, his or her life. As Chairman, I believe that a public education campaign warning parents and other caregivers about the high degree of danger associated with leaving children unattended in a bathtub, with or without a bath seat, is an initiative that the agency and especially the juvenile products industry leaders should initiate to help prevent such incidents from occurring in the future.

Between 1983 and November of 2009, bath seats have been associated with 174 fatalities, and 300 nonfatal incidents. Over the years, ASTM, the voluntary industry standard setting organization, has tried to address hazards relating to the use of bath seats and rings. Despite these efforts, the number of deaths and injuries associated with the use of these products has continued to increase, and new and unforeseen hazards have been discovered, such as the breaking of arms designed to secure a seat to a tub. Further, despite the 2004 revisions to the ASTM voluntary standard, between 2004 and November of 2009, 119 incidents (47 fatal and 72 nonfatal incidents) were associated with bath seats or bath rings. Of these incidents, 77 were associated with seats that met the stability requirements added in 2004 voluntary standard. Although no deaths have been reported for bath seats certified to the 2007 standard, 4 nonfatal incidents have been associated with these newer products.

For the Final Rule, the Commission considered the ASTM F1967-08a voluntary standard. The standard created by the Final Rule improves upon the voluntary standard to create one that we believe will be more protective of infants when a caregiver uses these products. At this time, we are not aware of any products on the market that could be certified to this mandatory standard. Under

Section 104 of the CPSIA, however, we are tasked with ensuring that mandatory durable product standards “provide the highest level of safety for such products that is feasible,” and that is what we have achieved today.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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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.



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STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON THE FINAL RULE FOR
INFANT BATH SEATS

May 19, 2010

Today's vote for the Infant Bath Seats Final Rule reflects the unanimous view of the Commissioners that the mandatory standard it has adopted for infant bath seats is reasonable and appropriate. Section 104 of the Consumer Product Safety Improvement Act (CPSIA) requires the Commission to adopt mandatory standards for durable infant products at the rate of two product categories every six months. The Infant Bath Seats Final Rule is the first of many and represents a well-thought-out standard.

However, today's rule alone will not have a substantial impact on the genuine risk and often recurring tragedy of children under the age of five drowning in bathtubs. Approximately seventy-five young children drown each year in bathtubs.¹ Most of the reported fatalities regarding submersion deaths of these children appear to involve a parent or guardian who steps away from the tub briefly, discounting the very real danger that a fatal submersion can happen in the blink of an eye.

Of the incident reports of bathtub drownings, only a small percentage of them involve a bath seat. Given the data, it is possible that the use of a bath seat reduces the likelihood of a child's drowning in a bathtub. However, it is also possible that the use of a bath seat may increase the risk of drowning simply by providing the parent with a false sense of security that the child will be temporarily safe if he/she briefly walks away.

As a Commissioner at the Consumer Product Safety Commission, one quickly becomes aware of what circumstances present the most serious and frequent risks to families and, in particular, to children. I believe the Commission should spend more time and resources addressing these types of categorical dangers, even if they are not directly related to a specific consumer product. In that regard, the mandate of section 104 that the Commission issue mandatory standards for durable nursery products presents an opportunity for us also to focus more attention on the overarching hazards that could impact any infant, such as drowning during bathing.

I agree with my fellow Commissioners that the larger, underappreciated hazard associated with bathing an infant or leaving a baby near water in any circumstance cannot be overstated. For that reason, I hope the Commission will pursue a campaign warning of the dangers of leaving an infant unattended in a bathtub, even if only for a moment. Such a campaign would likely save more lives than will publishing this final rule.

¹ Submersions Related to Non-Pool and Non-Spa Products, 2009 Report.
<http://www.cpsc.gov/library/foia/foia10/os/nonpoolsub2009.pdf>

Chairman Tenenbaum has made it one of her goals to expand the Commission's education and informational programs, in particular by initiating the agency's creation of "CPSC 2.0" - our social media initiative, which reaches tens of thousands of consumers and makes lifesaving information available to millions of online users. We also have seen tremendous success with the "Back to Sleep" campaign, saving infants' lives by creating a safer sleep environment for children across the country.

I am convinced a similar, effective campaign regarding the deadly threat of leaving young children unattended during baths would save lives. The creative use of social media can significantly expand our efforts to protect children without costly investments.

I appreciate the hard work of our Office of Public Affairs in creating and promoting all of our safety initiatives, and I am enthusiastic about the potential to expand on the agency's success and begin another nationwide campaign that would save babies' lives.