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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1112 and 1234

[CPSC Docket No. 2015-0019]

#### Safety Standard for Infant Bath Tubs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Danny Keysar Child Product Safety Notification Act, Section 104 of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) requires the United States Consumer Product Safety Commission (“Commission,” “CPSC,” or “we”) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for infant bath tubs in response to the direction under Section 104(b) of the CPSIA. In addition, the Commission is proposing an amendment to include the proposed standard in the list of notices of requirements (NORs) issued by the Commission.

**DATES:** Submit comments by October 28, 2015.

**ADDRESSES:** Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed mandatory standard for infant bath tubs should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202-395-6974, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Other comments, identified by Docket No. CPSC 2015-0019, may be submitted electronically or in writing:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments.

The Commission does not accept comments submitted by electronic mail (email), except through [www.regulations.gov](http://www.regulations.gov). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

*Instructions:* All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number CPSC-2015-0019, into the “Search” box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Celestine T. Kish, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; email: [ckish@cpsc.gov](mailto:ckish@cpsc.gov); telephone: (301) 987-2547.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Statutory Authority

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. Standards issued under section 104 are to be “substantially the same as” the applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the

risk of injury associated with the product.

The term “durable infant or toddler product” is defined in section 104(f)(1) of the CPSIA as “a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.” Section 104(f)(2) of the CPSIA lists examples of durable infant or toddler products, including products such as “bath seats” and “infant carriers.” Although section 104(f)(2) does not specifically identify infant bath tubs, the Commission has defined infant bath tubs as a “durable infant or toddler product” in the Commission’s product registration card rule under CPSIA section 104(d).<sup>1</sup>

Pursuant to section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this notice of proposed rulemaking (“NPR”), largely through the standards development process of ASTM International (formerly the American Society for Testing and Materials) (“ASTM”). The proposed rule is based on the voluntary standard developed by ASTM, ASTM F2670-13, *Standard Consumer Safety Specification for Infant Bath Tubs* (“ASTM F2670-13”), with several modifications to strengthen the standard.

The testing and certification requirements of section 14(a) of the Consumer Product Safety Act (“CPSA”) apply to product safety standards promulgated under section 104 of the CPSIA. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (test laboratories) to assess conformity with a children’s product safety rule to which a children’s product is subject. The infant bath tub standard, if issued as a final rule, will be a children’s product safety rule that requires the issuance of an NOR. To meet the requirement that the Commission issue an NOR for the infant bath tub standard, this NPR proposes to amend 16 CFR part 1112 to include 16 CFR part 1234, the CFR section where the infant bath tub standard will be codified if the standard becomes final.

<sup>1</sup> Requirements for Consumer Registration of Durable Infant or Toddler Products; Final Rule, 74 FR 68668, 68669 (December 29, 2009); 16 CFR 1130.2(a)(16).

## II. Product Description

### A. Definition of Infant Bath Tub

ASTM F2670–13 defines an “infant bath tub” as a “tub, enclosure, or other similar product intended to hold water and be placed into an adult bath tub, sink, or on top of other surfaces to provide support or containment, or both, for an infant in a reclining, sitting, or standing position during bathing by a caregiver.” ASTM F2670–13 section 3.1.2. Falling within this definition are products of various designs, including “bucket style” tubs that support a child sitting upright, tubs with an inclined seat for infants too young to sit unsupported, inflatable tubs, folding tubs, and tubs with spa features, such as handheld shower attachments and even whirlpool settings. The ASTM standard permits infant bath tubs to have “a permanent or removable passive crotch restraint as part of their design,” but does not permit “any additional restraint system(s) which requires action on the part of the caregiver to secure or release.” *Id.* section 6.1. ASTM F2670–13 excludes from its scope “products commonly known as bath slings, typically made of fabric or mesh.” *Id.* sec. 1.1.

### B. Market Description

CPSC staff is aware of at least 26 firms that supply infant bath tubs to the U.S. market. Twenty-three of these firms are domestic, including 14 manufacturers, eight importers, and one with an unknown supply source. Three foreign companies export directly to the United States via Internet sales or to U.S. retailers.

## III. Incident Data

CPSC staff has received detailed reports from various sources of 202 incidents related to infant bath tubs from January 1, 2004 through May 20, 2015. Thirty-one of these incidents (15%) were fatal. Of the 146 victims whose age could be determined, 141 (97%) were under 2 years of age. In the 168 incidents in which the sex of the child was reported, 54 percent of the victims were male, and 46 percent of the victims were female.

### A. Fatalities

Thirty-one fatalities were reported to have been associated with infant bath tubs from January 1, 2004 through May 20, 2015. Drowning was the reported cause of death for 30 of the fatalities (97%); the remaining fatality involved a child with a heart defect, whose death was attributed to pneumonia. Twenty-nine of the fatality victims (94%) were between 4 months and 11 months of

age; the remaining two fatality victims were 23 months and 3 years of age. In all but one of the drowning fatalities, a parent or caregiver left the victim alone in the infant bath tub, and returned to find the child submerged. Sixteen of the fatalities (52%) were male, while 15 (48%) were female.

### B. Nonfatal Injuries

One hundred seventy-one nonfatal incidents associated with infant bath tubs were reported to have occurred from January 1, 2004 through May 20, 2015. The 171 reports included 30 reports of injuries requiring hospitalization (nine reports), emergency room treatment (nine reports), treatment by a medical professional (eight reports), or first aid (four reports). The nine incidents requiring hospitalization included eight near-drowning incidents in which a child almost died from suffocation under water, and one scalding water burn. All eight near-drowning incidents resulting in hospitalization occurred while the parent or caregiver was not present. The nine incidents requiring emergency room treatment consisted of five near-drowning incidents, a head injury caused by a bath toy detaching from a tub, a concussion from a fall from a tub located on a counter when a tub leg collapsed, one rash, and an injury caused by mold on a tub. The eight injury reports requiring a visit to a medical professional consisted of one laceration, one rash, and six injuries involving mold. The four incidents requiring home first aid resulted from finger, hand, and foot entrapments.

### C. Hazard Pattern Identification

CPSC staff considered all 202 (31 fatal and 171 nonfatal) reported infant bath tub incidents to identify the hazard patterns associated with infant bath tub-related incidents. Staff grouped the hazard patterns into the following categories in order of frequency:

1. *Drowning/Near Drowning* incidents account for 43 out of 202 (21%) of the reported incidents. Thirty of these 43 incidents were drowning fatalities; the remaining 13 incidents involved near-drownings. In 38 of the 43 drowning or near-drowning incidents (88%), the parent or guardian was not present at the time the incident occurred. Because there were no witnesses to a majority of drowning or near-drowning incidents, determining exactly what happened is difficult. Generally, the child was found floating, but exactly what transpired was unclear. One incidental fatality was attributed to pneumonia rather than drowning; this incident is discussed in the “Miscellaneous Issues” category.

2. *Protrusion/Sharp/Laceration issues* accounted for 39 out of 202 (19%) of the reported incidents. In most of these incidents, the child made contact with a part that protrudes from the tub, causing red marks, cuts, or bruising. The body parts reportedly injured were toes, feet, bottom, genitalia, and back. In 29 of the 39 incidents, a protrusion described as a “bump” or “hump” caused a red mark or discomfort to the infant. In many of these protrusion incidents, a “hammock/sling” attachment was involved.

Only one of the 39 “protrusion” incident reports required a hospital visit; in that incident, a child’s back was scratched by a screw that penetrated the tub wall. The remaining 38 incidents in this category resulted in a minor injury or no injury.

3. *Product failures* accounted for 53 out of 202 (26%) of the reported incidents. In 28 incidents, the “hammock” or “sling” collapsed or broke, and in eight incidents the tub’s locking mechanism failed or broke. The remaining 17 “product failure” incidents involved various tub parts breaking. In two of the 53 “product failure” incidents a child was treated at a hospital and released; in the remaining incidents, there was either no injury or a minor injury. In one of the incidents requiring a hospital visit, a toy attached to a tub fell and caused a deep cut on a child’s forehead. In the second incident, the leg of a tub collapsed, causing a child to fall from the counter top supporting the tub onto the floor, resulting in a concussion.

4. *Entrapment issues* accounted for 20 out of 202 (10%) of the reported incidents. Entrapment incidents involved fingers, arms, feet, legs, or genitalia caught or stuck on parts of the tub, mostly in a pinching manner. Many of these injuries occurred in tubs that fold. Hinges, holes, and the foot area inside a tub were common areas of entrapment. These entrapment incidents resulted in no injury or minor injury; there were no reported hospitalizations.

5. *Slippery tub surface issues* accounted for 14 of 202 (7%) of the reported incidents. These incidents resulted in minor skin abrasions or scratches, and potential submersions. These incidents resulted in no injury or minor injury.

6. *Mold/Allergy issues* accounted for 12 of 202 (6%) of the reported incidents. Eight incidents were attributed to mold, and four were allergy related. The reported issues included itching, rashes, foul odor, respiratory issues, and a urinary tract infection. Eight of these incidents, six involving mold issues and two involving allergy issues, involved a

single infant tub make and model. The 12 reported incidents included two emergency room visits, one for an upper respiratory issue, and one for a rash on the child's back. In seven additional incidents, children were seen by a medical professional for itching and rashes (four incidents), a urinary tract infection, a severe cold with fever, and the presence of mold spores on the genitalia.

7. *Miscellaneous issues* accounted for 21 out of 202 (10%) of the reported incidents. The issues included falling out of a tub, an unstable tub, missing pieces, batteries leaking or overheating, rust, and scalding. Miscellaneous issues resulted in one fatality and one hospital admission. The fatality involved a child with a ventricular septal defect whose death was attributed to pneumonia. The hospital visit was caused by scalding when a parent poured hot water from a stove onto a tub's foam cushion and then placed the child in the tub. The rest of the reports involved no injury or a minor injury.

#### D. National Injury Estimates

CPSC also evaluates data reported through the National Electronic Injury Surveillance System (NEISS), which gathers summary injury data from hospital emergency departments selected as a probability sample of all the U.S. hospitals with emergency departments. This surveillance information enables CPSC staff to make timely national estimates of the number of injuries associated with specific consumer products. Based on a review of emergency department visits related to infant bath tubs for the years 2004 to 2014, staff estimates that there were 2,200 injuries treated in U.S. hospital emergency rooms over that 11-year period associated with infant bath tubs (sample size = 82, coefficient of variation = 0.18).<sup>2</sup> The NEISS data included one infant death, which has been included in the fatality statistics reported above. Approximately 94 percent of the victims were 12 months of age or younger and only one of the 82 reported NEISS cases involved a child older than 24 months.

For the injuries reported through NEISS, the most prominent hazard was falling, which occurred in 33 percent of the incidents. Drowning or near-drowning occurred in 22 percent of the incidents. Head injuries were common

(35%), as were body injuries (22%), and face injuries (18%). In more than 80 percent of the NEISS cases, the victim was treated at the emergency room and released, while 15 percent were admitted or transferred to a hospital.

### IV. The ASTM Infant Bath Tub Standard

#### A. History of ASTM 2670–13

Section 104(b)(1)(A) of the CPSIA requires the Commission to consult representatives of “consumer groups, juvenile product manufacturers, and independent child product engineers and experts” to “examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products.” As a result of incidents arising from infant bath tubs, CPSC staff requested that ASTM develop voluntary requirements to address the hazard patterns related to their use. Through the ASTM process, CPSC staff consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public, and the infant bath tub standard was developed.

ASTM F2670 was first approved in 2009, and then revised in 2010, 2011, 2012, and 2013. The current version, ASTM F2670–13, was approved on February 15, 2013, and was published in March 2013.

#### B. Description of the Current ASTM Voluntary Standard-ASTM 2670–13

ASTM F2670–13 contains both general and performance requirements to address the hazards associated with infant bath tubs. ASTM F2670–13 includes the following key provisions: scope, terminology, general requirements, performance requirements, test methods, marking and labeling, and instructional literature.

*Scope.* This section states the scope of the standard, which: “establishes performance requirements, test methods, and labeling requirements to promote the safe use of infant bath tubs.” As stated in section II.A. of this preamble, ASTM F2670–13 defines an “infant bath tub” as a “tub, enclosure, or other similar product intended to hold water and be placed into an adult bath tub, sink, or on top of other surfaces to provide support or containment, or both, for an infant in a reclining, sitting, or standing position during bathing by a caregiver.” This description includes “bucket style” tubs that support a child sitting upright, tubs with an inclined seat for infants too young to sit unsupported, inflatable

tubs, folding tubs, and tubs with more elaborate designs including handheld shower attachments and even whirlpool settings. ASTM F2670–13 excludes from its scope “products commonly known as bath slings, typically made of fabric or mesh.” *Id.* sec. 1.1.

*Terminology.* This section provides definitions of terms specific to this standard.

*Requirements and Test Methods.* These sections set both general and performance requirements to address several hazards, many of which are also found in the other ASTM juvenile product standards. These requirements and test methods address:

- Sharp edges or points (incorporating CPSC standards for sharp edges and sharp points);<sup>3</sup>
- Small parts (incorporating CPSC standards for small parts);<sup>4</sup>
- Lead in paint and surface coatings (incorporating CPSC lead and surface coating standards);<sup>5</sup>
- Passive restraints;
- Size and safety requirements for attached toys (incorporating CPSC toy standards);<sup>6</sup>
- Resistance to collapse or displacement in use;
- Durability and strength of locking components;
- Displacement of protective components;
- Adherence of suction cups;
- Permanence of labels and warnings;
- Protection from scissoring, shearing and pinching;
- Limits on openings; and
- Labeling.

*Marking and Labeling.* This section contains various requirements related to warnings, labeling, and required markings for infant bath tubs. This section prescribes various substance, format, and prominence requirements for such information.

*Instructional Literature.* This section requires that instructions provided with infant bath tubs be easy to read and understand. Additionally, the section contains requirements for instructional literature contents and format, as well as prominence of certain language.

### V. Assessment of Voluntary Standard ASTM F2670–13

Staff considered the fatalities, injuries, and non-injury incidents associated with infant bath tubs, and evaluated ASTM F2670–13 to determine

<sup>2</sup> NEISS reports for infant bath tub incidents are summary in nature and provide limited detail for determining hazard scenarios. For that reason, NEISS incident data are not included in our analysis and discussion of overall hazard patterns, unless a NEISS incident report was supplemented by further investigation.

<sup>3</sup> See 16 CFR 1500.48 (sharp point standard) and 1500.49 (sharp edge standard).

<sup>4</sup> See 16 CFR part 1501 (small part limitations).

<sup>5</sup> See 16 CFR part 1303 (limitations on lead in paint and surface coatings).

<sup>6</sup> See ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (ASTM F963).

whether the ASTM standard adequately addresses the incidents, or whether more stringent standards would further reduce the risk of injury associated with these products. We discuss the staff's assessment in this section.

#### *A. Warnings and the Risk of Drowning Due to Inattention by Parent or Caregiver*

From 2004 to 2014, 30 drowning fatalities and 13 near-drowning incidents have been associated with infant bath tubs. In 29 of the 30 drowning fatalities (97%), the caregiver left a child alone in an infant bath tub. In 38 of 43 total drowning or near-drowning incidents (88%), the child was left alone when the incident occurred.

From the perspective of setting product standards, the only way caregiver behavior, such as leaving an infant unattended in an infant bath tub, can be addressed is through warnings and instructions to caregivers. Staff reviewed the warnings and instructions required by ASTM F2670–13 to determine whether the ASTM standard's provisions are adequate, or whether a more stringent standard would reduce the risk of drowning and near-drowning associated with these products. The currently required warnings include the phrases: "WARNING—DROWNING HAZARD," in bold capital letters, "Infants have DROWNED in infant bath tubs" (with the word "DROWNED" in bold capital letters), and "ALWAYS keep infant within adult's reach."

Staff determined that these current warning requirements allow for considerable variation in the conspicuity and format of the warnings presented to consumers. Staff's research suggests that the impact of these warnings would be improved by providing specific guidance for a more consistent and prominent presentation of hazard information. Staff's research also indicates that changes to the size, color, content, and format of required warnings and instructions could augment the impact of the warnings and instructions for infant bath tubs, resulting in a higher level of caregiver compliance.

Staff developed suggested wording and formatting changes for infant bath tubs that staff believed would improve the warning and instructions sections of the voluntary standard. Staff circulated these proposed wording and formatting changes to the ASTM subcommittee responsible for ASTM F2670–13, and discussed the proposed changes at a public ASTM meeting in May 2015. In response to feedback received from

ASTM and stakeholders, staff made adjustments to staff's proposed warnings and instructions.

The Commission now proposes to adopt ASTM F2670–13 with modifications to some of the warnings and instructions for infant bath tubs. In particular, the Commission proposes the following modifications:

- Increasing the size of the text in the on-product warnings to make the warnings for infant bath tubs consistent with Commission requirements for warnings for a similar product, infant bath seats;
- Requiring the use of a "hazard color" in the on-product and retail package warnings;
- Revising the warning content to simplify and clarify the language and to add specific language to address the risk of falls; and
- Specifying the format of the warnings on the product, on the retail packaging, and in the accompanying instructions to increase the potential impact of the warnings and provide a more consistent presentation of hazard information.

Based on research relating to the efficacy of warnings and instructions, staff believes that these changes will help capture and maintain caregiver attention, personalize the tone of the warnings, be simpler to comprehend than the current warnings, and provide consistency with the warnings regarding baby bath seats, a similar product. These changes, plus the new required warning of the risk of falls, may result in increased caretaker comprehension of, and compliance with, product warnings and instructions. The Commission believes that these changes constitute more stringent warning and labeling requirements than the current standard, and will further reduce the risk of injury to infants and toddlers associated with infant bath tubs.

#### *B. Hazards Related to Protrusion/Sharp/Laceration Issues*

Protrusion issues were involved in 39 of 202 (19%) of the reported incidents. In one incident, a protruding screw scratched a child, resulting in a hospital visit; other incidents involved red marks, cuts, or bruising from rough or protruding edges. However, staff found no trends in the incident data involving scrapes or cuts.

In most of the "protrusion" incidents, a "hump" or "bump" in the tub, designed to help older infants sit upright, caused a red mark or discomfort for the infant, typically when the infant bath tub was used with a hammock or sling attachment and the child made contact with the "hump."

As discussed in more detail in section V.C. of this preamble, ASTM has formed two task groups to develop new infant sling performance requirements.

#### *C. Hazards Related to "Bath Sling" Products*

The current ASTM standard specifically excludes bath slings, which are net or mesh products that do not hold water, are attached to an infant bath tub or a frame, and are used for bathing newborn babies and young infants. Several infant bath tub models include bath slings as part of the tub, or as an accessory.

Staff is aware that 28 of the 53 "product failure" incidents involved bath hammocks or slings. Staff and ASTM are working to investigate how the observed risks of bath slings should be addressed. In addition, ASTM formed two task groups to address the risks of bath slings. One group is developing performance requirements for infant slings that can only be used with infant bath tubs, which will be addressed in the infant bath tub standard. A second group is developing requirements for bath slings that are used separately or as tub accessories, which will be addressed under a new, separate standard.

#### *D. Latching or Locking Mechanism Testing*

A number of incidents involved tub locking mechanisms that failed or broke. Staff believes the current standard for latch mechanism testing in ASTM F2670–13, section 7.1.2., which requires that latches be tested more than 2,000 cycles, is appropriately stringent. However, staff also has observed that some complex locking and latching mechanisms are difficult to test within the required "cycle time" of 12 cycles per minute. Staff has worked with ASTM to find an alternate method of conducting this test to make testing results for infant bath tubs more accurate and consistent. Staff has determined that requiring the 2,000-cycle testing to be conducted on a "continuous basis" will allow more designs of infant bath tubs to be tested consistently and accurately to the standard of section 7.1.2. Moreover, ASTM is currently considering adopting the change that staff suggested to ASTM, but has not yet done so.

In this NPR, the Commission proposes to modify section 7.1.2 to improve the accuracy and consistency of the mandatory product testing. The Commission also proposes adding an Appendix regarding section 7.1.2, to clarify that although the cadence of testing has changed to accommodate a

broader variety of infant bath tub designs, the intent of the standard is to require continuous testing while maintaining a rate as close to 12 cycles per minute as can reasonably be achieved. The Commission believes these changes will augment product safety by improving the accuracy, consistency, and repeatability of durability testing.

#### *E. Static Load Testing.*

The static load testing requirement and the testing for resistance to collapse in the infant bath tub standard is intended to address the issue of breaks. Infant bath tubs are required to support a load of 50 lbs. (22.7 kg.), or three times the maximum weight recommended by the manufacturer, whichever is greater, for 20 minutes. Staff believes that the current load testing provides an appropriate level of protection from breakage. However, staff also has determined that the current testing standard, which mandates the use of a 6" x 6" block of high-density polyethylene to provide the required weight, may damage some infant bath tub designs, which could create additional risks. Staff recommended to ASTM that the required polyethylene block be rounded on the corners; but ASTM decided to replace the block with a bag of steel shot for static load testing. This matter was addressed at an ASTM public meeting, was balloted and approved by ASTM, and will be added to the next published edition of the ASTM standard. The Commission believes that including this modification in the NPR will augment product safety by improving the accuracy, consistency, and repeatability of static load testing.

#### *F. Entrapment*

Entrapments accounted for 20 of 202 reported incidents (10%). Most of the incidents involved body parts becoming stuck or caught in a tub, and most of those incidents involved pinching. Many of the incidents involved folding tubs. However, staff found no trends in this incident data. The Commission believes that the current infant bath tub standard's requirements for scissoring, shearing, and pinching (section 5.5) and Openings (section 5.6) are appropriate to protect the public.

#### *G. Slippery Surfaces*

Slippery tub surfaces accounted for 14 of the 202 reported incidents (7%), resulting in abrasions and submersions but no injuries. Most of these incidents contain little detail. Therefore, the Commission is not proposing any modifications to the ASTM infant bath tub standard regarding this issue. Staff

will continue to monitor, collect, and study details on slip-related fall and submersion incidents in infant tubs. In addition, staff will work with ASTM, if warranted, to develop appropriate performance requirements to address slip-related fall and submersion incidents.

#### *H. Mold/Allergy Issues*

The mold and allergy issues involved itching, rashes, foul odor, respiratory issues, and a urinary tract infection. This is a difficult issue to address through performance requirements because the issue arises from the consumer's inability to clean and dry the infant tub to prevent mold. Therefore, the Commission is not proposing any modifications to the ASTM infant bath tub standard regarding this issue. However, CPSC staff will continue to review the incident data. If warranted, staff will address this matter through the ASTM process to determine whether additional instructions or warnings would be effective in reducing this risk.

##### *I. Miscellaneous Issues*

Miscellaneous issues included falling out of the tub, unstable tubs, missing pieces, batteries leaking or overheating, rust and scalding. Incidents in this category included one fatality that was attributed to pneumonia and one hospitalization from scalding. The rest of the reports were incidents with no injury or a minor injury. Staff's review of these miscellaneous incidents did not result in any recommendations to change the infant bath tub standard.

#### **VI. Proposed CPSC Standard for Infant Bath Tubs**

The Commission is proposing to incorporate by reference ASTM F2670–13, with certain modifications to strengthen the standard. As discussed in the previous section, the Commission concludes that these modifications will further reduce the risk of injury associated with infant bath tubs.

Section 1234.1 would state the scope of the rule; infant bath tubs. The definition of "infant bath tub" is provided in ASTM F2670–13 section 3.1.2.

Section 1234.2(a) would incorporate by reference ASTM F2670–13, with the exception of certain provisions that the Commission proposes to modify.

Section 1234.2(b) would detail the changes and modifications to ASTM F2670–13 that the Commission has determined would further reduce the risk of injury from infant bath tubs. In particular:

- Section 7.1.2, *Latching or Locking Mechanism Durability*, would be

changed to permit continuous testing of infant bath tub latches through 2,000 cycles. An Appendix regarding section 7.1.2 would be added to clarify that the cadence of testing has been changed to accommodate tubs that could not be tested at the previous rate of 12 cycles per minute, but that testing is to be conducted continuously while maintaining a rate as close to the previous standard as possible.

- Section 7.4.2 would be changed to require that a 50 lb. (22.7 kg) bag of steel shot is to be used to test infant bath tubs in the required static load testing, rather than a block of high-density polyethylene, which might damage or puncture some tubs. Additionally, the text of this section would be changed to make the required weight equivalent, whether stated in pounds or kilograms.

- Section 8.4 would be changed to require warning statements on infant bath tubs and infant bath tub retail packaging to have prescribed warning language, and for the warning statements to be permanent, conspicuous, in contrasting color(s), bordered, and in type larger than currently required. Section 8.4 will also require additional warnings for infant bath tubs with suction cups. The changes would be accompanied by exemplar warnings.

- Section 9 would be changed to require that instructional literature for infant bath tubs contain new prescribed warnings regarding the risks of drowning or falling; explain the proper use of the product; and emphasize the safety practices stated in the warnings. The instructions must also address appropriate temperature ranges for bath water, and instruct users to discontinue use of infant bath tubs that become damaged, broken, or disassembled. The changes would be accompanied by an exemplar warning.

#### **VII. Incorporation by Reference**

Section 1234.2(a) of the proposed rule incorporates by reference ASTM F2670–13. The Office of the Federal Register ("OFR") has regulations concerning incorporation by reference. 1 CFR part 51. The OFR recently revised these regulations to require that, for a proposed rule, agencies must discuss in the preamble to the NPR ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons, or explain how the agency worked to make the materials reasonably available. In addition, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section IV.B. of this

preamble summarizes the provisions of ASTM F2670–13 that the Commission proposes to incorporate by reference. ASTM F2670–13 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at: <http://www.astm.org/cpsc.htm>. Interested persons may also purchase a copy of ASTM F2670–13 from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; <http://www.astm.org>. One may also inspect a copy at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923.

### VIII. Amendment of 16 CFR Part 1112 To Include NOR for Infant Bath Tubs

The CPSA establishes certain requirements for product certification and testing. Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). Thus, the proposed rule for 16 CFR part 1234, Safety Standard for Infant Bath Tubs, if issued as a final rule, would be a children's product safety rule requiring the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies*, 78 FR 15836 (March 12, 2013), codified at 16 CFR part 1112 ("part 1112") and effective on June 10, 2013, establishing requirements for CPSC acceptance of third party conformity assessment bodies to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies all of the NORs previously issued by the Commission.

All new NORs for new children's product safety rules, such as the infant bath tub standard, require an amendment to part 1112. To meet the requirement that the Commission issue an NOR for the proposed infant bath tub standard, as part of this NPR, the Commission proposes to amend the

existing rule that codifies the list of all NORs issued by the Commission to add infant bath tubs to the list of children's product safety rules for which the CPSC has issued an NOR.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for infant bath tubs would be required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1234, *Standard Consumer Safety Specification for Infant Bath Tubs*, included in the laboratory's scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC Web site at: [www.cpsc.gov/labsearch](http://www.cpsc.gov/labsearch).

### IX. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission is proposing an effective date of 6 months after publication of the final rule in the **Federal Register** for products manufactured or imported on or after that date. The proposed rule does not require manufacturers to make design or manufacturing changes; rather, the proposed rule requires only that manufacturers create and print new labels. The two product testing recommendations require a simple change in equipment (replacing a block of high-density polyethylene with a 50-lb. shot bag), and a timing change in the cycle testing for latches or locking mechanisms. Similar equipment and testing methods are already used in child product testing, so the testing changes can be made without delay. The 6-month period will allow ample time for manufacturers and importers to arrange for third party testing, and this is consistent with the timeframe adopted in a number of other section 104 rules.

We also propose a 6-month effective date for the amendment to part 1112.

We ask for comments on the proposed 6-month effective date.

### X. Regulatory Flexibility Act

#### A. Introduction

The Regulatory Flexibility Act ("RFA") requires agencies to consider the impact of proposed rules on small entities, including small businesses. The RFA generally requires agencies to review proposed rules for their potential

impact on small entities and prepare an initial regulatory flexibility analysis ("IRFA") unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. Because staff was unable to estimate precisely all costs of the draft proposed rule, staff conducted such an analysis. The IRFA must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. Specifically, the IRFA must contain:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records;
- Identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize the rule's economic impact on small entities.

#### B. Market Description

CPSC staff is aware of at least 26 firms that supply infant bath tubs to the U.S. market. Twenty-three of these firms are domestic. Of the domestic firms, 14 are manufacturers, eight are importers, and one has an unknown supply source. Seventeen of the domestic firms qualify as "small firms" under the guidelines of the U.S. Small Business Administration ("SBA"). Three foreign companies export to the United States via Internet sales or to U.S. retailers.

#### C. Reason for Agency Action and Legal Basis for Proposed Rule

The Danny Keysar Child Product Safety Notification Act, section 104 of the CPSIA, requires the CPSC to promulgate mandatory standards that are substantially the same as or more stringent than, the voluntary standards for durable infant or toddler products. The proposed rule implements that congressional direction.

#### D. Other Federal Rules

Section 14(a)(2) of the CPSA requires every manufacturer and private labeler of a children's product that is subject to a children's product safety rule to certify, based on third party testing conducted by a CPSC-accepted laboratory that the product complies with all applicable children's product safety rules. Section 14(i)(2) of the CPSA requires the Commission to establish protocols and standards requiring children's products to be tested periodically and when there has been a material change in the product, and safeguarding against any undue influence on a conformity assessment body by a manufacturer or private labeler. A final rule implementing these requirements, *Testing and Labeling Pertaining to Product Certification* (16 CFR part 1107) became effective on February 13, 2013 (the "1107 Rule"). If a final children's product safety rule for infant bath tubs is adopted by the Commission, infant bath tubs will be subject to the third party testing requirements, including record keeping, when the final rule becomes effective.

Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (*i.e.*, testing laboratories) for each children's product safety rule. The NORs for existing rules are set forth in 16 CFR part 1112. If the Commission adopts a final rule on infant bath tubs, publication of a NOR establishing requirements for the accreditation of testing laboratories will be required.

#### E. Impact of the New Standards and Testing Requirements on Small Businesses

Under SBA guidelines, a manufacturer of infant bath tubs is categorized as "small" if it has 500 or fewer employees, and importers and wholesalers are considered "small" if they have 100 or fewer employees. Based on these guidelines, 17 of the 23 domestic firms known to be supplying infant bath tubs to the U.S. market are small firms: 10 manufacturers, six importers, and one firm with an unknown supply source.

*Small Domestic Manufacturers.* The impact of the proposed rule is not likely to be significant for small manufacturers. Based on information on firms' Web sites, staff believes six domestic manufacturers already comply with the current infant bath tub standard. This includes two infant bath tub manufacturers that are certified by the Juvenile Products Manufacturers Association ("JPMA"), the major U.S.

trade association that represents juvenile product manufacturers and importers, as compliant with the voluntary standard. Firms already in compliance with the infant bath tub standard will not need to make physical modifications to their products, but will have to make modifications regarding the warnings and instructions with their products. The costs of modifying existing labeling are usually small.

The four domestic manufacturers who do not appear to be in compliance with the infant bath tub standard might need to modify their products. However, these modifications are likely to be minor because the products are not complex; infant bath tubs generally are composed of one or two pieces of hard or soft plastic molded together. Modifications would primarily involve adjusting the size of grooves or openings on the side of the product to avoid finger entrapment. Therefore, the impact of the proposed rule is likely to be small for producers who do not yet comply with the infant bath tub standard.

Under section 14 of the CPSA, should the Commission adopt the infant bath tub standard as a final rule, all manufacturers will be subject to the additional costs associated with the third party testing and certification requirements under the testing and labeling rule (16 CFR part 1107). Third party testing will include any physical and mechanical test requirements specified in the final infant bath tub rule that may be issued; lead testing is already required. Third party testing costs are in addition to the direct costs of meeting the infant bath tub standard.

Based on testing costs for similar juvenile products, staff estimates that testing to the infant bath tub standard could cost approximately \$500–\$600 per model sample. On average, each small domestic manufacturer supplies three different models of infant bath tubs to the U.S. market annually. Therefore, if third party testing were conducted every year on a single sample for each model, third party testing costs for each manufacturer would be about \$1,500–\$1,800 annually. Based on a review of firms' revenues, which were, on average, about \$29 million annually, it seems unlikely that the impacts of the rule will be economically significant for small producers.

*Small Domestic Importers.* Staff believes that four of the six small importers are compliant with the current infant bath tub standard, and would only need to assure that their suppliers make the label modifications to comply with the proposed rule. The two remaining importers might need to find an alternate source of infant bath

tubs if their existing suppliers do not come into compliance with the requirements of the proposed rule. Alternatively, these firms may discontinue importing infant bath tubs altogether and perhaps substitute another product.

Importers of infant bath tubs will be subject to third party testing and certification requirements, and will experience the associated costs if their supplier(s) does not perform third party testing. Based upon review of the firms' revenues, which were, on average, about \$4.0 million annually, the impact of the testing requirements could exceed 1 percent of revenues if the firms needed to test more than one unit per model. Hence, staff cannot rule out a significant economic impact on small domestic importers due to the testing requirements.

As mentioned above, one small domestic firm has an unknown supply source. However, the firm has a diverse product line and claims to be compliant with various standards for several of its other infant products. It is possible that its infant bath tub is already compliant with ASTM F2670–13, and thus, would only have to modify existing labels. Regardless, this firm should not experience large impacts because infant bath tubs are only one of many products this firm supplies.

In summary, staff concluded that the impact of the proposed rule is unlikely to be economically significant for most firms, but is unable to conclude that the proposed rule would not have a significant economic impact on small importers.

*Alternatives.* Under section 104 of the CPSIA, the Commission is required to promulgate a standard that is either substantially the same as the voluntary standard or more stringent. The Commission could promulgate the existing voluntary standard without revision. However, the proposed warning labels and testing procedures are not expected to have a substantial impact on costs to small businesses. Another alternative that would reduce the impact on small entities is to set an effective date later than the proposed 6 months. This would allow manufacturers additional time to modify and/or develop compliant infant bath tubs, thus spreading the costs associated with compliance over a longer period of time.

#### F. Impact of Proposed 16 CFR Part 1112 Amendment on Small Businesses

As required by the RFA, staff conducted a Final Regulatory Flexibility Analysis ("FRFA") when the Commission issued the part 1112 rule

(78 FR 15836, 15855–58). Briefly, the FRFA concluded that the accreditation requirements would not have a significant adverse impact on a substantial number of small testing laboratories because no requirements were imposed on test laboratories that did not intend to provide third party testing services. The only test laboratories that were expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision.

Based on similar reasoning, amending 16 CFR part 1112 to include the NOR for the infant bath tub standard will not have a significant adverse impact on small test laboratories. Moreover, based upon the number of test laboratories in the United States that have applied for CPSC acceptance of accreditation to test for conformance to other mandatory juvenile product standards, we expect that only a few test laboratories will seek CPSC acceptance of their accreditation to test for conformance with the infant bath tub standard. Most of these test laboratories will have already been accredited to test for conformance to other mandatory juvenile product standards, and the only

costs to them would be the cost of adding the infant bath tub standard to their scope of accreditation. As a consequence, the Commission certifies that the NOR amending 16 CFR part 1112 to include the infant bath tub standard will not have a significant impact on a substantial number of small entities.

**XI. Environmental Considerations**

The Commission’s regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. Under these regulations, a rule that has “little or no potential for affecting the human environment” is categorically exempt from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

**XII. Paperwork Reduction Act**

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

*Title:* Safety Standard for Infant Bath Tubs.

*Description:* The proposed rule would require each infant bath tub to comply with ASTM F2670–13, with the changes proposed in this Notice, which contains requirements for marking, labeling, and instructional literature. These requirements fall within the definition of “collection of information,” as defined in 44 U.S.C. 3502(3).

*Description of Respondents:* Persons who manufacture or import infant bath tubs.

*Estimated Burden:* We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1234.2 .....	26	3	78	1	78

Our estimate is based on the following:

Section 8.1 of the infant bath tub standard requires that the name of the manufacturer, distributor, or seller, and either the place of business (city, state, and mailing address, including zip code) or telephone number, or both, to be marked clearly and legibly on each product and its retail package. Section 8.1.2 requires a code mark or other means that identifies the date (month and year, as a minimum) of manufacture. Section 8.4 describes required safety labeling.

There are 26 known entities supplying infant bath tubs to the U.S. market. All firms are assumed to use labels already on both their products and their packaging, but they may need to make some modifications to their existing labels. Based on an informal survey by staff, the estimated time required to make these modifications is about 1 hour per model. Each entity supplies an average of three different models of infant bath tubs; therefore, the

estimated burden associated with labels is 1 hour per model × 26 entities × 3 models per entity = 78 hours. We estimate the hourly compensation for the time required to create and update labels is \$30.19 (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” March 2015, Table 9, total compensation for all sales and office workers in goods-producing private industries: <http://www.bls.gov/ncs/>). Therefore, the estimated annual cost to industry associated with the labeling requirements is \$2,354.82 (\$30.19 per hour × 78 hours = \$2,354.82). No other operating, maintenance, or capital costs are associated with the collection.

Section 9.1 of the infant bath tub standard requires instructions to be supplied with the product. Infant bath tubs are products that generally require use and/or assembly instructions. Under the OMB’s regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that

would be incurred by persons in the “normal course of their activities” are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are “usual and customary.” We are unaware of infant bath tubs that generally require use instructions, but lack these instructions. Therefore, we tentatively estimate that there are no burden hours associated with section 9.1 of the infant bath tub standard, because any burden associated with supplying instructions with infant bath tubs would be “usual and customary” and not within the definition of “burden” under the OMB’s regulations.

Based on this analysis, the proposed standard for infant bath tubs would impose a burden to industry of 78 hours at a cost of \$2,355 annually.

In compliance with the PRA (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information

collection by September 14, 2015, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;

- The accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, utility, and clarity of the information to be collected;

- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and

- The estimated burden hours associated with label modification, including any alternative estimates.

### XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as "consumer product safety rules." Therefore, the preemption provision of section 26(a) of the CPSA would apply to a rule issued under section 104.

### XIV. Request for Comments

This NPR begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for infant bath tubs, and to amend part 1112 to add infant bath tubs to the list of children's product safety rules for which the CPSC has issued an NOR. We invite all interested persons to submit comments on any aspect of the proposed mandatory safety standard for infant bath tubs and on the proposed amendment to part 1112. Specifically, the Commission requests comments on the costs of compliance with, and testing to, the proposed mandatory infant bath tub standard, the proposed 6-month effective date for the new mandatory infant bath tub

standard, and the amendment to part 1112.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

### List of Subjects

#### 16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

#### 16 CFR Part 1234

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed in the preamble, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

### PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

**Authority:** Public Law 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(41) to read as follows:

**§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?**

\* \* \* \* \*

(b) \* \* \*

(41) 16 CFR part 1234, Safety Standard for Infant Bath Tubs.

\* \* \* \* \*

■ 3. Add part 1234 to read as follows:

### PART 1234—SAFETY STANDARD FOR INFANT BATH TUBS

Sec.

1234.1 Scope.

1234.2 Requirements for infant bath tubs.

**Authority:** Authority: Sec. 104, Public Law 110–314, 122 Stat. 3016.

#### § 1234.1 Scope.

This part establishes a consumer product safety standard for infant bath tubs.

#### § 1234.2 Requirements for infant bath tubs.

(a) Except as provided in paragraph (b) of this section, each infant bath tub shall comply with all applicable provisions of ASTM F2670–13, *Standard Consumer Safety Specification for Infant Bath Tubs*,

approved February 15, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; <http://www.astm.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

(b) Comply with ASTM F2670–13 with the following additions or exclusions:

(1) Instead of complying with section 7.1.2 of ASTM F2670–13, comply with the following:

(i) 7.1.2 *Latching or Locking Mechanism Durability*—The latching or locking mechanism(s) shall be cycled through its normal operation a total of 2000 cycles. Each cycle shall consist of opening and closing the mechanism and erecting/folding the product. Cycling shall be conducted on a continuous basis.

(ii) [Reserved]

(2) Add as an Appendix to ASTM F2670–13, the following:

(i) X1.2 Section 7.1.2—The timing of the durability cycling was revised so as to accommodate latching or locking mechanisms on some products that may require longer than 5 seconds to activate and deactivate. Continuous cycling is being prescribed to accommodate these potential longer activation/deactivation cycles, but the intent of the standard is to cycle the latching or locking mechanisms at a rate as close to 12 cycles per minute as can be reasonably achieved for the specific mechanism.

(ii) [Reserved]

(3) Instead of complying with section 7.4.2 of ASTM F2670–13, comply with the following:

(i) 7.4.2 Place a load on the center of the seating surface using a 6 to 8 in. (150 to 200mm) diameter bag filled with steel shot and which has a total weight of 50 lb (22.7kg) or three times the maximum weight of the child recommended by the manufacturer, whichever is greater, on the center of the product.

(ii) [Reserved]

(4) Instead of complying with section 8.4 of ASTM F2670–13, including all subsections of section 8.4, comply with the following:

(j) 8.4 Each product shall be labeled with warning statements. The warning statements shall be in contrasting color(s), permanent, conspicuous and in non-condensed sans serif typeface. All warning(s) shall be distinctively separated from any other wording or designs and shall appear in the English language at a minimum. The specified warning label may not be placed in a location that allows the warnings to be obscured or rendered inconspicuous when in the manufacturer's recommended use position.

(A) 8.4.1 Warning Label Format—The safety alert symbol



and the word "WARNING," shall be at least 0.4 in. (10 mm) high unless stated otherwise, shall be the same size, and shall be in bold capital letters. The remainder of the text shall be in characters whose upper case shall be at least 0.2 in. (5 mm) high unless stated otherwise. The safety alert symbol



and signal word "WARNING" shall be delineated with a bold solid line black border. The background color behind the safety alert symbol



and signal word "WARNING" shall be orange, red, or yellow, whichever provides best contrast against the product background. The remainder of the label text shall be black and in upper and lower case letters on a white background surrounded by a bold solid line black border. Text within the message panel shall be left-justified. Precautionary statements shall be indented from hazard statements and preceded by bullet points. Message panels within the label shall be delineated with solid black lines between sections addressing different hazards. If an outer border is used to surround the bold solid black lines of the label, the outer border shall be white and the corners may be radiused. An example label in the format described in this section is shown in Fig. 2.

(B) 8.4.2 The following warning statement shall be included exactly as stated below:

*Drowning Hazard:* Babies have drowned while using infant bath tubs.

(C) 8.4.3 Additional warning statements shall address the following:

- Stay *in arm's reach* of your baby.
- Use in empty adult tub or sink.
- Keep drain open.

(D) 8.4.4 The following warning statement shall be included exactly as stated below:

*Fall Hazard:* Babies have suffered head injuries falling from infant tubs.

(E) 8.4.5 Additional warning statements shall address the following:

- Use only [insert safe location(s), *e.g.*, in adult tub, sink, or on floor; in adult tub or on floor].
- Never *lift or carry* baby in tub.

(F) 8.4.6 The drowning hazard warning statements and the fall hazard warning statements in 8.4.2 through 8.4.5 may be displayed on separate labels. If the fall hazard warning statements are displayed on a separate label, the label shall comply with the requirements of 8.4.1 except that the safety alert symbol



and the signal word "WARNING" shall be at least 0.2 in. (5 mm) in height and the remainder of the text shall be at least 0.1 in. (2.5 mm) in height. The fall hazard warning label shall not be displayed above or before the drowning hazard warning label.

(G) 8.4.7 Products utilizing suction cups as an attachment mechanism to the support surface, and which are not intended by the manufacturer to be used on any type of slip-resistant surface, shall also include a warning to this effect. In addition, if there are other types of surfaces that the manufacturer does not intend the product be used on, then additional warning(s) shall be given regarding such surface(s). Such warning(s) shall use the signal word WARNING preceded by the safety alert symbol, and shall meet the requirements described in 8.4.1.

(5) Instead of complying with section 8.5 of ASTM F2670–13, comply with the following:

(i) 8.5 Each product's retail package shall be labeled on the principal display panel as specified in 8.4 except that the safety alert symbol



and the word "WARNING" shall be at least 0.2 in. (5 mm) high and the remainder of the text shall be in characters whose upper case shall be at least 0.1 in. (2.5 mm) high. The warnings and statements are not required on the retail package if they are on the product and visible in their entirety and are not concealed by the retail package. Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(ii) [Reserved]

(6) Instead of complying with section 9 of ASTM F2670–13, including all subsections of section 9, comply with the following:

(i) 9. Instructional Literature

(A) 9.1 All products shall have instructional literature enclosed that explains the proper use of the product and that shall be easy to read and understand. Such literature shall include instructions for assembly, maintenance, cleaning, inspections, and limitations of the product, as well as the manufacturer's recommended use position(s).

(B) 9.2 *Warning Statements in Instructional Literature:*

(1) 9.2.1 Instructional literature shall include the warnings specified in 8.4.2 through 8.4.7. The phrase "To prevent drowning" shall be added before the bulleted statements in 8.4.3 and the phrase "To prevent falls" shall be added before the bulleted statements in 8.4.5.

(2) 9.2.2 Warning statements in instructional literature shall also address the following:

- Babies can drown in as little as 1 inch of water. Use as *little water as possible* to bathe your baby.
- Never rely on a toddler or preschooler to help your baby or alert you to trouble. Babies have drowned even with other children in or near bath tub.

(3) 9.2.3 Warning statements in instructional literature shall meet the requirements described in 8.4 except that the background and text in the signal word panel need not be in color, and the remaining text shall be in highly contrasting colors, (*e.g.*, black text on white). An example label that meets the requirements is shown in Fig. 3.

(C) 9.3 In addition to the warnings, the instructional literature shall emphasize and reinforce the safe practices stated in the warnings.

(D) 9.4 Instructional literature shall also advise to test the temperature of the water in, or being put into, the infant bath tub prior to placing the infant into the product. Instructions shall also indicate that the typical water temperature for bathing a baby should be between 90 and 100 °F (32.2 and 37.8°C).

(E) 9.5 Instructional literature shall instruct to discontinue the use of the product if it becomes damaged, broken, or disassembled.

(F) 9.6 Instructional literature shall include the information as specified in 8.3.

(G) 9.7 Warnings, statements, or graphic pictorials shall not indicate or imply that the infant may be left in the product without a caregiver in attendance.

(7) Add the following Figure 2 to ASTM F2670-13:

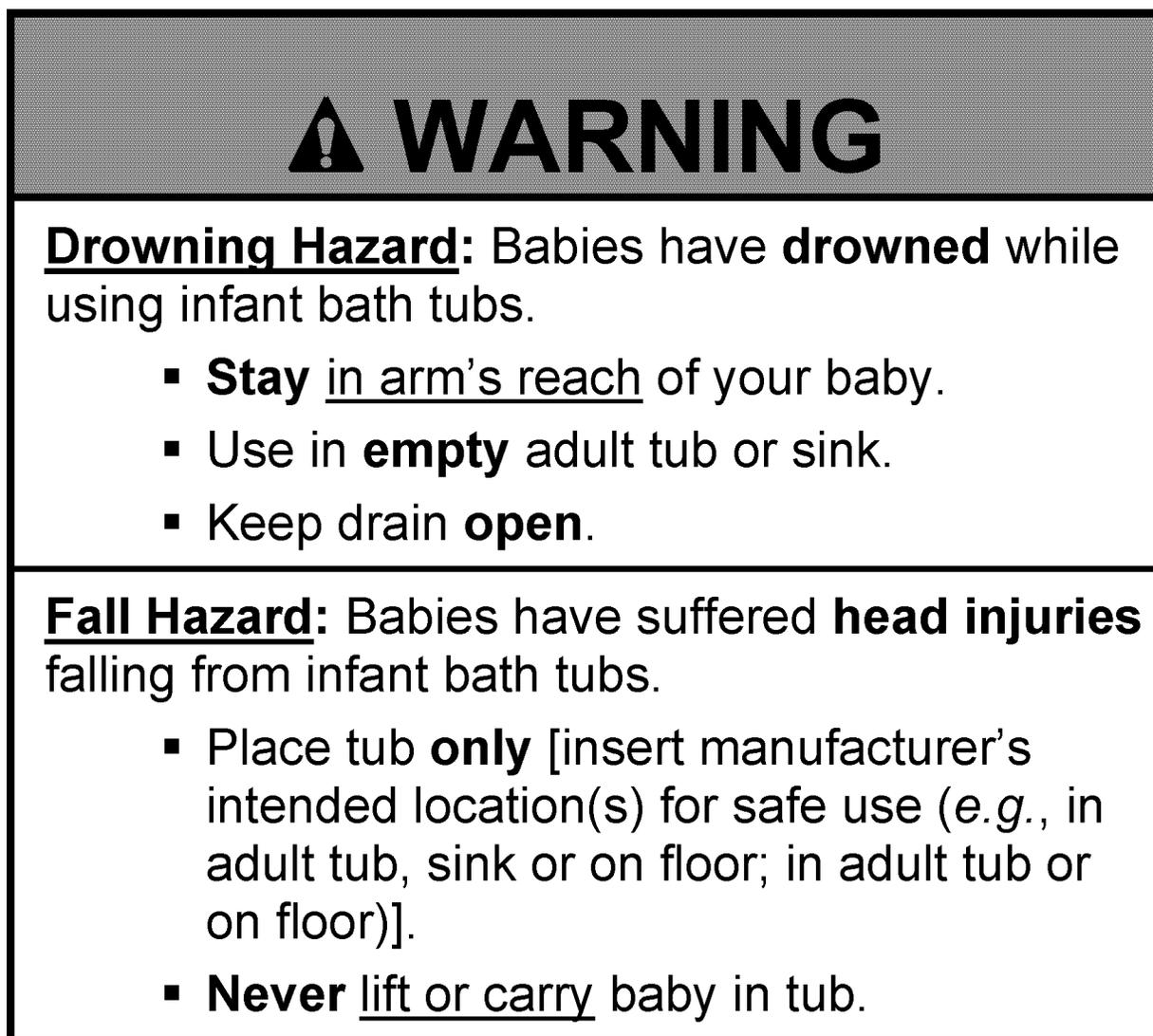


Fig. 2 Example label that meets the requirements of Section 8 with the drowning and fall hazards combined in a single label.

(8) Add the following Figure 3 to ASTM F2670-13:

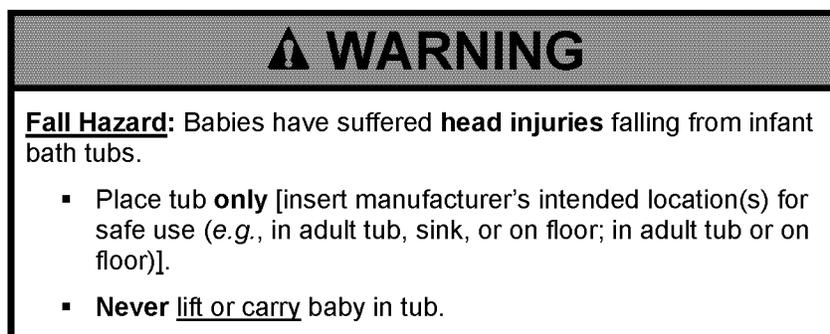
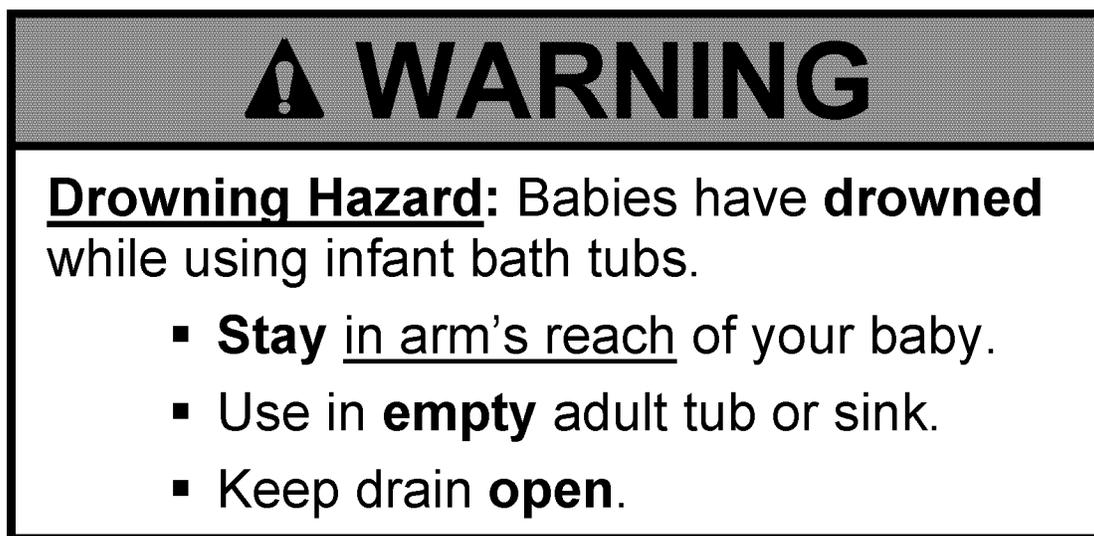


Fig. 3 Example labels that meet the requirements of Section 8 when the drowning hazard warning and fall hazard warning are presented in separate labels.

(9) Add the following Figure 4 to ASTM F2670-13:

 <b>WARNING</b>
<p><b><u>Drowning Hazard:</u></b> Babies have <b>drowned</b> while using infant bath tubs.</p> <p><b>To prevent drowning: Stay <u>in arm's reach</u> of your baby.</b></p> <ul style="list-style-type: none"><li>▪ <b>Never</b> rely on a toddler or preschooler to help your baby or alert you to trouble. Babies have drowned even with other children in or near bath tub.</li><li>▪ Babies can drown in as little as <b>1 inch</b> of water. Use as <u>little water as possible</u> to bathe your baby.</li><li>▪ Use in an <b>empty</b> adult tub or sink.</li><li>▪ <b>Always</b> keep drain <b>open</b>.</li></ul>
<p><b><u>Fall Hazard:</u></b> Babies have suffered <b>head injuries</b> falling from infant bath tubs.</p> <p><b>To prevent falls:</b></p> <ul style="list-style-type: none"><li>▪ Place tub <b>only</b> [insert manufacturer's intended location(s) for safe use (e.g., in adult tub, sink or on floor; in adult tub or on floor)].</li><li>▪ <b>Never</b> <u>lift or carry</u> baby in tub.</li></ul>

Fig. 4. Example label that meets the requirements of Section 9. Note: The fall hazard warning need not be presented in 0.2 in. text if it is displayed separately from the drowning hazard warning.

BILLING CODE 6355-01-P

Dated: August 6, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG-2015-0561]

RIN 1625-AA00

**Safety Zone; Mack Cycle Escape to Miami Triathlon, Biscayne Bay; Miami, FL**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the waters of Biscayne Bay, east of Margaret Pace Park, Miami, Florida during the Mack Cycle Escape to Miami Triathlon on September 20, 2015. The temporary safety zone is necessary to provide for the safety of the participants, participant vessels, spectators, and the general public during the event. Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone that encompasses the swim area unless authorized by the Captain of the Port Miami or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 31, 2015.

Requests for public meetings must be received by the Coast Guard on or before September 14, 2015.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail or Delivery:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on

submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Benjamin R. Colbert, Sector Miami Prevention Department, Coast Guard; telephone (305) 535-4317, email [Benjamin.R.Colbert@uscg.mil](mailto:Benjamin.R.Colbert@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:****Table of Acronyms**

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking

**A. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

**1. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2015-0561 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and

electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

**2. Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2015-0561) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**3. Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**4. Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**B. Regulatory History and Information**

This is the first rule-making action in regards to this year's Mack Cyle Escape to Miami Triathlon event.

**C. Basis and Purpose**

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1. The purpose of the rule is to provide for the safety of life on the navigable waters of the United States