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OFFICE OF THE SECRETARY
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May 18, 2001

Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

Re: Briefing Package for Petition No. HP 00-4, Request to Ban Baby Bath Seats

Please forward these letters to the appropriate Commissioners as soon as possible.

Thank you in advance for your help in this matter.

Sincerely,



Paul A. Ware
ASTM F15.20 Subcommittee Chair

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34 McNamara Street
Stoughton, MA 02072
(781) 344-8204

May 18, 2001

The Honorable Ann Brown, Chair
The Honorable Thomas Moore, Commissioner
The Honorable Mary Gall, Commissioner
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

Dear Commissioners:

Re: Briefing Package for Petition No. HP 00-4, Request to Ban Baby Bath Seats

As Chair of the ASTM Subcommittee F15.20 on Bath Seats, I want to respond to the subject briefing package prepared by the CPSC staff dated 3/30/01. The following comments are directed in particular to Tab G, "Review of BATH SEAT ASTM STANDARD F1967 and Response to Comments to Petition HP 00-4."

Contrary to the characterization of the subject standard as "inadequate," I submit that the standard does address those incidents where reasonably foreseeable use and abuse of the product occurs. The critical factor considered by the subcommittee throughout all its deliberations to develop this standard was the issue of "reasonableness" as it relates to the presence of the caregiver.

In 1994, the Commission voted not to proceed with rulemaking due to their consideration of this critical factor, judging that the caregiver's actions to leave a child unattended in a bath seat product were not reasonable. Thus, in this context, the subcommittee diligently considered all aspects of the reported incidents to arrive at an adequate standard to address those incidents where reasonably foreseeable actions occurred.

This objective is clearly stated in the Introduction Section of the standard, where the first sentence states that the standard "is intended to address certain(my underline for emphasis) incidents associated with the use of bath seats,". It is also clear in the third sentence that the standard "does not address incidents in which bath seats are unreasonably(again, my underline for emphasis)misused, are used in a careless manner that disregards the warnings and instructions that are provided with each product, or those instances where the caregiver leaves the infant unattended in the product."

The major issues that the CPSC staff addressed, and that the ASTM subcommittee deliberated throughout the development of the current standard, include the following:

Performance Requirements

The inclusion of Performance Requirements in the standard was considered important not only because these requirements are present in many, if not all, other juvenile products standards, but also because there were incidents of pinches and lacerations in the reported incident data – *contrary to what staff states in the briefing package*.

Stability

Staff contends that the test for stability does not address suction cup performance over time or on non-smooth or dirty surfaces. I respectfully disagree.

The standard does require testing on both smooth surfaces AND slip-resistant surfaces for all bath seats designed to be used on both surface types. Where a bath seat product is recommended for use on slip-resistant surfaces, the standard requires that it pass the stability test when tested on a surface that complies with the requirements of ASTM F462 for slip-resistant bathing facilities.

If the bath seat is not recommended for use on slip-resistant surfaces, then a warning to this effect is required to be given to the caregiver by the manufacturer.

Although staff believes that a bath seat "can be made to function properly on a textured surface and not rely on suction cups," this assertion is neither proven nor relevant to the creation of a product safety standard. Their citation of Figure 2 in Tab G as an example of a product that fulfills this assertion is inaccurate, since the product cited in Figure 2 does utilize suction cups for its primary attachment mechanism.

In fact, the current standard does address the issue of slip-resistant surfaces through the warning requirement. Whether or not a product CAN be made to function properly in any given situation, does not lead to the conclusion that all products should be REQUIRED to function in that same situation. These are choices that should be more appropriately left up to product designers and manufacturers.

The issue of "dirty surfaces" has been discussed repeatedly throughout the development of the current standard. The general consensus is that there is great difficulty in simulating the variety of "dirty surfaces" that might exist in households, and this is confirmed by staff's statement. Test repeatability and reliability are factors that must be considered when developing a standardized testing methodology, and the variability of these "dirty surfaces" has never been quantified or defined, even by the CPSC.

In fact, other standards, such as F977 for walkers and the draft standards for bouncers

and bassinets, contain tests designed specifically with surface and component part cleaning instructions included in order to create a test method that will produce consistent and repeatable test results.

The CPSC staff has not proposed for consideration by the subcommittee specific test methods for conducting either the stability test on a slip-resistant surface or for evaluating suction cups using "dirty water" or other use conditions.

However, it should be emphasized that at this time, the subcommittee has established a task group to address the issue of degradation of suction cups over time and under simulated use conditions. A report is due from this task group in October.

Restraint System

Staff accurately points out that no crotch/waist restraints are permitted by the standard, as these are believed to be counterproductive to both the convenience of the caregiver and the protection of the occupant. The subcommittee believes that the requirement for a crotch restraint for certain product designs is sufficient to prevent submarining incidents.

Although the current standard contains no dimensional requirements for leg hole openings, this issue was considered and discussed at length by the subcommittee during the development of the standard. It was the consensus of the subcommittee that more detailed study was needed to fully define the requirements for these openings. This was as a result of studies conducted on various proposals for leg openings with the finding that a greater potential for entrapment was created with many of these proposals.

Currently, a task group is addressing this issue with regard to submarining incidents. To more fully understand the circumstances involving these incidents, and to recommend an adequate requirement for openings that will help prevent both submarining and entrapment, the subcommittee has requested the CPSC to provide all incident data regarding this issue. That request was made in early March at the conclusion of the ASTM meetings in Orlando. To date, no information or incidents have been forwarded to the subcommittee for review.

Adequacy of the Standard

It should be pointed out that the staff has not delineated incident occurrence sufficiently to determine whether the incidents are associated with products that are compliant with ASTM F1967 standard requirements or older products not subject to the standard. Until incidents are tracked to show this comparison, no firm conclusions can actually be drawn regarding the adequacy of the published standard.

It is interesting to note that ES believes that the standard cannot be improved to eliminate all incidents where the child was left unattended. This is the same dilemma faced by the subcommittee throughout the development of the standard, and should be

the focus of discussion if ALL deaths involving bath tub drownings are to be targeted for elimination. To accomplish such a goal involves changing human behavior through education and awareness, not through the banning of a useful, convenient product that is safe when reasonably used.

Summary

It would be unwise to reject the work that has been accomplished so far in developing this standard. Rather, the continued efforts of the task groups and the subcommittee should be supported with encouragement and participation. If the intent of the Commission is to reduce and eliminate caregiver negligence and unreasonable misuse of the product, initiatives outside the scope of a product standard should be undertaken.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul A. Ware", with a long horizontal flourish extending to the right.

Paul A. Ware
ASTM F15.20 Subcommittee Chair