



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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Date: September 7, 2011

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Kenneth R. Hinson, Executive Director

FROM : Cheryl A. Falvey, General Counsel
Philip L. Chao, Assistant General Counsel, RAD
Barbara E. Little, Regulatory Affairs Attorney

SUBJECT : Virginia Graeme Baker Pool and Spa Safety Act; Unblockable Drain Rule

Section 1403(7) of the Virginia Graeme Baker Pool and Spa Safety Act defines an “unblockable drain” as a “drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.” On April 27, 2010, the Commission issued a final interpretive rule in the *Federal Register* providing that certain drain covers that meet specific requirements could create unblockable drains. Staff is forwarding to you a *Federal Register* notice that would revoke the Commission’s position announced in the April 27, 2010 *Federal Register* notice.

Please indicate your vote on the following options:

- I. Approve publication of the draft *Federal Register* notice, without changes.

Signature

Date

II. Approve publication of the draft *Federal Register* notice, with changes (please specify changes):

Signature

Date

III. Do not approve publication of the draft *Federal Register* notice.

Signature

Date

IV. Take other action (please specify):

Signature

Date

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

Virginia Graeme Baker Pool and Spa Safety Act; Interpretation of Unblockable Drain

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of revocation.

SUMMARY: The Consumer Product Safety Commission (“Commission,” “CPSC” or “we”) is revoking its interpretation of the term “unblockable drain” as used in the Virginia Graeme Baker Pool and Spa Safety Act (“VGB Act”).

EFFECTIVE DATE: Compliance date: This revocation does not alter the current requirement that public pools and spas be in compliance with the VGB Act, which became effective December 19, 2008. Any public pools or spas that require *modifications* as a result of this revocation shall comply by May 28, 2012.

FOR FURTHER INFORMATION CONTACT: Troy Whitfield, Lead Compliance Officer, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7548 or email twhitfield@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Virginia Graeme Baker Pool and Spa Safety Act, P.L. 110-140, Title XIV (“the VGB Act”) was signed into law on December 19, 2007, and became effective on December 19, 2008. The VGB Act’s purpose is to prevent suction entrapment by swimming pool and spa drains and child drowning in swimming pools and spas.

Section 1404(c)(1)(A)(i) of the VGB Act requires that each public pool and spa in the United States be equipped with drain covers that comply with the ASME/ANSI A112.19.8 performance standard or any successor standard. (In the *Federal Register* of August 5, 2011 (76 FR 47436), we published a final rule to incorporate into our regulations ANSI/APSP-16 2011 as the successor standard to ANSI/ASME A112.19.8. The effective date of this incorporation is September 6, 2011, so that drain covers manufactured, distributed, or entered into commerce in the United States must conform to ANSI/APSP-16 2011 as of that date.) Section 1404(c)(1)(A)(ii) of the VGB Act requires that each public pool and spa in the United States with a single main drain, other than an unblockable drain, be equipped, at a minimum, with one or more of the following:

- safety vacuum release system;
- suction-limiting vent system;
- gravity drainage system;
- automatic pump shut-off system;
- drain disablement; and/or
- any other system determined by the Commission to be equally effective as, or better than, the enumerated systems at preventing or eliminating the risk of injury or death associated with pool drainage systems.

For purposes of this preamble, we will refer to these systems collectively as “secondary anti-entrapment systems.” Thus, under the VGB Act, each public pool or spa with a single main drain, other than an unblockable drain, must be equipped with a secondary anti-entrapment system. Section 1403(7) of the VGB Act defines an “unblockable drain” as “a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.”

On April 27, 2010, the Commission issued a final interpretive rule in the *Federal Register* (75 FR 21985) interpreting “unblockable drain” as follows:

A suction outlet defined as all components, including the sump and/or body, cover/grate, and hardware such that its perforated (open) area cannot be shadowed by the area of the 18" x 23" Body Blocking Element of ASME/ANSI A112.19.8-2007 and that the rated flow through the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. All suction outlet covers, manufactured or field-fabricated, shall be certified as meeting the applicable requirements of the ASME/ANSI A112.19.8 standard.

This language is codified in 16 CFR § 1450.2(b). Under this interpretation, when a drain cover meeting certain specifications was attached to a drain, the covered drain constituted an “unblockable drain.” As an unblockable drain, this drain did not require a secondary anti-entrapment system. For the reasons set forth in Part B, the Commission is revoking this interpretation. As a result, a blockable drain cannot be made “unblockable” by use of a cover alone.

B. Revised Interpretation

Since the issuance of this interpretive rule, we received 156 letters asking us to reexamine our interpretation of the definition of “unblockable drain.” In general, these letters assert that drain covers, regardless of their size, can come off or break over the course of the life of a pool or spa, even when the owners and operators have the best intentions. They claim that for this reason, backup systems are necessary, and a swimming pool or spa with a single main drain cannot be made “unblockable” by the simple installation of a drain cover meeting certain

requirements. They also claim that our interpretation of the definition of “unblockable drain” undermines the law’s intent of incorporating several layers of protection into pools and spas. These letters have been made part of the docket.

In light of these letters, we have reconsidered our interpretation of an “unblockable drain,” at 16 CFR 1450.2(b) and believe it was in error. Regardless of the size of a drain and its cover, the drain cover can come off, presenting a risk of entrapment. We believe that not requiring an additional layer of protection in the form of a secondary anti-entrapment system thwarts the layers of protection intended by the VGB Act. Accordingly, the Commission is revoking the interpretation of unblockable drain at 16 CFR 1450.2(b).

C. Effect of Revocation of 16 CFR 1450.2(b)

The revocation of this rule means that a drain cover can no longer be used to convert a blockable drain into an unblockable drain. Pursuant to the VGB Act, drains that are blockable require a secondary anti-entrapment system. Section 1404(c)(1)(A)(ii) of the VGB Act. Accordingly, if you have used an unblockable drain cover to create an unblockable drain, the revocation of the interpretative rule means that you must equip your public pool or public spa with a secondary anti-entrapment system as required by the VGB Act. A drain is “unblockable” if the suction outlet, including the sump, has a perforated (open) area that cannot be shadowed by the area of the 18” x 23” Body Blocking Element of ANSI/APSP-16 2011 and the rated flow through any portion of the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. The Staff Technical Guidance of June 2008 will be updated to clarify that placing a removable, unblockable drain cover over a blockable drain does not constitute an unblockable drain. This revocation corrects the previous interpretation, which the Commission now believes was in error

and thwarts the intent of the law to require layers of protection in cases where a drain cover, regardless of its size, can be removed, broken, or otherwise expose a blockable drain and present an entrapment hazard. The Commission has set a compliance date of May 28, 2012, to allow time for firms that require modifications as a result of this revocation to bring their pools into compliance with the statute as written.

List of Subjects in 16 CFR Part 1450

Consumer protection, Infants and children, Law enforcement.

For the reasons stated above, the Commission amends part 1450 of title 16 of the Code of Federal Regulations by removing section 2(b) as set forth below:

PART 1450 – Virginia Graeme Baker Pool and Spa Safety Act Regulations

1. The authority citation for part 1450 continues to read as follows:

Authority: 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

§ 1450.2 Definitions.

(b) [Removed].

Dated:

Todd A. Stevenson, Secretary
Consumer Product Safety Commission