

Gaby
JK



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: October 2, 2001

TO : ES
Through: *[Signature]*
Sadye E. Dunn, Secretary, OS
FROM : Martha A. Kosh, OS

SUBJECT: Advance Notice of Proposed Rulemaking on Baby
Bath Seats and Rings, FR August 01, 2001, Volume 66,
No. 148, page 39692

ATTACHED ARE COMMENTS ON THE CH 01-5

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CH 01-5-1	9/25/01	E. Marla Felcher Ph.D.	325 Harvard Street Cambridge, MA 02139
CH 01-5-2	9/27/01	Nancy Cowles Exec Director	Kids in Danger 116 W. Illinois St Suite 5E Chicago, IL 60610
CH 01-5-3	10/01/01	Mary E. Fise General Counsel	Consumer Federation of America 1424 16 th St, NW Suite 604 Washington, DC 20036
CH 01-5-3a	10/01/01	Mary E. Fise On Behalf of State and Local Organizations	Address same as above
CH 01-5-4	10/01/01	Heather Paul Exec Director	National Safe Kids Campaign 1301 Pennsylvania Ave, NW, Suite 1000 Washington, DC 20004
CH 01-5-5	10/01/01	Rachel Weintraub Staff Attorney	U.S.PIRG 218 D St, SE Washington, DC 20003

Advance Notice of Proposed Rulemaking on Baby Bath Seats and Rings, FR August 01, 2001, Volume 66, No. 148, page 39692

CH 01-5-6	10/01/01	Sally Greenberg & Janell M. Duncan	Consumers Union of U.S. Inc. 1666 Connecticut Ave, NW, Suite 310 Washington, DC 20009
CH 01-5-7	10/01/01	Beth Vozenilek Consumer	1194 Linn Ridge Road Mount Vernon, IA 52314
CH 01-5-8	10/2/01 dated 9/27/01	John Lineweaver Chairman	The Danny Foundation 1451 Danville Blvd. Suite 202 Alamo, CA 94507
CH 01-5-9	10/2/01 Dated 9/28/01	C. Pierre	2119 130 th Place SE Bellevue, WA 98005

E. Marla Felcher, Ph.D.
325 Harvard Street
Cambridge, MA 02139
(617)441-9714

September 25, 2001

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RECEIVED
SEP 28 12 38 PM '01
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

**Comment on the Advance Notice of Proposed Rulemaking
on Baby Bath Seats and Rings
(66 Fed. Reg. 39692)**

The purpose of this letter is to strongly urge CPSC to proceed with a rulemaking to ban baby bath seats and rings. The 78 infant deaths and 110 non-fatal incidents associated with bath seats and rings present clear evidence that these products do not belong in any baby's nursery. Nearly every major manufacturer of bath seats has abandoned the bath seat market, for good reason: the risks associated with bath seats far outweigh the benefits. That the one remaining manufacturer, Safety 1st, continues to aggressively market this product, represents nothing less than an egregious policy of putting corporate profits ahead of baby safety. For years, CPSC has been urging Safety 1st and its parent company, Cosco, to improve the safety of their children's products. That Safety 1st not only continues to manufacture and sell bath seats – when other manufacturers refuse to do so – strongly suggests CPSC's requests have fallen on deaf ears.

Despite its name, Safety 1st is not a company parents can trust. Over the last decade, the company has recalled **2.5 million** baby products, including defective bed rails, cabinet safety latches, walkers, and wipe warmers. One product, a bouncing buggy toy, was recalled after more than 700 reports of children breaking the toy, which presented a choking hazard. Safety 1st parent company, Cosco, also has a disturbing safety record. In the past decade, this company has recalled **3.5 million** baby products, including toddler beds, cribs, strollers and high chairs, accounting for more than 400 injuries. Last April, the CPSC levied a **\$1.75 million** fine against Cosco/Safety 1st, for failing to report known defects in its metal cribs, tandem strollers and walkers, defects that caused serious injuries and deaths to children. This was the largest fine the CPSC had levied against a children's product manufacturer to date. The fine came on the heels of a 1998 civil penalty of **\$175,000** against Safety 1st for failing to report a suffocation hazard associated with its bed rails, and a **\$725,000** fine in 1995 against Cosco for failing to report a strangulation hazard associated with its toddler beds and rails. Lured by low prices and

promises of safety, consumers continue to buy Cosco's offerings, unaware of the company's abysmal safety track record.

The baby products industry, under the auspices of ASTM, has been working on a voluntary bath seat standard for years. This process, fraught with conflicts of interest, has failed. Safety 1st vice president Paul Ware chaired the bath seat standard-setting committee. In 1999, Ware estimated (in a sworn deposition) gross sales of the product to be "on the order of four to five million dollars." If the ASTM committee chose to write more stringent safety standards for bath seats, it is likely that Safety 1st would have been required to redesign their lucrative product – a process that was likely to eat into the product's profits.

At the ASTM meetings, CPSC engineers repeatedly pointed out two features of bath seats that were contributing to the majority of bath seat deaths: the size of the leg openings, and suction cups that were coming off. The agency pushed Ware and his committee to add a maximum leg-opening dimension to the standard, and to address the suction cup issue. After working on this issue for **five** years, during which time **43** more infants drowned (at least half of them in the Safety 1st bath seat), Ware and his committee approved the new bath seat safety standard. Their years of work culminated in a standard that called for no significant structural product changes: the leg openings were just as wide, and the suction cups just as likely to detach. The committee completely disregarded the CPSC's requests, the arguments of consumer advocates, and the continuing bath seat death toll. Quite predictably, this new standard has done nothing to slow the bath seat mortality rate.

While the ASTM committee was dragging its feet, Dr. Clay Mann of the University of Utah was conducting research on bath seat fatalities. Dr. Mann's conclusion: bath seats increase the likelihood that a child will be left unattended in a bathtub, and drown. Parents, grandparents, regulators, public interest groups and industry executives agree on one fact – children should never be left alone in a bathtub. Yet, for whatever reason, adults choose to engage in this risky behavior when they see their infant sitting up in the tub in a bath seat. Everything about the product – its design, the packaging, and the name Safety 1st – screams, "your child is safe in this seat!" It's no accident that the fine print warning label, "never leave a child unattended," is often overshadowed by these more salient product attributes.

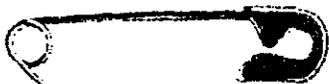
When a new mother or grandmother reaches for a "bathing aid" on a store shelf, chances are she knows very little about Safety 1st, nor does she know that so far, at least 78 babies have died while using bath seats. She probably has no idea that over the years, Safety 1st has recalled millions of hazardous children's products. She probably doesn't know that Safety 1st has been fined by the CPSC for ignoring the law and withholding safety information from the agency. She will not know that the CPSC asked the company to change its name. Nor will she know how or why the company hijacked the ASTM safety standard-setting process. All that the mother or grandmother will know is what the company name, smiling baby and ASTM stamp on the box dupe her into believing: Safety 1st sells safe products.

It is time for CPSC to take a leadership role and say, "No! Companies do **not** have an inalienable right to market any product they deem profitable." Never in the agency's history has there been such a clear case for a product ban. It is CPSC's responsibility to do all it can to curb bath seat deaths, even if this comes at the expense of Cosco's bottom line. Any reasonable, independent analysis of this product and the role it plays in infant drowning will conclude that its benefits are dwarfed by the risk it poses to babies. It is time for CPSC to heed the words of one baby product manufacturer who witnessed an ASTM bath seat standard-setting meeting and commented, "Nothing that these guys can talk about here today will make bath seats safe. It's ridiculous. We would never make such a product." It is time for CPSC to stand up for families and ban bath seats, once and for all. 78 dead babies should be **enough**.

Respectfully,

A handwritten signature in black ink, appearing to read "E. Marla Felcher". The signature is fluid and cursive, with a long horizontal stroke at the end.

E. Marla Felcher, Ph.D.



KIDS IN DANGERSM

Baby bath seats 2

A nonprofit organization
dedicated to protecting children by
improving children's product safety

September 27, 2001

Linda E. Ginzel, Ph.D.
Boaz Keysar, Ph.D.
Co-Founders

Marla Felcher, Ph.D.
Sonny Garg
Howard Haas
Chris Sweeny
Steven W. Swibel
Robert R. Tanz, MD
Lisa Turano Sulano
Board of Directors

Nancy A. Cowles
Executive Director

Andrea Murphy
Administrative Director

Genevieve Kirk
Program Manager

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

**Re: Comment on the Advance Notice of Proposed Rulemaking
on Baby Bath Seats and Rings (66 Fed. Reg. 39692)**

Kids In Danger urges the US Consumer Product Safety Commission (CPSC) to proceed with rulemaking to ban baby bath seats and rings. Seventy-eight children have died while using these rings and seats, along with over 100 non-fatal incidents or injuries.

While the company that manufactures the vast majority of these implements calls itself Safety 1st these devices are anything but safe.

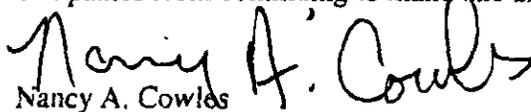
We urge the CPSC to ban bath seats for two compelling reasons:

- Placing your child in these seats -- no matter how well designed -- is risky. It gives parents *a false sense of security*, allowing them to think they can sit back from the tub, read a book, or even, grab a towel. In fact, any of those actions while a child is in a tub can cause disaster. It only takes a second or two as all parents know. Consider the following scenario -- an infant is in the tub without a bath seat -- the mother hovers near her. Suddenly, her three-year-old sister screams from the bedroom. The mother grabs the wet infant and runs into the bedroom. But consider if the infant is in a bath seat -- does the mother take the time to extract her from the Safety 1st seat, wasting valuable seconds, or does she run to look, planning to return in the seconds it will take to see the situation is not life threatening? Infants and toddlers are never safe in water when an adult is not within arms reach. If the seat encourages parents to believe otherwise, it should not be used.
- The second reason to ban bath seats is that *the flaws are inherent. They cannot be designed out.* The suction cups needed to keep the seat upright will not stick to new tub surfaces. And if the suction works well enough to keep the seat always upright, it will also work to hold the child

underwater, even with a parent struggling to free the child, if the child submarines, or slips out of the seat.

Bath seats are a convenience for many parents – a convenience they can live without to save their child's life.

We urge CPSC to ban bath seats and rings. Under voluntary standards, most companies have stopped producing the seat – accepting that the product cannot be made to safe standards. Now is the time to stop the remaining companies from continuing to make this unsafe product.


Nancy A. Cowles
Executive Director

Bob Burt 2002
comments 3



Consumer Federation of America

October 1, 2001

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Comments of Consumer Federation of America on the Advance Notice of Proposed Rulemaking on Baby Bath Seats and Rings (66 Fed. Reg. 39692)

Consumer Federation of America (CFA) strongly urges CPSC to ban baby baths seats and rings. CFA is a non-profit association of some 280 pro-consumer groups, with a combined membership of over 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education. One of the original petitioners to CPSC requesting a ban of these products, CFA maintains that nothing has changed in the products' design and use since the filing of our petition. The product poses an unreasonable risk of injury and should be banned.

The incident data associated with these juvenile products present a compelling case for a ban. CPSC has received reports of 78 deaths and 110 non-fatal incidents associated with baby bath seats and rings between January 1983 and May 2001. Forty-one non-fatal incidents/complaints occurred while the caregiver was present.

CFA believes that there is no standard that would adequately address the risk of injury associated with these products. We have participated in the ASTM standards development activity for many years and are convinced that development of a standard that addresses the hazards and unique characteristics of this product is not possible. The agency should not continue to hope that a standard will be developed someday either by the voluntary standards development community or by its own staff. If CPSC staff could have proposed a way to stop these deaths through a mandatory standard (or a voluntary standard that it suggested for use by the voluntary standards committee), we believe that would have happened in the past seven years.

Rather, this product used in conjunction with bathtubs with the non-slip or slip-resistant surfaces, as specified in the voluntary standard for bathtubs, poses a risk of drowning to young children. The evidence also indicates that this drowning risk is present even when used with bathtubs not complying with the slip resistance provisions.

In addition, there is no labeling rule that will adequately address the risk. Labeling can not address the stability of the seat, the suction cup operation and the occupant retention. Current consumer use, and the injury and deaths associated with the product, clearly show that parents and caregivers are deceived by the products' appearances. They mistakenly believe that this is a safety device and no labeling will be sufficient to overcome this belief.

Some would have the Commission believe that since some parents leave their child alone in a bathtub for a brief amount of time that this misuse is not misuse of the product but the misuse of the person (Comment #63). However, it is the product that is being misused. The commenter goes on to state that "No standard, whether mandatory or voluntary, can address this risk." While it is extremely difficult for product standards to change consumer behavior, whether they be mandatory or voluntary, CPSC standards can make the product safer and protect children from consumer misuse of the product.

Thus, in the past, CPSC has taken regulatory action to address child play with cigarette lighters (by requiring that they be child resistant), children climbing in refrigerators and suffocating (by requiring them to have a mechanism whereby they can be opened from the inside), and children being poisoned when they ingest prescription or over the counter medicines (by requiring them to be in child resistant packaging). These actions included a fix for the product that addressed hazards related to use or foreseeable misuse. The case of bath seats, however, presents a more serious risk than these examples in that there is no standard that could address the hazards posed by the products' use or foreseeable misuse. Hence, bath seats are comparable to lawn darts which posed a mechanical hazard due to use and foreseeable misuse and were banned by the agency.

The evidence before the Commission more than adequately supports a finding that in normal use alone¹, a bathseat's design and manufacturer presents an unreasonable risk of personal injury and is therefore a mechanical hazard under the Federal Hazardous Substances Act (15 U.S.C. 1261(s)). Under section 2 (q)(1)(A) an article intended for use by children that presents a mechanical hazard is a banned hazardous substance. CFA believes CPSC has before it a

¹ While we believe that the product in normal use alone presents a mechanical hazard under the FHSA, the evidence that product may be "subjected to reasonably foreseeable damage or abuse" (15 U.S.C. 1261(s)) and result in personal injury further compounds the evidence in support of a mechanical hazard determination.

clear case of a children's product that poses a mechanical hazard and, therefore, should be declared a banned hazardous substance.

Submitted by:

Mary Ellen R. Fise
General Counsel
Consumer Federation

*Baby
Bath
Seats
Comments* 34

October 1, 2001

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

**Comments of State and Local Consumer Organizations on the Advance Notice of
Proposed Rulemaking (ANPR) on Baby Bath Seats and Rings
(66 Fed. Reg. 39692)**

The undersigned consumer groups strongly urge Consumer Product Safety Commission ("CPSC") to proceed with a rulemaking to ban baby bath seats and rings. The incident data associated with these juvenile products present a compelling case for a ban. CPSC has received reports of 78 deaths and 110 non-fatal incidents associated with baby bath seats and rings between January 1983 and May 2001. Forty-one non-fatal incidents/complaints occurred while the caregiver was present.

It is clear that there is no standard that adequately addresses the risk of injury associated with these products. In the seven years between the time the Commission first considered rulemaking in 1994 and its vote to initiate rulemaking in May of this year, no standard has been developed that would address the drowning risk posed to young children using these products. It is an incontrovertible fact that baby bath seats can not be used safely with bathtubs that meet the voluntary safety standard for slip resistance.

Our organizations represent thousands of families across America who demand and deserve safe baby products. Baby bath seats and rings pose an unreasonable risk to young children and the Commission should proceed with this rulemaking and ban the products.

Sincerely,

Arizona Consumers Council
Consumer Action (CA)
Consumer Federation of California
CALPIRG (CA)
CoPIRG (CO)
Connecticut PIRG
Florida PIRG
Chicago Consumer Coalition (IL)

Comments on Bath Seats ANPR
Page two

Coalition for Consumer Rights (IL)
Illinois PIRG
Indiana PIRG
Iowa PIRG
Maryland Consumer Rights Coalition
MaryPIRG (MD)
Massachusetts Consumers' Coalition
Mass PIRG (MA)
Michigan Consumer Federation
PIRG in Michigan
Missouri PIRG
New Hampshire PIRG
New Jersey PIRG
New Mexico PIRG
Empire State Consumer Association (NY)
Niagara Frontier Consumers Association (NY)
North Carolina Consumers Council, Inc.
North Carolina PIRG
Ohio PIRG
Oregon State PIRG (OSPIRG)
PennPIRG (PA)
Columbia Consumer Education Council (SC)
Vermont PIRG
Virginia Citizens Consumer Council
WashPIRG (WA)
Wisconsin PIRG
The Center for Public Representation (WI)



1301 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20004-1707
(202) 662-0600
(202) 393-2072 Fax
www.safekids.org

Chairman
C. Everett Koop, M.D.

President
Martin R. Mitchellberger, M.D.

Executive Director
Heather Paul, Ph.D.

October 1, 2001

Todd Stevenson
Acting Secretary
U.S. Consumer Product Safety Commission
Washington, DC 20207-0001

RE: Advanced Notice of Proposed Rulemaking for Baby Bath Seats/Rings

Dear Mr. Stevenson:

On behalf of the National SAFE KIDS Campaign, I am writing in regard to an advanced notice of proposed rulemaking for baby bath seats/rings that was published in the August 1, 2001 issue of the *Federal Register*. As drowning is the leading cause of unintentional injury-related death among children ages 1 to 4, the National SAFE KIDS Campaign is in full support of a U.S. Consumer Product Safety Commission (CPSC) mandatory standard for baby bath seats/rings that would eliminate the risk of injury associated with the current form of the product.

Given the CPSC's recent research into the hazard scenarios surrounding the use of baby bath seats, the Campaign would like to amend our previous comments calling for a ban of the product, and instead support a standard to improve the baby bath seat's design. As failure of some mechanical features, such as suction cups and leg openings, may have contributed to some deaths and injuries, the Campaign strongly believes that baby bath seats must be modified in order to create a safer bathing environment for a child.

The current design of the baby bath seats/rings also encourage dangerous consumer behavior by making caregivers believe that a baby is in a relatively safe setting and as a result, the baby may be left unattended in the water. As babies can drown very quickly if left alone in the bathtub, baby bath seats that encourage a false sense of security should be subject to strict mandatory safety standards.

In addition, the Campaign applauds the CPSC for its intentions to undertake an aggressive education program to reinforce the vital message that babies should never be left alone in water. Along with our over 300 state and local coalitions, we stand ready to assist the CPSC in whatever way possible to further your educational efforts.

I am available to answer any questions that the U.S. Consumer Product Safety Commission might have relating to our position. As always, the Campaign looks forward to working with the U.S. Consumer Product Safety Commission on this and other issues in the future.

Sincerely,

Heather Paul, Ph.D.
Executive Director



Founding Sponsor
Johnson & Johnson

*Bob K...
...
... 4*



*BBM
bath seats
comment 5*

October 1, 2001

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Comments of U.S. PIRG on the Advance Notice of Proposed Rulemaking For Baby Bath Seats (66 Fed. Reg. 39692)

U.S. Public Interest Research Group urges Consumer Product Safety Commission ("CPSC") to proceed with a rulemaking to ban baby bath seats and rings. U.S. PIRG believes that baby bath seats and rings are a "hazardous substance" as defined by 15 U.S.C. 1261 2(f)(1)(d) due to the fact that in normal use its design or manufacture presents an unreasonable risk of personal injury, illness or death. Baby bath seats must, therefore, be banned as explained in 15 U.S.C 1261 2(q)(1)(a): baby bath seats are a "banned hazardous substance" because they are articles intended for use by children, which is a hazardous substance accessible by a child.

The incident data associated with baby bath seats and rings present a compelling case for a ban. CPSC has received reports of 78 deaths and 110 non-fatal incidents associated with baby bath seats and rings between January 1983 and May 2001. Forty-one non-fatal incidents or complaints occurred while the caregiver was present.

It is clear that there is no standard that adequately addresses the risk of injury associated with these products. In particular the voluntary standard that currently relates to bath seats, the ASTM F1967-99 inadequately prevents deaths and injuries associated with bay bath seats. U.S. PIRG supports CPSC's position that provisions for stability of the seat, suction cup operation, occupant retention and labeling do not adequately address the drowning hazard. Further, it is clear that in the seven years between the time the Commission first considered rulemaking in 1994 and its vote to initiate rulemaking in May of 2001, no standard has been developed that would address the drowning risk posed to young children using these products. Finally, ASTM F1967-99, the voluntary standard relating to bath seats and the ASTM F 462-79 (reapproved in 1999), the voluntary standard for slip resistant bath tub surfaces, are inherently incompatible. Suction cups will not adhere to slip resistant surfaces.

In addition, one study of caregivers who use bath seats found that: a) they are likely to fill the bathtub with more water, increasing the chance of drowning, and b) they are more likely to willfully leave a child in the bathtub alone when a bath seat is in use. This research concludes that bath seats increase the probability that a caregiver will leave the

child unattended in the bathtub.¹ Furthermore, this study also confirms that the mechanical problems with baby bath seats make it more likely that a child will drown if a caregiver leaves the child unattended.

U.S. PIRG strongly disagrees with the belief conveyed by a commenter who filed comments in response to CPSC's August 22, 2000 Federal Register notice. This commenter stated that the design or manufacture of these products does not present an unreasonable risk of personal injury or illness to the child who uses them. This commenter (# 63) argued that it was the "unreasonable" actions of those entrusted with caring for these children, which caused their deaths. U.S. PIRG finds this opinion objectionable both as a matter of fact and as law. First, as discussed above baby bath seats do pose an unreasonable risk of injury and death to children who use them due to mechanical problems including failed suction cup integrity and a passive crotch restraint that has leg openings that are too wide to effectively restrain children. Second, as a matter of law, the CPSC was created in 1972 by Congress through the Consumer Product Safety Act and directed to "protect the public against unreasonable risks of injuries and deaths associated with consumer products." Blaming parents as "unreasonable," instead of seeking regulatory solutions to make a product safer, is in direct contradiction to this congressional mandate.

U.S. PIRG works every day on behalf of consumers to make consumer products as safe as possible. Baby bath seats and rings pose an unreasonable risk of death and injury to young children. U.S. PIRG strongly urges CPSC to proceed with this rulemaking and ban baby bath seats and bath rings.

Sincerely,



Rachel Weintraub
Staff Attorney

¹ Professor Clay Mann, Intermountain Injury Control Research Center, University of Utah Medical School, presentation before the National Congress on Childhood Emergencies, March 2000. Professor Mann compared 32 bath seat drownings and 32 drownings not involving a bath seat.



Publisher of Consumer Reports

Bath
seats
comment 6

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814
Cpsc-os@cpsc.gov

**Comments of Consumers Union to the
Consumer Product Safety Commission
For an
Advance Notice of Proposed Rulemaking Relating to Baby Bath Seats and Rings
Under Federal Hazardous Substances Act
(66 fed. Reg. 39692)**

These comments are submitted by Consumers Union¹ (CU), non-profit publisher of *Consumer Reports* magazine. They are in response to the Consumer Product Safety Commission's (CPSC or Commission) request for comments and information on its advance notice of proposed rulemaking (ANPR), under the Federal Hazardous Substances Act, (FHSA), 15 U.S.C. 1261, *et seq.*, concerning the risks of injury associated with baby bath seats and rings.²

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² In its ANPR, the Commission information on the risk of injury associated with the baby bath seats, proposed regulatory alternatives; other possible measures; the submission of existing standard; and/or a statement of intent to develop or modify a voluntary standard. 66 Fed. Reg. at 39692 (August 1, 2001).

Consumers Union strongly urges the Commission to issue a rule declaring baby bath seats and rings to be “banned hazardous substances.” We believe all of the other options would fail to address the dangers posed by these products.³

Standard for Ban under FHSA

A product is a “hazardous substance” under the FHSA if it is a toy or other article intended for use by children that the Commission determines presents a “mechanical, electrical, or thermal hazard.”⁴ A product “may be determined to present a mechanical hazard if in normal use, or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness [or] (9) because of any other aspect of the article’s design or manufacture.” 15 U.S.C. 1261(s)(9).

Any toy or other article intended for use by children that presents a “mechanical hazard” may be banned under section 3(e) of the FHSA.⁵

Baby Bath Seats and Rings Present a Mechanical Hazard

Consumers Union believes that baby bath seats and rings present an unreasonable risk of injury to infants. There have been 78 reported deaths and 110 non-fatal incidents between January 1983 and May 2001 of children whose caregivers have used these products.⁶ As described below, the history of experience with these devices

³ Although baby bath rings are not currently sold, we urge the Commission to ban them to prevent any future sales of these products.

⁴ 15 U.S.C. 1261(F)(1)(d).

⁵ See 15 U.S.C. 1262(e). A “banned hazardous substance” is “any toy, or other article intended for use by children, which is a hazardous substance” 15 U.S.C. 1261(q)(a).

⁶ 66 Fed. Reg. at 39693 (August 1, 2001).

clearly demonstrates, as required under the FHSA, that “[their] design . . . presents an unreasonable risk of personal injury” In addition, this risk of injury exists “. . . in normal use, or when subjected to reasonably foreseeable damage or abuse.” As such, these products are subject to a ban under the FHSA.⁷

Nature of Risk Presented By Product

We believe that using baby bath seats and rings encourages caregivers to leave children alone in the bathtub – a “misuse” of the product. This misuse occurs due to a misunderstanding of the proper use of the products. Parents and caregivers using these products develop a false sense of security because the products appear to be able to hold a child upright, and in place. However, this “misuse” now is well known to the industry, and clearly is foreseeable. In addition, these products pose a hazard even when used in a manner consistent with their purpose as a bath aid – evidence collected by the CPSC reveals three deaths have been reported where a caregiver was present in the bathroom.⁸ In addition, 41 non-fatal incidents have been reported with the products while the caregiver was present.⁹

Other aspects of the product design are central to the risk these products pose to infants. These include (1) the incompatibility of the seats with slip-resistant bathtubs;¹⁰ (2) leg openings large enough for an infant to slip through or become entrapped; (3)

⁷ See 15 U.S.C. 1262(e).

⁸ 66 Fed. Reg. at 39694 (August 1, 2001). See also “CPSC Nominee Grilled by Former Allies” The Washington Times, 7/26/01, A3, describing Commissioner Mary Sheila Gall as reversing her position and voting to regulate bath seats upon hearing that children had been injured even when parents were present to witness seat malfunctions.

⁹ 66 Fed. Reg. at 39693 (August 1, 2001).

¹⁰ ASTM F 462-79, “Standard for Slip-Resistant Bathing Facilities,” establishes slip-resistant surface requirements for bathtubs. The standard requires bathtubs and shower basins to have an abraded

suction cups that will not adhere to a bathtub surface with soap scum; and (4) the lack of restraints to prevent a child from climbing out of the seat.

Adding to the above concerns is evidence that the seat design encourages caregivers to behave differently than they would if no bath seat or ring were present.¹¹ These behaviors include leaving the child alone in the bathtub willfully and deliberately, and filling the tub with a higher level of water.¹²

Ban is Warranted Because Other Possible Alternatives are Inadequate

In its ANPR, the CPSC requests comment on how to address the risk presented by baby bath seats and rings. Consumers Union believes that because any measure short of a ban will not be sufficient to address the risks presented by these products, a product ban warranted. The issues and concerns surrounding these products are clear. As stated above, the CPSC has received reports of 78 deaths and 110 non-fatal injuries, between January 1983 and May 2001, of infants whose caregivers had used these products.¹³

surface. The suction cups designed to keep bath seats and rings in place are not compatible with bathtubs meeting this standard because the suction cups will not adhere to the surface.

¹¹ 66 Fed. Reg. at 39694-39675, citing findings by Dr. N. Clay Mann, Intermountain Injury Control Center at the University of Utah. Bath seats provide caregivers with a false sense of security, and caregivers are more likely to fill the bathtubs with more water. See also, Felcher, E. Marla It's No Accident How Corporations Sell Dangerous Products, Common Courage Press, 2001, at 41. (citing study by Dr. N. Clay Mann, Intermountain Injury Control Center at the University of Utah).

¹²Id. Dr. Mann studied thirty-two bath seat drownings, and thirty-two drownings where bath seats were not involved. In his study, he found that caregivers were more likely to fill the bathtub with a higher water level, and to willfully leave a child unattended in the tub when a bath seat was used.

¹³ 66 Fed. Reg. at 39693 (August 1, 2001).

Mandatory Standard Inappropriate

Issuance of a mandatory standard is not adequate in this case because these products, as currently designed, are inherently hazardous. As described below, no standard currently exists that addresses the many safety risks associated with bath seats and rings. Until and unless a standard is developed that is proven to reduce the substantial risks involved with the use of these products (possibly through an extensive product redesign), a product ban is warranted.

Voluntary Standard

There is no existing voluntary standard that adequately addresses the many safety risks related to these products. ASTM Standard F1967-99, "Standard Consumer Safety Specification for Infant Bath Seats," has not slowed the rate of deaths related to bath seats and rings.¹⁴ In particular, the standard fails to address concerns relating to the stability of the seats, the leg opening size requirement, the effectiveness of the suction cups, or user-operated restraint of an infant in the seat.¹⁵ The standard also does not remedy safety concerns relating to the operation of the suction cups. In fact, it is entirely possible that no standard may be able to remedy the fact that baby bath seats and rings cannot be used safely in bathtubs that meet the ASTM standard for slip-resistant bathtubs. In addition to the concern over the incompatibility of the products with slip-resistant tubs, these products cannot be used safely in bathtubs that are not sufficiently soap scum-free.

¹⁴Felcher, E. Marla It's No Accident How Corporations Sell Dangerous Products, Common Courage Press, 2001, at 40 (citing study by Dr. N. Clay Mann, Intermountain Injury Control Center at the University of Utah).

¹⁵ 66 Fed. Reg. at 39695-39696 (August 1, 2001).

Mandatory Labeling

Experience with current labeling of these products indicates that mandatory labeling of the product will be insufficient to prevent future deaths, or alleviate the need for a product ban. The relevant ASTM Standard F1967-99 for bath seats requires a warning label on the product packaging.¹⁶ However, many infant deaths have occurred despite the display of this warning on the product packaging. Under these circumstances, it is apparent that mandatory labeling will not sufficiently ensure that caregivers will not engage in the misuse of the product – and infants will remain at risk.

For the foregoing reasons, we believe that the Commission should proceed with the promulgation of a rule banning baby bath seats and rings because of the high incidence of drowning deaths associated with the products. We believe that no measure short of a ban will be sufficient to prevent the risks associated with the use – or the foreseeable misuse – of these products by infant caregivers.

Respectfully submitted,

CONSUMERS UNION OF U.S. INC.

Sally Greenberg
Sally Greenberg
(202) 462-6262

Janell Mayo Duncan
Janell Mayo Duncan
(202) 462-6262

¹⁶The warning appears as follows: "WARNING "Prevent Drowning. ALWAYS keep baby within arms reach." See 66 Fed. Reg. at 39695 (August 1, 2001).

Stevenson, Todd A

*Beth Vozenilek
re: seats
comment 7*

From: Beth Vozenilek [Beth.Vozenilek@wcom.com]
Sent: Monday, October 01, 2001 12:25 PM
To: Cpsc-Os@Cpsc.Gov
Cc: merf@home.com; rweintraub@pirg.org; Sally Greenberg
Subject: Comment on the Advance Notice of Proposed Rulemaking on Baby Bath Seats and Rings (66 Fed. Reg. 39692)

Beth Vozenilek, Grandmother of Olivia Jade Gardner
1194 Linn Ridge Road
Mount Vernon Iowa 52314
(319)366-6748

September 30, 2001

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Comment on the Advance Notice of Proposed Rulemaking
on Baby Bath Seats and Rings
(66 Fed. Reg. 39692)

I am writing this letter to strongly urge the CPSC to move forward with a rulemaking to ban baby bath seats and rings and to finally begin saving lives of this country's smallest, most innocent, most precious consumers! The 78+ infants who have died and the huge amount of near-miss incidents associated with bath seats and rings are loudly shouting volumes of the danger associated with these products!!

Listen, members of the Consumer Product Safety commissionand you will hear!

Nearly every major manufacturer of bath seats has recognized the very grave risks associated with the manufacturer of the bath seats, and have rightfully felt a moral obligation to withdraw from manufacturing the product. All, except for one, of course, "Safety First". Clearly, the priority to the "Safety First Corporation" is profit FIRST, baby safety LAST! They continue to manufacture the product, market the product, slap their most creative marketing name "Safety First" on the product, and throughout it all, have completely ignored the deadly consequences associated with this product to the very consumers they make their living from. And with what nerve...under of all things...a name like "Safety First".

The thing that has always bothered me the most about this tragedy, is that one of the players, the manufactures, are in a position to predict the mishap before it happens. They are fully aware of the dangers associated with this product and they know there will be another incident, another death, another perfectly healthy infant life lost forever, they just don't know when. But when it does, you can guarantee, "Safety First" will do what it has always done for all 78+ deaths.. absolutely nothing! Oh, they will spend some time, passing blame, pointing fingers, and then they will hid, like cowards, behind the protection of their warning label, that they know is NOT WORKING. But they won't miss a beat, their production line will not slow down, or shut down, and MOST IMPORTANTLY their profit margin will not suffer, and that is, after all, their real FIRST priority.

But somewhere else in this county, a family will suffer dearly. A precious life will be lost forever, a lifelong of pain and devastation will be just beginning for those left to live with the lost. You see, I know this pain all too well , because I lost my beautiful granddaughter, Olivia Jade

- Gardner in June of 2000. She died from complications 24 hours after a near-drowning incident in a Safety First bath seat my daughter had received from a friend. And guess what? She was not some crazed mother on drugs. She was a good, caring and loving mother who was fooled into thinking the seat was safe... safe enough for her to make a quick trip down the hall. And what a price she has paid...

These products cannot be made "SAFE". There is not "a standard" that will work with this product. It is time, way pass time, to discontinue the manufacturer of these death traps. Think about it, a seat that holds a baby upright, out of the water, held up by suction cups of all things, whose behavior is completely sporadic, sticking like glue one day, suddenly letting lose the next. Baby bath seats where never a good idea. Not then, and certainly not now, after over 78+ unnecessary deaths.

It is time for CPSC to stand up and say "NO MORE"! Too many lives have been lost in association with this product, and it is clear that a ban is necessary to stop the death toll.

Please, members of the Consumer Product Safety Commission, reach out to protect your most fragile consumer! You have the power and the responsibility to tell Cosco to move on to something else. This product has proved time and time again, at the grave costs of infant lives that it is unsafe. It is way past time to end this death toll and to ban bath seats completely, once and for all. Do it for the 78+ dead babies that have paid for this bad product design with their lives.

Respectfully,

Beth Ann Vozenilek
1194 Linn Ridge Road
Mount Vernon, Iowa 52314
319 366-6748

Grandmother of Olivia Jade Gardner
Victim, Safety First Baby Bath Seat



*Baby bath seats
unmanned*

The Danny Foundation
For Crib and Child Product Safety

September 27, 2001

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

**Comments of The Danny Foundation on the Advance Notice of Proposed Rulemaking
on Baby Bath Seats and Rings
(66 Fed. Reg. 39692)**

The Danny Foundation urges the Consumer Product Safety Commission, (CPSC), to proceed with a rulemaking that will ban Baby Bath Seats and Baby Bath Rings from the market.

A considerable effort has gone into the development of a voluntary standard to address the problems identified with this product. That standard has failed to reduce the numbers of drowning and near drowning incidents that occur with this product. Indeed, the voluntary standard did not require any physical change to the bath seat/bath ring products currently in the marketplace. We see no reason to expect that a mandatory standard will be more successful.

The Federal Register Notice specifies a utility age range of 5 months (age a child can sit securely) to 10 months, (age a child begins to pull up on objects) as a likely useable time for this product. Our own child safety experts feel that 6 to 8 months is a much more realistic age range for average children to sit securely and to begin to pull up on objects. We feel it is important to allow some margin of safety in considering the variables in a child's development. Providing a one month margin of safety to the "sit up" and "pull up" ages makes the utility of this product "0" months.

We understand that all but one juvenile product manufacturer has dropped baby bath seats/rings from their product line. We believe that this is a clear indication that the product does not belong in the marketplace and should be banned rather than attempt to develop a standard for a single manufacturer.

Finally, we believe that baby bath seats/rings that appear to be more substantial in construction will lead child care takers to believe that baby bath seats/rings are safety items that allow the child to be left unattended in a bathtub. They may also perceive a sturdier product as a protective restraint device and use it to secure older children who are able to pull up to a standing position.

The Danny Foundation urges the ban of baby bath seats/rings.

Respectfully yours,

John Lineweaver
John Lineweaver
Chairman, The Danny Foundation

Bill
Baby
Seats 9

2119 130th Place SE
Bellevue, WA 98005

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207-0001

September 28, 2001

Re: **ANPR for Baby Bath Seats**

To Whom It May Concern,

2001 09 28 11:09
Bill
Baby
Seats

I appreciate this opportunity to comment on the proposed rulemaking concerning baby bath seats and rings under the Federal Hazardous Substance Act. Let me begin by commending this Commission for its efforts to take actions that focus on the protection and safety of our children. The deaths of infants and babies that have involved bath seats/rings can only be described as tragic and heartbreaking; Heartbreaking because these tiny lives ended almost as soon as they began and tragic because their deaths could have been so easily averted. However, with the overwhelmingly heavy sorrow that comes with losing a child, it is easy for caregivers to be quick to place the blame on someone or something other than on the real reason that these children lost their lives. I believe that reason not to be the manufacture or design of bath seats/rings but the incompetence and negligence of the caregiver.

Bath Seats and Rings Are a Useful and Necessary Tool for many families:

Bath Seats and Rings are a very useful tool for parents who are trying to bathe a slippery and squirmy baby while keeping him or her in an upright position. The proper use of a bath seat allows the caregiver to more easily "steady" a child with one hand and bathe or entertain the child with the other. In essence, a bath seat or ring is an aide to the caregiver in their attempt to support and bathe the child. As a member of a family with many children, I can tell you that parents often bath multiple children at once. In the midst of the aquatic revelry of up to three children in the tub at once, a bath seat or ring becomes almost essential for the caregiver or parent to properly keep an eye on everyone. Parents have also reported to me that bath rings and seats allow them to accomplish many of the other tasks of daily life, such as folding laundry, as their child takes a bath. The bath seat frees up a parent's hands to do other things, all while keeping a watchful eye on their little ones. I even know of parents who will place their child in a bath ring in order to keep an eye on them as they shower. Bath seats and rings are a very useful tool. As a tool, it must be actively used. A bath seat or ring is not an appliance or baby sitting service which can be left to itself.

A rule banning bath seats and rings as a "hazardous substance" may be open to statutory attack:

The portion of the Federal Hazardous Substance Act upon which this petition is based defines a "hazardous substance" as including "[a]ny toy or other article intended for use by children which the Secretary [Commission] by regulation determines, . . . , presents an electrical, mechanical, or thermal hazard". FHSA, 15 u.s.c. 1261(f)(1)(D). The statute goes on to say that a "mechanical hazard" is present "if, in normal use or when subject to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness..." 15 u.s.c. 1261(s) (emphasis added). Obviously, the focus of whether something is a "mechanical hazard" is on the article's "design and manufacture". However, the one factor that

connects most of the deaths associated with bath seats and rings is not a certain design or manufacturing flaw but the absence of the caregiver. According to the "incident data" in the notice to which I am responding, 75 of the 78 deaths associated with baby bath rings or seats reported between 1983 and 2001 took place when the victim was left unattended (by the caregiver) in the bathtub.

The real problem is not with the bath seat /ring but with the people that misuse them:

Is the fact that a caregiver negligently leaves a child alone in a bath seat/ring a "reasonably foreseeable abuse" of the bath seat/ring or is it an abuse of the child? I would contend that such reckless and negligent conduct by the caregiver is an abuse of the child. Under this theory it could be argued that bath seats and rings do not present a mechanical hazard. We have all heard this "guns don't kill people, people kill people" kind of argument before, but the data provided by this Commission in the notice seems to point to this conclusion. Even the six main hazard scenarios outlined in the notice to which I am responding only become truly hazardous when the child is unattended. Again, the data provided clearly shows that almost all of the deaths and injuries that involved bath seats or rings took place because a caregiver left the victim unattended. It is also clear, from numerous product warnings and plain old common sense, that bath seats and rings are not meant to be used in such a manner. They are an aid to help the caregiver give support to the child as he or she bathes. As an aid they must be used in conjunction with the acts of the caregiver. If the bath seat/ring was "designed and manufactured" to allow the caregiver to place the child in the tub and walk away then I would heartily agree that these articles constitute a "mechanical hazard". But the fact is, these bath aides were not designed or manufactured to be used in such a way.

Battling a "false sense of security" in bath seats/rings is a reason to add safety features not disallow them.

As your notice stated, some would argue that bath seats/rings are viewed as safety devices and give the caregiver a false sense of security that allows them to leave the child unattended. Yet the American Society for Testing Materials (ASTM) has a standard that does not allow additional user activated restraints, that could very well keep the child safer, because the subcommittee believed that this would provide the caregiver with a false sense of security. See ASTM F1967 and §H(2) of 16 CFR Part 1500. In essence, this argument is saying, "bath seats/rings give a caregiver a false sense of security but we will not make them safer because that could give a caregiver a false sense of security and increase the likelihood that a parent might leave the child unattended." The ASTM does not allow certain extra restraints just because they want to avoid giving this "false sense of security" that others argue is already there! This doesn't seem to make very much sense. I believe that the ASTM should allow standards that provide for the highest degree of safety for the child. Parents who are incompetent enough to leave their children unattended in a bathtub are going to act in such a way whether there are extra safety devices or not. Therefore, the standards for bath seats/rings should make the article as safe as humanly possible. To disallow extra safety devices in hopes of squelching an ethereal "sense of security" is not only illogical but wrong.

Recommendations for present action and direction from past action of this Commission:

Regardless of whether you can statutorily find bath seats or rings to be "hazardous materials" or not, we cannot escape the fact that children are dying in horrible and needless ways. I commend this Commission for seeking to properly make rules that will help prevent such deaths in the future. However, because of the usefulness of these bath aides when properly used, I do not

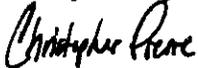
believe that banning bath seats or rings is the answer. As an example of how to handle this situation we can look to the very similar problems presented with baby walkers.

On August 24, 1994 this Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding that may have resulted in the issuance of mandatory design or performance requirements for baby walkers. In 1994, an estimated 25,500 children younger than 15 months of age were treated in hospital emergency rooms for injuries associated with baby walkers. See Unified Agenda of CPSC, November 30, 2000 and 16 CFR 1500. The vast majority of these injuries resulted from a fall down the stairs. As you may recall, in response to the Commissions work, the industry approved revisions to the voluntary standard for baby walkers in 1996 to address the specific hazard of falling down the stairs. Because of these changes, in 1999 baby walker injuries dropped to 8,800. Id. I would recommend that in the same way, this Commission again choose the alternative of a "voluntary standard". The bath seat/ring industry has not only a moral obligation to make their products as safe as possible but an economic one as well. Who better to come up with practical and useful standards than the industry itself. Hopefully, as the industry revises their own voluntary standard and focuses on specific hazards, injuries to children associated with bath seats/rings can be as drastically reduced as they were in the case of baby walkers.

Although I am not an engineer or an expert on bath seat/ring design, I would begin by recommending that the ASTM revise their disallowance of additional user activated restraints. Our American ingenuity has served us many times before and I have no doubt that precautions and added safety measures can be added to these articles to make them as safe as possible. Small alarms could be placed in the seats that ring when the water level gets too high. Stability can be increased by implementing sturdier design standards or bath seat attachments to fixtures or other immovable objects. Things can be done that would make these products safer, but no product can be designed to rid a caregiver or parents of incompetence. Sadly, this fact guarantees that no matter how safe we design bath seats/rings, baby walkers, or any number of other items we use in our daily lives, children may still lose their lives while using these products.

Bath seats and rings are a very useful tool for many of America's families. To ban them would take away the, sometimes essential, aid that a caregiver needs in bathing one or multiple children. Do not ban this useful tool because of the relatively few negligent and incompetent acts of caregivers in leaving their children unattended in the tub. Allow the industry to do just what it wants to do: provide a safe and useful tool for the bathing of infants and babies.

Thank you for your time,



Christopher Pierre