



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814

BALLOT VOTE SHEET

Date: **FEB 22 2010**

TO : The Commission
 Todd Stevenson, Secretary

THROUGH: Maruta Budetti, Executive Director *MB*

FROM : Cheryl Falvey, General Counsel *CF*
 Philip L. Chao, Assistant General Counsel, RAD *PLC*
 Barbara E. Little, Attorney *BEL*

SUBJECT : Virginia Graeme Baker Pool and Spa Safety Act Briefing Package

Ballot Vote Due February 24, 2010

Attached are documents relating to the administration and enforcement of the Virginia Graeme Baker Pool and Spa Safety Act, P.L. 110-140, Title XIV (December 19, 2007).

Please indicate your vote on the following options.

A. Unblockable Drain Cover

I. Instruct staff to draft a proposed interpretive rule on unblockable drain covers.

 Signature

 Date

II. Do not instruct staff to draft an interpretive rule interpreting unblockable drain covers.

 Signature

 Date

III. Take other action (please specify):

~~CPSA 60(M)1 CLEARED FOR PUBLIC~~

~~X NO MFRS/PRVTLBLS OR PRODUCTS IDENTIFIED~~

~~EXCEPTED BY: PETITION RULEMAKING ADMIN. PRCDG~~

~~X WITH PORTIONS REMOVED: TAB F~~

Note: This document has not been reviewed or accepted by the Commission.
 Initials RH Date 2/4/2010

Signature

Date

B. "Public Accommodations Facility"

I. Approve the publication of a proposed interpretive rule in the *Federal Register* interpreting "public accommodations facility," as drafted.

Signature

Date

II. Approve the publication of a proposed interpretive rule in the *Federal Register* interpreting "public accommodations facility" with changes (please specify changes):

Signature

Date

III. Do not approve the publication of a proposed interpretive rule in the *Federal Register* interpreting "public accommodations facility."

Signature

Date

IV. Take other action (please specify):

Signature

Date

C. Technical Guidance; Section 1406 of the Virginia Graeme Baker Pool and Spa Safety Act: Minimum State Law Requirements for Grant Eligibility; February 2010 (“Technical Guidance”)

I. Approve the issuance of the Technical Guidance as drafted.

Signature

Date

II. Approve the issuance of the Technical Guidance with changes (please specify changes):

Signature

Date

III. Do not approve the issuance of the Technical Guidance.

Signature

Date

IV. Take other action (please specify):

Signature

Date

D. Model Uniform State Pool and Spa Safety Bill ("Model Legislation")

I. Approve the issuance of the Model Legislation as drafted.

Signature

Date

II. Approve the issuance of the Model Legislation with changes (please specify changes):

Signature

Date

III. Do not approve the issuance of the Model Legislation.

Signature

Date

IV. Take other action (please specify):

Signature

Date

E. Funding Opportunity Announcement

- I. Approve the issuance of the Funding Opportunity Announcement as drafted.

Signature

Date

- II. Approve the issuance of the Funding Opportunity Announcement with changes (please specify changes):

Signature

Date

- III. Do not approve the issuance of the Funding Opportunity Announcement.

Signature

Date

- IV. Take other action (please specify):

Signature

Date

Briefing Package

The Virginia Graeme Baker Pool and Spa Safety Act:
Unblockable Drains
Public Accommodations
Implementation of the Section 1405 State Grant Program

February 2010



For information, contact:
Elizabeth Leland
Directorate for Economic Analysis
301-504-7706

Barbara E. Little
Office of the General Counsel
301-504-7879

Troy Whitfield
Office of Compliance
301-504-7548

CPSA 6(b)(1) CLEARED for PUBLIC

X NO MFRS/PRVT LBLRS OR
PRODUCTS IDENTIFIED

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RULEMAKING ADMIN. PRCDG

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Note: This document has not been
reviewed or accepted by the Commission.
Initials RH Date 2/4/2010

Executive Summary

The Virginia Graeme Baker Pool and Spa Safety Act, P.L. 110-140, Title XIV (“the Act”) was passed by Congress on December 19, 2007, with an effective date of one year later. The purpose of the Act is to prevent drain entrapment and child drowning in swimming pools and spas.

Section 1404 of the Act establishes a federal swimming pool and spa drain cover standard that requires public pools to be equipped with compliant anti-entrapment drain covers and, in certain instances, with additional devices or suction entrapment prevention systems. Section 1405 establishes, through appropriations to the U.S. Consumer Product Safety Commission (CPSC), a state swimming pool safety grant program. Section 1406 of the Act provides minimum requirements that states must meet to be eligible to apply for a grant through the grant program.

In implementing the Act, CPSC has received specific questions from the public regarding various provisions of the Act. Two of these provisions are: unblockable drains and a definition for the term “public accommodations facility.” Staff has provided technical and legal memoranda, as appropriate, regarding these issues, for Commission review and decision. Both decisions have implications for the Commission’s enforcement efforts related to the technical requirements of the Act.

This briefing package also provides information about the state grant program established by the Act, including staff documents that have been developed to assist states in understanding and meeting the minimum eligibility requirements for applying for a grant. These staff documents require Commission review and decision in order that the grant program planning, announcement, and implementation may proceed.

Table of Contents

	<i>Page</i>
Executive Summary	2
Briefing Memorandum	4
A. Introduction	4
B. Specific Issues for Discussion	5
1. Unblockable Drains	5
2. Definition of “Public Accommodations Facility”	6
3. State Grant Program	6
a. Objectives of the Program and Minimum Eligibility Requirements	6
b. Administration of the State Grant Program	7
C. Conclusion	8
D. Options Available to the Commission	8
E. Staff Recommendation	9
Tabs	
A. “Response to Public Comment on Unblockable Drains,” Memorandum from Troy Whitfield, Mechanical Team Lead, Regulatory Enforcement, Office of Compliance, February 3, 2010	10
B. “Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation”; Draft Interpretive Rule	14
C. “Technical Guidance, Section 1406 of the Virginia Graeme Baker Pool and Spa Safety Act: Minimum State Requirements for Grant Eligibility”	21
D. “Model Uniform State Pool and Spa Safety Bill”	31
E. “Response to Comments on <i>Virginia Graeme Baker Pool and Spa Safety Act – September 2008 CPSC Staff Draft Technical Guidance on Section 1406: Minimum State Law Requirements</i> ”	43
F. Funding Opportunity Announcement for the Virginia Graeme Baker Pool and Spa Safety Act State Grant Program (Restricted; Provided To the Commission Under Separate Cover)	48



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Memorandum

February 3, 2010

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*
Maruta Z. Budetti, Executive Director *MZB*
John G. Mullan, Assistant Executive Director, Office of Compliance *JGM*
Robert J. Howell, Assistant Executive Director, Office of Hazard Identification
and Reduction *RJH*

FROM : Elizabeth W. Leland, Project Manager for the Virginia Graeme Baker Pool and
Spa Safety Act State Grant Program, Directorate for Economic Analysis *EWL*
Barbara Little, Attorney, OGC *BL/CAF*
Troy Whitfield, Lead Compliance Officer, Office of Compliance *TW*

SUBJECT : The Virginia Graeme Baker Pool and Spa Safety Act: Unblockable Drains,
Public Accommodations, and Implementation of the State Grant Program

A. Introduction

The Virginia Graeme Baker Pool and Spa Safety Act, P.L. 110-140, Title XIV (“the Act”) was passed by Congress on December 19, 2007, with an effective date one year later.¹ The purpose of the Act is to prevent drain entrapment and child drowning in swimming pools and spas.

Section 1404 of the Act establishes a federal swimming pool and spa drain cover standard that requires public pools to be equipped with compliant anti-entrapment drain covers and, in certain instances, with additional devices or suction entrapment prevention systems. Section 1405 establishes, through appropriations to the U.S. Consumer Product Safety Commission (CPSC), a state swimming pool safety grant program. Section 1406 of the Act provides minimum requirements that states must meet to be eligible to apply for a grant through the grant program.

¹ A copy of the Act can be accessed at www.poolsafety.gov/pssa.pdf.

In implementing the Act, CPSC has received specific questions from the public regarding various provisions of the Act. Some questions require a technical response, while others require legal interpretation and policy decision making.² This briefing package presents information about two issues that require Commission review and decision, namely, unblockable drains and a definition for the term “public accommodations facility”.

This briefing package also provides information about the state grant program established by the Act, including staff documents that have been developed to assist states in understanding and meeting the minimum eligibility requirements for applying for a grant. These staff documents require Commission review and decision.

B. Specific Issues for Discussion

1. Unblockable Drains

An unblockable drain, by definition in the Act, is “a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.” The Act requires that every public pool and spa be equipped with drain covers that comply with the ASME/ANSI A112.19.8 performance standard. The Act also requires that each public pool and spa with a single main drain other than an unblockable drain be equipped, at a minimum, with one or more secondary anti-entrapment devices or systems.³ Thus, under the Act, a pool with a single main drain that is not blockable needs only an ASME/ANSI A112.19.8 compliant drain cover to meet the requirements of the Act. A pool with a single main drain that is blockable needs a compliant drain cover and a secondary anti-entrapment system to comply with the Act.

Manufacturers have manufactured a drain cover intended to render what otherwise would be a blockable drain an unblockable drain. If the product were deemed to create an unblockable drain, it would negate the need for a secondary anti-entrapment system. The question has been asked of the Commission staff as to whether a drain cover meeting certain requirements can in fact render a blockable drain unblockable.

In July 2009, CPSC staff published draft technical guidance on what constitutes an “unblockable drain” and received comments from the public.^{4, 5} In addition, the Commission conducted a public hearing on November 4, 2009, to receive views from interested parties about the draft guidance.⁶

The CPSC staff has revised its guidance in light of the comments received at the public hearing. A technical memorandum that addresses the comments and includes staff’s proposed guidance is attached at Tab A. A legal memorandum will be forwarded to the Commission under separate cover.

² A “FAQ” section is available at www.poolsafety.gov/pssafaq.pdf.

³ This requirement is important as well to the eligibility requirements of the state grant program.

⁴ “Virginia Graeme Baker Pool and Spa Safety Act,” July 2009 CPSC Staff Draft Technical Guidance on Unblockable Drains,” www.poolsafety.gov/unblockable.pdf.

⁵ Comments can be viewed at www.cpsc.gov/library/foia/foia09/pubcom/drains.pdf.

⁶ A link to the Webcast is available at www.poolsafety.gov/vgb.html. Scroll to the “Public Hearings” section towards the bottom of the page and click on the “Unblockable Drains” link.

2. *Definition of “Public Accommodations Facility”*

As noted earlier, the Act requires that each public pool and spa with a single main drain other than an unblockable drain be equipped with certain secondary anti-entrapment systems.⁷ The Act defines “public pool and spa” to include a swimming pool or spa that is “open exclusively to patrons of a hotel or other public accommodations facility;”⁸ however, the Act does not define the term “public accommodations facility”.

The Commission has received numerous inquiries regarding what constitutes a “public accommodations facility” under the VGB Act. The Office of General Counsel has prepared a legal analysis of this issue and drafted a proposed interpretive rule that would define “public accommodations facility” as “an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.” The draft interpretive rule is provided in Tab B. A legal discussion of the rule will be provided under separate cover to the Commission.

3. *State Grant Program*

The state grant program established by the Act has two facets that are important to CPSC staff: the first is the objectives and requirements of the program and the second is the administration of the program. Both facets are discussed in this section.

a. *Objectives of the Program and Minimum Eligibility Requirements of the States*

The state grant program is designed to provide assistance to eligible states to:

- hire and train enforcement personnel for implementation and enforcement of standards under the state swimming pool and spa safety law;
- educate pool construction, installation, and service companies about the standard;
- educate pool owners and operators and other members of the public about the standards under the swimming pool and spa safety law and about the prevention of drowning and entrapment of children using swimming pools and spas, and
- defray the administrative costs associated with such training and education programs.

At least 50 percent of the funds made available to a state are to be used for the hiring and training of enforcement personnel. There are no restrictions attached to the use of the remaining funds on the other objectives.⁹

As noted earlier, section 1406 of the Act sets forth the minimum state law requirements that a state must meet to be eligible to apply for a grant under the Act’s grant program. The state must demonstrate to the satisfaction of the Commission that it has an existing statute that applies to *all* swimming pools and spas in the state (with the exception of barrier requirements, which apply only to *outdoor residential* pools and spas), and requires:

⁷ Section 1404(c) of the Act.

⁸ Section 1404(c)(2)(B)(iii) of the Act.

⁹ Section 1405(d) of the Act.

- the enclosure of all outdoor residential pools and spas by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access to pools and spas,
- that all pools and spas be equipped with devices and systems designed to prevent entrapment by pool or spa drains,
- that pools and spas built more than one year after the date of enactment of the state law shall have more than one drain, *or* one or more unblockable drains, *or* no main drain,
- that every swimming pool and spa that has a main drain other than an unblockable drain shall be equipped with a drain cover that meets the consumer product safety standard established by section 1404 of the Act, and
- that periodic notification be provided to owners of pools and spas about compliance with the entrapment protection standards of the ANSI/ASME A112.19.8 performance standard for drain covers.¹⁰

The Act also specifies that the Commission shall ensure that any minimum eligibility requirements are consistent with the Commission's publications: "Safety Barrier Guidelines for Home Pools" (CPSC Publication No. 362) and "Guidelines for Entrapment Hazards: Making Pools and Spas Safer" (CPSC, March 2005), and any other pool safety guidelines established by the Commission.

The CPSC staff has received technical questions about the minimum eligibility requirements for applying for a grant program. To assist states in understanding and meeting these minimum requirements and in developing a state statute that would meet the minimum eligibility requirements, CPSC staff has prepared two documents. These documents are:

- "Technical Guidance; Section 1406 of the Virginia Graeme Baker Pool and Spa Safety Act: Minimum State Law Requirements for Grant Eligibility; February 2010", and
- "Model Uniform Model State Pool and Spa Safety Bill"

These documents are provided in Tabs C and D, respectively. The technical guidance document was released for public comment in September 2008.¹¹ Twenty-three comments were received.¹² The CPSC staff reviewed the comments and revised the guidance as discussed in Tab E.

b. Administration of the State Grant Program

Section 1405(a) of the Act specifies that the CPSC shall establish a state pool and spa safety grant program, and section 1405(e) of the Act specifies the authorization of appropriations for establishing the grant program. Subject to funds availability, an amount of \$2,000,000 is authorized to be appropriated for each of the Fiscal Years (FYs) 2009 and 2010. Funds for each of these FYs *have* been appropriated, with spending obligation through September 30, 2010, for

¹⁰ Section 1406(a)(1)(A) of the Act.

¹¹ See www.poolsafety.gov/pssa1406pubcom.html.

¹² The comments can be reviewed at www.cpsc.gov/library/foia/foia09/pubcom/pssa10202008.pdf.

the FY 2009 appropriated funds and through September 30, 2011, for the FY 2010 appropriated funds.¹³

Because CPSC does not have in-agency capability to administer grant programs, the Commission has entered into an interagency agreement (IAA) with the Centers for Disease Control and Prevention (CDC) /National Center for Injury Control and Prevention (NCIPC) to administer the program, including the acceptance of submitted applications and the awarding of grants. The IAA specifies the tasks that each Agency will complete to ensure implementation of the state grant program.

One of these tasks is to prepare, with CDC as the lead agency and CPSC providing input, a Funding Opportunity Announcement (FOA) which will be released to the public; the FOA specifies the requirements for applicant eligibility and application submission and the criteria by which applications will be evaluated. The Commission will receive under separate cover the draft FOA which is undergoing review and approval by both agencies. The current schedule calls for the FOA to be released in March, with grant awards being made in August 2010.

The Act specifies that the Commission submit to Congress a report evaluating the implementation of the grant program. The report must be submitted not later than one year after the day of each fiscal year for which grants are made.

C. Conclusion

Implementing the Virginia Graeme Baker Pool and Spa Safety Act has raised issue that require Commission review and decision. In addition, staff has prepared documents to assist states in understanding and meeting eligibility requirements for the grant program. These documents also require Commission review and decision.

D. Options Available to the Commission

1. Approve All of the Staff's Recommendations

If the Commission agrees with:

- the staff's proposed definition of "unblockable drain",
- the staff's draft proposed interpretive rule for "public accomodation",
- the staff's draft technical guidance for the minimum eligibility requirements of the Act's state grant program,
- the staff's draft model legislation, and
- the Funding Opportunity Announcement prepared in collaboration with CDC,

then, it could:

- instruct the staff to draft a proposed interpretive rule for "unblockable drain",
- issue the staff's interpretive rule for "public accommodation",
- approve the staff's draft technical guidance document for Section 1406
- approve the staff's draft model legislation, and

¹³ Section 1405 (e) of the Act specifies that any funds that remain unexpended and unobligated at the end of the relevant FYs "shall be retained by the Commission and credited to the appropriations account that funds enforcement of the Consumer Product Safety Act."

- approve the Funding Opportunity Announcement.

2. *Approve Some, but Not All, of the Staff's Recommendations*

If the Commission disagrees with some, but not all, of the staff's documents presented in this briefing package, it could:

- disapprove each document with which it does not agree,
- approve each document with which it does agree, or
- make specific changes to any or all of the documents and approve those particular documents with changes.

3. *Defer Making a Decision on the Staff's Recommendations*

If the Commission believes there is insufficient information to make a decision about the documents presented in this briefing package, it could defer making a decision and direct the staff to gather additional information.

4. *Do Not Approve Any of the Staff's Recommendations*

If the Commission does not agree with any of the documents presented in the staff's briefing package, it could disapprove all of those documents.

5. *Direct the Staff to Take Other Action*

If the Commission does not want to proceed with approving one or more of the documents presented in the staff's briefing package, it could direct the staff to take other action regarding one or more of the documents.

D. Staff Recommendation

The CPSC staff recommends that the Commission:

- direct the staff to prepare a proposed interpretive rule regarding unblockable drain covers,
- approve and issue the proposed interpretive rule for "public accommodation facility" as drafted,
- approve the technical guidance document for Section 1406 of the Act as drafted,
- approve the model legislation document as drafted, and
- approve the Funding Opportunity Announcement as drafted.

A



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

DATE: February 3, 2010

TO: The Commission
Todd Stevenson, Secretary

THROUGH: Gib Mullan, Assistant Executive Director *JEM*
Office of Compliance and Field Operations
Mary Toro, Director *mtoro*
Regulatory Enforcement

FROM: Troy Whitfield, Mechanical Team Lead *TW*
Regulatory Enforcement

SUBJECT: Response to Public Comment on Unblockable Drains

The Virginia Graeme Baker Pool and Spa Safety Act was enacted by Congress and signed by President Bush on December 19, 2007. Intended to prevent the hidden hazard of drain entrapment and evisceration in pools and spas, the law became effective on December 19, 2008.

The Act defines an unblockable drain as “a drain of any size or shape that a human body cannot sufficiently block to create a suction entrapment hazard.” A draft technical guidance document was developed and announced by staff in August 2009, on what constitutes an “unblockable drain.” In that document, staff provided the following guidance based on requirements found in the ASME/ANSI A1112.19.8 – 2007 standard:

Based on the dimensions of the blocking element found in the standard, an outlet cover with measurements in excess of 18” x 23” (or a diagonal measurement greater than 29”) would provide a means to render the outlet ‘unblockable’ and subsequently, the sumps below (drains) would be inaccessible and unblockable providing the outlet cover remains in place. The implication is that if the outlet cover cannot be ‘shadowed’ by the solid blocking element the remaining open area of the cover will allow sufficient water flow to prevent the creation of entrapping forces.

In reaching the definition for an unblockable drain, the characterization of a suction fitting is taken from the standard to include the sump and cover as a unit, along with all of the following:



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

1. The blocking element dimensions and the diagonal measure to define a minimum size requirement;
2. The need for the remaining open flow area of the cover, once shadowed, to provide sufficient flow to prevent entrapment; and
3. The general requirements (of the standard) for fasteners and fastening integrity (i.e., the cover must stay in place).

On Wednesday, November 4, 2009, the Commission conducted a public hearing on the draft technical guidance. This memo addresses the comments raised in the November 4, 2009 hearing and proposes a revised definition of an unblockable drain for the Commission's consideration.

Diagonal Measurement: Several comments were provided stating that staff did not need to provide a 29-inch diagonal requirement as it was an over-simplification and not found in the ASME/ANSI A112.19.8 standard.

Response: Staff agreed with these comments and removed the 29-inch diagonal reference from the proposed definition.

18" x 23" Dimension: Several commenters questioned the use of the 18" x 23" measurement. Some believed it was too small, while others claimed it was unnecessarily restrictive. Some commenters also indicated that the definition should make clear that the 18" x 23" measurement is intended to represent a blocked portion of the cover for consideration of the remaining open flow area, not simply the dimensions of the cover.

Response: The 18" x 23" dimension represents the dimensions of a 99th percentile male and mirrors the measurement used in the ASME/ANSI A112.19.8 standard referenced in the VGB Act. Staff continues to believe this dimension is appropriate. Staff agrees with commenters that the 18" x 23" is intended to reference the remaining open flow area, once shadowed, and has revised its proposed definition to make this clear.

Blocking Element: One commenter stated that the blocking element was not representative of 'human skin' and therefore did not fully represent a body's ability to adhere to or seal around an outlet cover.

Response: Staff concedes that the blocking element does not replicate the properties of human skin. However, staff is relying on the industry standard that is referenced in the VGB Act to further its definition of unblockable drain, and is thus using the same blocking element dimensions that are referenced in ASME/ANSI A112.19.8 in its proposed definition. Whether a flexible membrane or a more rigid material is used, it is the remaining open area of the cover once shadowed by the blocking element that is the important factor for consideration.



UNITED STATES
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WASHINGTON, DC 20207

Memorandum

Layers of Protection: There were several comments regarding the intent of the Act to use a ‘layers of protection’ approach to address entrapment.

Response: As a drowning prevention law, the layers of protection are clearly applicable to incidents involving children getting unfettered access to swimming pools in residential locations. In these cases, barriers and warnings, such as, doors, door alarms, motion detectors, pool covers, fences with self-closing, self-latching gates, etc. can all be used to delay and/or prevent access to the hazard. However, for entrapment incidents the logical approach to prevention is different. Five different types of entrapment have been identified: body, limb, evisceration, hair and mechanical-related. The mechanisms of entrapment can be slightly different with each. The common element in all these entrapment scenarios is the necessity of an outlet cover as a layer of protection. All five of the entrapment issues are addressed by the appropriate flow rating and size of the cover when the cover remains in place. Currently, the ‘back-up’ systems mentioned as secondary requirements in the Act address *some* of the potential hazard patterns, but not all. The “back-up” systems primarily address suction body entrapment and may address some limb entrapments. However, these back-up systems do not address hair, mechanical and evisceration injuries associated with entrapments. Moreover, the back-up devices require the incident to occur before they respond and, depending on the type of entrapment and the circulation system present, the response may not prevent the entrapment.

Unblockable drain definition: The definition provided by the Senior Director of APSP (Association of Pool and Spa Professionals) during the hearing is as follows:

“Unblockable Drain: “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 18x23 Body Blocking Element of ANSI/ASME A112.19.8-2008a and that the rated flow through the remaining open area cannot create a suction force in excess of the values in Table 1 of that Standard. For manufactured products, this is calculated or verified by laboratory testing in accordance with the Standard. For field-built outlets, this is calculated in accordance with Section 2.3.1.2 of the Standard.”

Response: Staff agrees with the language provided by the industry representative but proposes simplified wording to clarify that all covers, manufactured or field-fabricated, must meet the requirements of the ASME/ANSI A112.19.8 standard, per 1404(c)(1)(A)(i).

Staff’s proposed definition reads as follows:

Unblockable Drain: 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



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

shadowed by the area of the 18x23 Body Blocking Element of ASME/ANSI A112.19.8-2007¹ and that the rated flow through the remaining open area 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.

In conclusion, suction outlet covers meeting the above definition create an unblockable drain when secured in place over the sump/drain according to the manufacturer's instructions and, in the case of a single outlet application as described in 1404(c)(1)(A)(ii), would not need a secondary entrapment prevention device installed.

¹ The ASME/ANSI A112.19.8 – 2007 standard includes an addendum which ASME codes and standards identify as A112.19.8a-2008. The addendum is part of the 2007 version of the standard and only includes pages with changed/revised items.

B

CONSUMER PRODUCT SAFETY COMMISSION

**Virginia Graeme Baker Pool and Spa Safety Act; Public
Accommodation**

AGENCY: Consumer Product Safety Commission.

ACTION: Interpretive rule.

SUMMARY: The Consumer Product Safety Commission ("Commission" or "CPSC") is issuing this proposed rule to interpret the term "public accommodation" as used in the Virginia Graeme Baker Pool and Spa Safety Act.

DATES: Written comments in response to this document must be received no later than [insert date that is 30 days after publication].

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2010-____, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper (preferably in five copies), disk, or CD-ROM submissions), to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 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 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 electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background comments or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Barbara E. Little, Regulatory Affairs Attorney, Office of General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; blittle@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001, ("VGB Act" or "Act") requires that drains in public

pools and spas be equipped with ASME/ANSI A112.19.8 compliant drain covers, and that each public pool and spa with a single main drain other than an unblockable drain be equipped with certain secondary anti-entrapment systems. Section 1404(c) of the Act. The Act defines "public pool and spa" to include a swimming pool or spa that is "open exclusively to patrons of a hotel or other public accommodations facility." Section 1404(c)(2)(B)(iii) of the Act. The term "public accommodations facility" is not defined in the Act.

The Commission has received numerous inquiries regarding what constitutes a public accommodations facility under the VGB Act. This proposed interpretive rule would define "public accommodation" as the term in used in the Virginia Graeme Baker Pool and Spa Safety Act.

B. Legal Analysis

In adopting a reasonable interpretation of "public accommodations facility," the Commission examined how other federal statutes define this same term. The Americans with Disabilities Act (ADA) defines "public accommodation" in relevant part as "an inn, hotel, motel, or other place of lodging, *except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as*

the residence of such proprietor" (emphasis added). 42 U.S.C. §12181(7). Under this definition, pools or spas found at bed and breakfasts with five or fewer rooms for rent or hire and that are actually occupied by the proprietor would not be considered "public pools or spas" under the VGB Act, nor would pools or spas that are located on single family home rental properties.

The Civil Rights Act (CRA) employs the same definition of "public accommodation" in relevant part as does the ADA, i.e., "any inn, hotel, motel, or other establishment which provides lodging to transient guests, *other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence*" (emphasis added). 42 U.S.C. §2000(b). This definition, then, is used in two prominent federal statutes addressing civil rights. Operators of inns, hotels, and lodging establishments likely are aware of these statutes addressing civil rights and the definitions they employ.

The phrase "public accommodation" also appears in a federal statute administered by the CPSC. Section 104(c) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) provides that it is a violation of the Consumer Product Safety Act for

"any person to which this subsection applies to manufacture . . . or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under subsection (b) [of section 104]." Section 104(c)(2)(D) of the CPSIA provides, in relevant part, that section 104(c) of the CPSIA applies to any person who "**owns or operates a public accommodation** affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (FFPCA) (15 U.S.C. 2203)" (emphasis added). Section 4 of the FFPCA defines a place of public accommodation as "any inn, hotel, or other establishment not owned by the Federal Government that provides lodging to transient guests, **except that such term does not include** an establishment treated as an apartment building for purposes of any State or local law or regulation or **an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment**" (emphases added). 15 U.S.C. § 2203(7). The FFPCA contains the same exclusion from public accommodation as do the ADA and CRA; in other words, all three statutes exclude an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment. The FFPCA, like the VGB Act,

is a statute intended to promote public safety. Further, the FFPCA's definition is used in the CPSIA, a statute which is administered by the CPSC. Parties familiar with the CPSC may already be familiar with the definition of "public accommodation" as used in the CPSIA. Thus, the Commission believes it is appropriate to enforce the same interpretation of the phrase "public accommodation" in the VGB Act as used in the CPSIA, especially given the similar public safety goals of the statutes.

List of Subjects in 16 CFR Part 1450

Consumer protection, Infants and children, Law enforcement.

C. Conclusion

For the reasons stated above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

1. Add part 1450 to read as follows:

PART 1450 - Virginia Graeme Baker Pool and Spa Safety Act

Regulations

Sec.

1450.1 Scope.

1450.2 Definitions.

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

§ 1450.1 Scope.

This part pertains to the Virginia Graeme Baker Pool and Spa Safety Act, ("Act"), 15 U.S.C. 8001 et seq., which is designed to prevent child drowning, drain entrapments and eviscerations in pools and spas.

§ 1450.2 Definitions.

(a) *Public accommodations facility* means an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

(b) [Reserved.]

Dated:

Todd A. Stevenson, Secretary
Consumer Product Safety Commission

C

U.S Consumer Product Safety Commission

Technical Guidance

Section 1406

of the

Virginia Graeme Baker Pool and Spa Safety Act: Minimum State Requirements for Grant Eligibility¹

February 2010

Section 1405 of the Virginia Graeme Baker Pool and Spa Safety Act (“Act”) specifies that the Commission shall establish a pool and spa safety grant program for Fiscal Year 2009 and Fiscal Year 2010, subject to the availability of appropriated funds². The purpose of the grant program is to encourage States to enact statutes that address the prevention of child drowning by requiring barriers to pool entry and anti-entrapment devices and systems.

Section 1406 of the Act specifies the *minimum* requirements states must meet to be eligible to apply for a grant under the Act’s grant program. To provide assistance to States that may be considering enacting or amending existing statutes related to pool and spa safety, the U.S. Consumer Product Safety Commission (CPSC) staff prepared a September 2008 draft guidance document that described technical issues for consideration in connection with the requirements of Section 1406 of the Act and asked for public comment.³ This final guidance document incorporates changes based on public comments to the September 2008 draft guidance.

To be eligible for a grant, a State must have certain barrier protection and entrapment prevention requirements in place. These requirements, with accompanying technical guidance, are discussed below.⁴ These requirements are *minimum* requirements, and CPSC staff notes that

¹ A copy of the Virginia Graeme Baker Pool and Spa Safety Act can be accessed at www.poolsafety.gov/pssa.pdf.

² Funds have been appropriated for Fiscal Year (FY) 2009, and they can be obligated through September 30, 2010. Funds have been appropriated for Fiscal Year 2010, with obligation authority through September 30, 2010.

³ The 2008 draft guidance document is available at www.poolsafety.gov/pssa1406/pubcom.html. The public comments are available at www.cpsc.gov/library/foia/foia09/pubcom/pssa10202008.pdf.

⁴ As specified in the Act, the Commission shall use these requirements solely for the purpose of determining the eligibility of a State for a grant, and not for other enforcement purposes.

States are free and *encouraged* to go above and beyond these minimum requirements, so long as the additional requirements do not conflict with the Act.

1. Barriers⁵

The Act defines “swimming pool” or “spa” as “any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures, and includes portable hot tubs, spas, portable spas, and non-portable wading pools”. P.L. No.110-140, §1403. *The CPSC staff interprets this definition to also include on-ground pools and spas, non-portable spas, non-portable hot tubs, and larger inflatable pools that can hold water over 24 inches deep, regardless of whether the pool has a circulation system.*

To be eligible for a grant, the State must have in place a statute that requires the enclosure of all outdoor residential pools and spas by barrier to entry. Pub. L. No. 110-140, §1406(a)(1)(A)(i). *The CPSC staff interprets this to include existing pools and spas.* Further, according to the Act, the barriers to entry should effectively provide protection against potential drowning or near-drowning of young children by preventing them from gaining unsupervised and unfettered access to outdoor residential swimming pools and spas.

The CPSC staff’s judgment and interpretation as to what an effective *minimum* barrier should entail, for the purposes of applying for a grant under the Act, follows. As already noted, these requirements are *minimum* requirements, and CPSC staff notes that States are free and encouraged to go above and beyond these minimum requirements, so long as the additional requirements do not conflict with the Act.

Residential outdoor in-ground, on-ground, and above-ground swimming pools and spas, larger inflatable pools that can hold water over 24 inches deep, non-portable spas and hot tubs, portable spas and hot tubs (except as noted in Sec. 1.4 below), and non-portable wading pools, including existing pools and spas, shall have a barrier which complies with the following requirements:

1.1 Fences and/or Walls

- 1.1.1 The top of a fence or wall used as a barrier shall be a minimum of 48 inches (1219 mm) above grade. The bottom of a fence shall be no more than 4 inches (102 mm) above grade when that grade is a hard surface such as cement/asphalt. The bottom of a fence shall be no more than 2 inches (51 mm) above grade when that grade is a soft surface such as grass or ground/natural

⁵ This section is based on *CPSC Safety Barrier Guidelines for Home Pools*, CPSC Publication No. 362, U.S. Consumer Product Safety Commission, Washington, D.C.

surface. All measurements shall be taken on the barrier side farthest from the pool.

1.1.1.1 Solid barriers such as brick or rock walls shall have no indentations or protrusions that can provide hand and/or foot holds. Normal construction tolerances and masonry joints are allowed.

1.1.2 Where a barrier (fence) is constructed of horizontal and vertical members, then:

1.1.2.1 If the distance between the tops of the horizontal members is less than 45 inches (1143 mm), the horizontal members shall be located on the swimming pool side of the fence. The spacing between the vertical members shall not exceed 1 $\frac{3}{4}$ inches (44 mm) in width.

1.1.2.2 If the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, the spacing between the vertical members of the fence shall not exceed 4 inches (102 mm) in width.

1.1.2.3 Any decorative cutout spacing within vertical members of the fence shall not exceed 1 $\frac{3}{4}$ inches (44 mm) in width.

1.1.3 The maximum mesh size for a chain link fence shall not exceed 1 $\frac{1}{4}$ inches (32 mm) square [1 $\frac{3}{4}$ inches (44 mm) diagonal.] A larger mesh size may be used if slats fastened at the top or bottom of the fence are used to reduce mesh openings to no more than 1 $\frac{3}{4}$ inches (44 mm). See Figure A below.

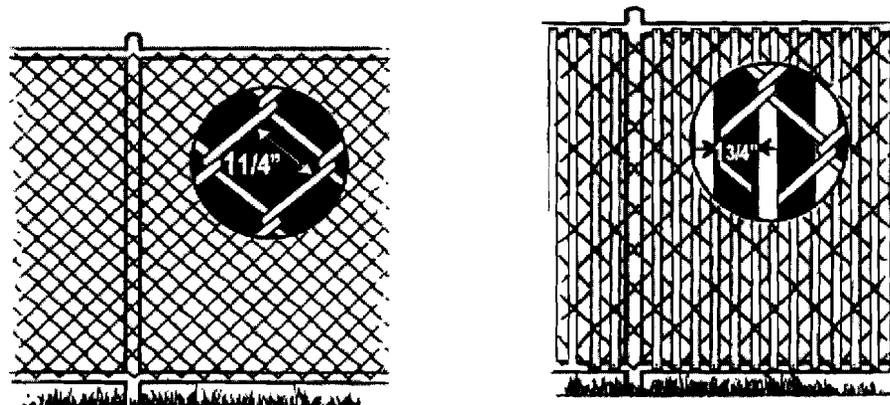


Figure A. Maximum chain link fence opening.

- 1.1.4 For a barrier (fence) made up of crossed wood, polyvinyl chloride (PVC), or metal strips (latticework), the maximum opening between the diagonal members shall not exceed 1 ¾ inches (44 mm).
- 1.1.5 Removable mesh fencing for swimming pools should meet the requirements of ASTM F2286-05: “Design and Performance Specification for Removable Mesh Fencing for Swimming Pools, Hot Tubs, and Spas.”
- 1.1.6 For above-ground or on-ground pools, the pool structure itself may serve as a ground level barrier only if it is at least 48 inches (1219 mm) high. If the top of the pool structure is less than 48 inches above grade and a barrier is mounted on top of the pool structure to make it at least 48 inches (1219 mm) high, then the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102 mm). See also Section 1.5 below.
 - 1.1.6.1 Where access to an above-ground pool is provided by a ladder or steps, then:
 - 1.1.6.1.1 The steps or ladder shall be designed to be secured, locked, or removed to prevent access, or
 - 1.1.6.1.2 A barrier such as one described in Section 1.1.1 above shall surround the steps or ladder.

1.2 Access Gates

- 1.2.1 Access gates shall meet the requirements of Section 1.1 (Fences and/or Walls) above and shall be equipped to accommodate a locking device.
- 1.2.2 Pedestrian access gates shall open outward away from the pool and shall be self-closing and self-latching. A locking device shall be included in the gate design. Where the release mechanism of the self-latching device is less than 54 inches (1372 mm) from the bottom of the gate, the release mechanism and openings must comply with the following:
 - 1.2.2.1 The release mechanism shall be on the pool side of the gate at least 3 inches (76 mm) below the top of the gate, and
 - 1.2.2.2 The gate and barrier shall have no opening greater than ½ inch (13 mm) within 18 inches (457 mm) of the release mechanism.
- 1.2.3 Access gates used with removable mesh fencing systems must meet the requirements of Section 1.2.1, i.e., manual “layback” entrances do not meet the requirement.

- 1.2.4 Gates other than those for pedestrian access shall be equipped with a self-latching device.

1.3 Dwelling Walls

- 1.3.1 For swimming pools or spas where dwelling walls serve as a part of a barrier, one of the following shall be in place:

- 1.3.1.1 A door in the wall that provides direct access to the pool shall be equipped with an audible alarm system meeting Underwriters Laboratories Inc. (UL) standard UL 2017 *General-Purpose Signaling Devices and Systems*, Section 77, Residential Water Hazard Entrance Alarm Equipment.

- 1.3.1.1.1 The alarm system shall be equipped with a manual means to temporarily deactivate the alarm for not more than 15 seconds.

- 1.3.1.1.2 The deactivation means shall be located not less than 54 inches (1372 mm) from the floor or threshold of the door.

- 1.3.1.2 A power safety cover for swimming pools or a manual **lockable** safety cover for non-portable spas and non-portable hot tubs that meets the requirements of ASTM F1346 *Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs*. The cover, whether it is a power safety cover or a manual lockable safety cover, shall be in use whenever the pool, non-portable spa, or non-portable hot tub is not in use.

- 1.4 **Residential outdoor portable spas and residential outdoor portable hot tubs** are exempt from the requirements listed in Sections 1.1 (Fences and/or Walls), 1.2 (Access Gates), and 1.3 (Dwelling Walls) above. However, if fences and/or walls meeting the requirements of Sections 1.1 – 1.3 are not used as a barrier to entry, then a **lockable** manual safety cover that complies with ASTM F1346 must be used.

- 1.5 **All barriers** should be located so as to prohibit permanent structures, equipment, or similar objects from being used to climb the barriers.

- 1.6 **Additional Layers of Protection** that provide a barrier to entry are available. These are not required for meeting the minimum eligibility requirements for purposes of the Act's Grant Program, but CPSC encourages their use. See Section 3 below.

2. Entrapment Prevention Devices

Section 1406 of the Act also sets forth that States, in order to be eligible for a grant, must have in their statutes certain minimum requirements to prevent entrapment. These requirements apply to all pools and spas, public and residential, including in-ground and above-ground pools, portable and non-portable hot tubs, portable and non-portable spas, and non-portable wading pools. Pub. L. No.110-140, §1403.

These entrapment prevention requirements are *minimum* requirements the States must include in their State statutes to be eligible for a grant under the Act, and States are free and encouraged to go above and beyond these requirements so long as the additional requirements do not conflict with the Act.

The CPSC's judgment and interpretation as to what the minimum requirements should entail, for purposes of applying for a grant, follow.

Residential and public outdoor and indoor in-ground, on-ground, and above-ground swimming pools and spas, larger inflatable pools that can hold water over 24 inches deep (regardless of whether the pool has a circulation system), portable and non-portable spas, portable and non-portable hot tubs, and non-portable wading pools, including existing pools and spas (except where noted below), shall meet the following entrapment prevention requirements:

2.1 All pools and spas shall be equipped with anti-entrapment devices or systems designed to prevent suction entrapment by pool or spa drains. Pub. L. No. 110-140, §1406(a)(1)(A)(ii). Such systems include a safety vacuum release system, a suction-limiting vent system, a gravity drainage system, an automatic pump shut-off system, or drain disablement. *[Note: this section may or may not be expanded to include an unblockable drain. A Commission decision is expected in February 2010]*

2.1.1 Portable spas certified to UL 1563 by a Nationally Recognized Testing Laboratory (NRTL) are considered to comply with the entrapment prevention provisions of the Act.

2.2 Pools and spas constructed more than one year after enactment of the State statute establishing requirements that comply with provisions of the Act shall have:

- (a) more than one drain; or
- (b) one or more unblockable drains; or
- (c) no main drain.

Pub. L. No. 110-140, §1406(a)(1)(A)(iii).

- 2.2.1** CPSC staff interprets a multiple main drain system without isolation capability with covers on each submerged suction outlet that meet ASME/ANSI A112.19.8 – 2007⁶ Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs to meet the requirements for “more than 1 drain.”

[Note: If Section 2.1 above is expanded to include “unblockable drain”, then a new section 2.2.2 will be added. It will define the requirements for an “unblockable drain”.]

- 2.3** All pools and spas with a main drain, other than an unblockable drain, shall be required to use a suction outlet cover that meets ASME/ANSI A112.19.8. Pub. L. No. 110-140, §1406(a)(1)(A)(iv).

3. Additional Layers of Protection

Although not required for purposes of meeting minimum eligibility requirements for applying for grants under the Act’s grant program, States are encouraged to consider requirements for additional layers of protection to supplement the requirements described in Section 1 (Barriers) and Section 2 (Entrapment Prevention Devices) above. The following devices have been identified by CPSC staff as additional safety requirements that States are encouraged to include in their State statutes.

3.1 Window Guards

- 3.1.1** A window in a wall that allows access to the pool or spa may be equipped with window guards that limit access or be affixed with a childproof device to limit the window opening to less than 4 inches (102 mm). The window guard shall meet ASTM F2006 *Safety Specification for Window Fall Prevention Devices for Non-Emergency Escape (Egress) and Rescue (Ingress) Windows*.

3.2 Swimming Pool Alarms

- 3.2.1** A pool alarm may be used to provide warning that a pool has been entered. Surface and sub-surface pool-based alarms are available, as well as perimeter alarms that monitor the pool area. All alarms shall meet the requirements of ASTM F2208 *Standard Specification for Pool Alarms*.

⁶ This is the most current version of ASME/ANSI A112.19.8. It includes an addendum, A112.19.8a-2008. If a successor standard to ASME/ANSI A112.19.8 is proposed, and the U.S. Consumer Product Safety Commission determines the proposed revision is in the public interest, it will incorporate the revision into the standard after providing 30 days notice to the public.

- 3.2.1.1** Surface alarms float on the pool's surface and are activated by waves in the pool. The device shall provide an alarm at the pool and within the residence and shall meet the requirements of ASTM F2208.
- 3.2.1.2** Subsurface alarms respond to pressure waves under the water surface, generated by the displacement of water when an object enters the pool. The device shall provide an alarm at the pool and within the residence and shall meet the requirements of ASTM F2208.
- 3.2.2** Perimeter alarms, used in conjunction with barriers meeting the requirements of Sections 1.1 – 1.3 above shall meet the performance requirements of ASTM F2208.

4. National Consensus Standards and Guides

Barriers

- Fencing

- **ASTM F1908 - 08** *Standard Guide for Fences for Residential Outdoor Swimming Pools, Hot Tubs, and Spas*
www.astm.org/Standards/F1908.htm
- **ASTM F2286 - 05** *Standard Design and Performance Specifications for Removable Mesh Fencing for Swimming Pools, Hot Tubs, and Spas*
www.astm.org/Standards/F2286.htm

- Pool, Spa, and Hot Tub Covers

- **ASTM F1346 - 91(2003)** *Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs*
www.astm.org/Standards/F1346.htm

- Windows

- **ASTM F2006** *Safety Specification for Window Fall Prevention Devices for Non-Emergency Escape (Egress) and Rescue (Ingress) Windows*
www.astm.org/Standards/F2006.htm

- **Entrance Alarms**

- **UL 2017 General –Purpose Signaling Devices and Systems, Section 77, Residential Water Hazard Entrance Alarm Equipment**
www.comm-2000.com

- **Residential Pool Alarms**

- **ASTM F2208 - 08 Standard Safety Specification for Residential Pool Alarms**
www.astm.org/Standards/F2208.htm

- **General**

- **ASTM F2518 - 06 Standard Guide for Use of a Residential Swimming Pool, Spa, and Hot Tub Safety Audit to Prevent Unintentional Drowning**
www.astm.org/Standards/F2518.htm

Entrapment Prevention

- **Suction Fittings**

- **ASME/ANSI A112.19.8 - 2007 (addendum 8a-2008) Suction Fittings for Use in Swimming Pools, Wading pools, Spas, and Hot Tubs**
www.asme.org (Enter *A112.19.8* into “Search ASME” field)
or
<http://webstore.ansi.org> (Enter *A112.19.8* into “Enter Document Number” field)

- **Safety Vacuum Release Systems**

- **ASTM F2387 - 04 Standard Specification for Manufactured Safety Vacuum Release Systems (SVRS) for Swimming Pools, Spas, and Hot Tubs**
www.astm.org/Standards/F2387.html
- **ASME/ANSI A112.19.17 - 2002 Manufactured Safety Vacuum Release Systems (SVRS) for Residential and Commercial Swimming Pool, Spas, Hot Tub and Wading Pool Suction Systems**
www.asme.org (Enter *A112.19.17* into “Search ASME” field)
or
<http://webstore.ansi.org> (Enter *A112.19.17* into “Enter Document Number” field)

5. General Note about the Virginia Graeme Baker Pool and Spa Safety Act

Section 1405(d) of the Act requires that any State receiving grant funds shall use at least 50 percent of the grant amount to hire and train enforcement personnel for implementation and enforcement of the State's swimming pool and spa safety law. The remaining money shall be used to educate pool construction, installation, and service companies about the standards and to educate pool owners, operators, and the public about pool safety and drowning and entrapment prevention, as well as to defray any administrative costs associated with training and education programs. A copy of the Act can be accessed at www.poolsafety.gov/pssa.pdf.

D

(This Model Legislation is provided by the U.S. Consumer Product Safety Commission staff for the purpose of assisting state legislatures that desire to enact or amend existing legislation for the purpose of preventing child drowning and suction entrapment injuries and deaths in swimming pools and spas. This Model Legislation also is intended to assist states that want to meet the minimum eligibility requirements for applying for a grant under Sections 1405 and 1406 of the Virginia Graeme Baker Pool and Spa Safety Act.)

MODEL UNIFORM STATE POOL AND SPA SAFETY BILL

SECTION 1 TITLE

This Act shall be known and may be cited as the “[STATE] Virginia Graeme Baker Pool and Spa Safety Act.”

SECTION 2 PURPOSE

This Act is intended to enhance the safety of public and residential pools and spas; encourage the use of layers of protection; reduce child drowning in pools and spas; reduce the number of suction entrapment incidents, injuries, and deaths; and educate the public on the importance of constant supervision of children in and around water.

SECTION 3 DEFINITIONS

For the purposes of this Act:

- (a) ASME/ANSI.—The term “ASME/ANSI” as applied to a safety standard means a standard that is accredited by the American National Standards Institute (ANSI) and published by the American Society of Mechanical Engineers (ASME).
- (b) Automatic pump shut-off system.—An automatic pump shut-off system is a device that can sense a drain blockage and shut off the pump system. Some safety vacuum release systems may meet this definition.
- (c) Barrier.—The term “barrier” includes a natural or constructed topographical feature that prevents unpermitted access by young children to a swimming pool, and, with respect to a portable hot tub and a portable spa, a lockable cover.
- (d) Commission.—The term “Commission” means the U.S. Consumer Product Safety Commission.
- (e) Drain disablement.—A device or system that disables the drain.
- (f) Gravity drainage system.—A gravity drainage system utilizing a collector tank is a swimming pool/spa with a separate water storage vessel from which the pool circulation pump draws water. Water moves from the pool to the collector tank due to atmospheric pressure, gravity and the displacement of water by bathers, which removes the need for direct suction at the pool. This type of system is also referred to as a reservoir, surge tank, or surge pit.

- (g) Main drain.—The term “main drain” means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a recirculating pump.
- (h) Multiple main drain system.—A multiple main drain system consists of, at a minimum, two fully submerged suction outlets per pump, with drain cover centers at least 3 feet apart.
- (i) Public pool or spa.—The term “public pool” or “public spa” means a pool or spa that is—
 - a. Open to the public generally, whether for a fee or free of charge;
 - b. Open exclusively to—
 - i. Members of an organization and their guests;
 - ii. Residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area (other than a municipality, township, or other local government jurisdiction); or
 - iii. Patrons of a hotel or other public accommodations facility; or
 - c. Operated by the Federal Government (or by a concessionaire on behalf of the Federal Government) for the benefit of members of the Armed Forces and their dependents or employees of any department or agency and their dependents, only to the extent these pools or spas are under the jurisdiction of the State.
- (j) Safety vacuum release system.—The term “safety vacuum release system” means a vacuum release system capable of providing vacuum release at a suction outlet where there is a high vacuum occurrence due to a suction outlet flow blockage. The safety vacuum release system ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected. It has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387.
- (k) Single main drain.—A single main drain is a submerged suction outlet, with or without a skimmer, connected to a dedicated pool pump. Main drains do not drain the pool, spa, or hot tub, as a sink drain does in a sink, but rather connect to the pump to allow for circulation and filtration. A pool may have more than one single main drain if it has multiple suction outlets that are each connected to a dedicated pump. A group of suction outlets connected together is considered a single main drain if the centers of the outlets are located within 3 feet of each other.
- (l) Suction-limiting vent system.—A suction-limiting vent system is also called an atmospheric vent. It is a pipe teed to the suction side of the circulation system on one end and open to the atmosphere on the opposite end. The pipe is normally full of water equal to the same height as the pool. When a blockage occurs at the main drain, air is introduced into the suction line thus causing the pump to lose prime and relieving the suction forces at the main drain (suction outlet).
- (m) Swimming pool; spa.—The term “swimming pool” or “spa” means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground, on-ground, and above-ground structures, inflatable pools that can hold water over 24 inches deep, hot tubs, portable hot tubs, spas, portable spas, and non-portable wading pools.

- (n) Unblockable drain.—The term “unblockable drain” means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

SECTION 4 MINIMUM REQUIREMENTS

I. Barriers.

All outdoor residential pools and spas shall be enclosed by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access to the pool or spa.

Note: The State statute must require enclosure of all outdoor residential pools and spas, including existing pools and spas, by barrier to entry. Thus, this section applies to outdoor residential pools and spas; it does not apply to public pools and spas. The intent of these barriers is to effectively provide protection against drowning or near-drowning of young children by preventing them from gaining unsupervised and unfettered access to swimming pools and spas.

For purposes of the barrier requirement, a “swimming pool” or “spa” includes any outdoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures. It includes portable hot tubs, spas, portable spas, and non-portable wading pools. CPSC staff has interpreted “swimming pool” to include non-portable spas, non-portable hot tubs, and larger inflatable pools that can hold water over 24 inches deep (“larger inflatable pools”), regardless of whether the pool has a circulation system.

Following is an explanation of what constitutes effective barriers to entry.

Residential outdoor in-ground, on-ground, and above-ground swimming pools and spas, larger inflatable pools that can hold water over 24 inches deep, portable spas and hot tubs

(except as noted below), non-portable spas and hot tubs, and non-portable wading pools, including existing pools and spas shall meet the following requirements:

➤ Fences/and or Walls.

The top of a fence or wall used as a barrier shall be a minimum of 48 inches (1219 mm) above grade. The bottom of a fence shall be no more than 4 inches (102 mm) above grade when that grade is a hard surface such as cement/asphalt. The bottom of a fence shall be no more than 2 inches (51 mm) above grade when that grade is a soft surface such as grass or ground/natural surface. All measurements shall be taken on the barrier side farthest from the pool.

Solid barriers such as brick or rock walls shall have no indentations or protrusions that can provide hand and/or foot holds. Normal construction tolerances and masonry joints are allowed.

Horizontal and vertical members: Where a fence is constructed of horizontal and vertical members, then:

- If the distance between the top of the horizontal members is less than 45 inches (1143 mm), the horizontal members shall be located on the swimming pool side of the fence. The spacing between the vertical members shall not exceed 1-3/4 inches (44 mm) in width. Any decorative cutout spacing within vertical members of the fence shall not exceed 1-3/4 inches (44 mm) in width.
- If the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, the spacing between the vertical members shall not exceed 4 inches (102 mm) in width. Any decorative cutout spacing within vertical members of the fence shall not exceed 1-3/4 inches (44 mm) in width.

Diagonal members: For a fence made up of crossed wood, polyvinyl chloride (PVC), or metal strips (latticework), the maximum opening between the diagonal members shall not exceed 1-3/4 inches (44 mm).

Chain link fence: The maximum mesh size for a chain link fence shall not exceed 1-1/4 inches (32 mm) square [1-3/4 inches (44 mm) diagonal]. A larger mesh size may be

used if slats fastened at the top or bottom of the fence are used to reduce mesh openings to no more than 1-3/4 inches (44 mm). See Figure A.

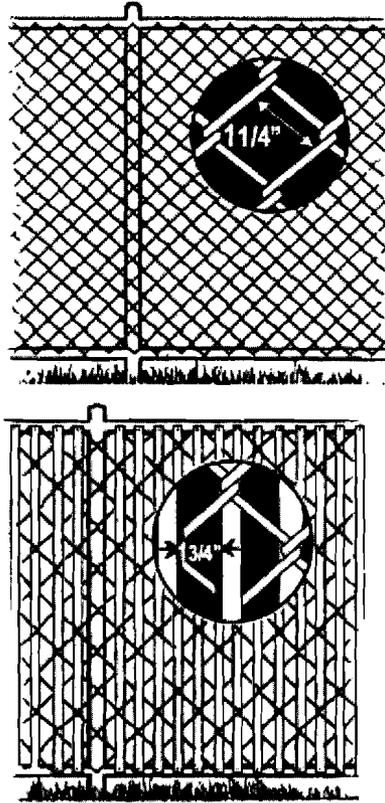


Figure A. Maximum chain link fence opening.

Mesh fencing: Removable mesh fencing for swimming pools shall meet the requirements of ASTM F2286-05: “Design and Performance Specification for Removable Mesh for Swimming Pools, Hot Tubs, and Spas”.

Pool structure as barrier: For above-ground or on-ground pools, the pool structure itself may serve as a ground level barrier only if it is at least 48 inches (1219 mm) high. If the top of the pool structure is less than 48 inches (1219 mm) above grade and a barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102 mm).

Ladder or steps: Where access to an above-ground pool is provided by a ladder or steps, then:

- The steps or ladder shall be designed to be secured, locked, or removed to prevent access, or

- A barrier such as one described under “Fences and/or Walls,” above, shall surround the steps or ladder.

➤ Access Gates.

Access gates shall meet the requirements of Fences and/or Walls (above) and shall be equipped to accommodate a locking device.

Pedestrian access gates shall open outward away from the pool and shall be self-closing and self-latching. A locking device shall be included in the gate design.

Where the release mechanism of the self-latching device is less than 54 inches (1372 mm) from the bottom of the gate, the release mechanism and openings must comply with the following:

- The release mechanism shall be on the pool side of the gate at least 3 inches (76 mm) below the top of the gate, and
- The gate and barrier shall have no opening greater than ½ inch (13 mm) within 18 inches (457 mm) of the release mechanism.

Access gates used with removable mesh fencing systems must meet the requirements of the access gates, above -- i.e., manual “layback” entrances are not considered to meet the requirement.

Gates other than for pedestrian access shall be equipped with a self-latching device.

➤ Dwelling walls.

For swimming pools or spas where dwelling walls serve as a part of the barrier, one of the following (an audible alarm system or a power safety cover) shall be in place:

- Audible alarm system. A door in the wall that provides direct access to the pool shall be equipped with an audible alarm system meeting Underwriters Laboratories Inc. (UL) standard UL 2017 *General-Purpose Signaling Devices and Systems*, Section 77, Residential Water Hazard Entrance Alarm Equipment.
 - i. The Alarm system shall be equipped with a manual means to temporarily deactivate the alarm for not more than 15 seconds.
 - ii. The deactivation means shall be located not less than 54 inches (1372 mm) from the floor or threshold of the door.

- **Power Safety Cover.** A power safety cover for swimming pools or a manual **lockable** safety cover for non-portable spas and non-portable hot tubs that meets the requirements of ASTM F1346 *Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs*. Both types of covers shall be in use whenever the pool, non-portable spa, or non-portable hot tub is not in use.

Residential outdoor portable spas and residential outdoor portable hot tubs. Residential outdoor portable spas and residential outdoor portable hot tubs are exempt from the “Fences and/or Walls” requirements, if and only if they have a lockable manual safety cover that complies with ASTM F1346.

All Barriers. All barriers shall be located so as to prohibit permanent structures, equipment, or similar objects from being used to climb the barriers.

Additional Layers of Protection—Barriers. Additional layers of protection are available. These are not required for meeting the minimum eligibility requirements for purposes of the VGB Pool and Spa Safety Grant Program, but CPSC encourages their use. See Section III below.

II. Entrapment.

- A. All pools and spas shall be equipped with devices and systems designed to prevent entrapment by pool or spa drains.**

This means that all pools and spas, both residential and public, must be equipped with devices and systems designed to prevent entrapment by pool or spa drains. Devices and systems designed to prevent entrapment by pool or spa drains may include [*an unblockable drain – depends on outcome of 11/ 4 meeting*], a safety vacuum release system, a suction-limiting vent system, a gravity drainage system, an automatic pump shut-off system, or drain disablement. The presence of any one of these devices or systems satisfies this requirement. Portable spas certified to UL 1563 by a Nationally Recognized Testing Laboratory (NRTL) are considered to comply with the

entrapment prevention provisions of the Act.

B. Pools and spas built more than one year after the date of the enactment of this title shall have—

- a. More than one drain;**
- b. One or more unblockable drains;**
- c. No single main drain.**

This section applies to public and residential pools built more than one year after the date of enactment of the State statute. The pool or spa built more than one year after the date of enactment must have more than one drain, one or more unblockable drains, or no main drain.

More than one drain: A pool with two fully submerged suction outlets per pump, with drain cover centers at least 3 feet apart, would constitute a pool with more than one drain. A pool with a multiple drain system *per pump* would also constitute a pool with more than one drain.

One or more unblockable drains: An unblockable drain is a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard. An unblockable drain may include:

- drains with dimensions greater than of 18” x 23”, which represent the shoulder to waist measurements of the 99th percentile adult male;
- long channels that cannot be blocked by the body (conceptual Figure a.);
- large outlet grate (diagonal measure of 29” or more) (conceptual Figure b.);
- circulation designs that do not include fully submerged suction outlets.

(NOTE: This section may or may not be expanded to include an unblockable drain. A Commission decision is expected in February 2010.)

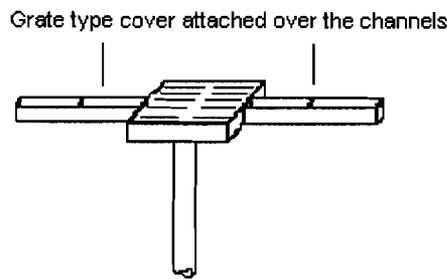


Figure a. Long Channel

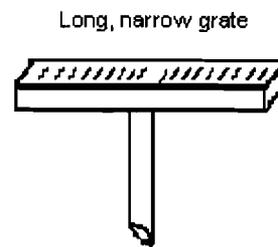


Figure b. Large Grate

Conceptual Unblockable Drain Configurations

No single main drain. A single main drain is a submerged suction outlet, with or without a skimmer, connected to a dedicated pool pump. It is possible for a pool to be constructed with more than one single main drain. A pool with more than one single main drain would also violate the requirement for no single main drain.

- C. Every swimming pool and spa that has a main drain, other than an unblockable drain, shall be equipped with a drain cover that meets the consumer product safety standard established by section 1404 of the Virginia Graeme Baker Pool and Spa safety Act..**

This applies to both residential and public swimming pools and spas that do not have unblockable drains. Residential and public swimming pools with drains that are blockable must be equipped with a drain cover that meets ASME/ANSI A112.19.8.

- D. Periodic notification shall be provided to owners of residential swimming pools or spas about compliance with the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard.**

The State shall ensure that periodic notification be provided to owners of residential swimming pools or spas about the compliance with the entrapment protection standards of ASME/ANSI A112.19.8 performance standard, or any successor standard.

E. No liability inference associated with state notification requirement.—The minimum State law notification requirement under paragraph (D) shall not be construed to imply any liability on the part of a State related to that requirement.

The notification requirement does not impart any liability to the State in the event of an entrapment incident.

Please note that what follows on the next page represents requirements that a State may wish to consider. A State statute need not require these basic access-related safety devices and equipment in order to be eligible for a grant.

III. “Basic Access-Related Safety Devices and Equipment”

A. Window Guards.

A window in a wall that allows access to the pool may be equipped with window guards that limit access or be affixed with a childproof device to limit the window opening to less than 4 inches. The window guard shall meet ASTM F2006 *Safety Specification for Window Fall Prevention Devices for Non-Emergency Escape (Egress) and Rescue (Ingress) Windows*.

B. Swimming Pool Alarms.

A pool alarm may be used to provide warning that a pool has been entered. A pool-based alarm may be either a surface or subsurface alarm. Surface alarms float on a pool’s surface and are activated by waves in the pool. Subsurface alarms respond to pressure waves under the water surface, generated by the displacement of water when an object enters the pool. Perimeter alarms, if used, should be used in conjunction with barriers meeting the barrier requirements of section (a). All alarms shall meet the requirements of ASTM F2208 *Standard Specification for Pool Alarms*.

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Memorandum

February 4, 2010

TO: Robert J. Howell, Assistant Executive Director for Hazard Identification and Reduction

FROM: Elizabeth W. Leland, Economic Analysis, Project Manager for the Virginia Graeme Baker Pool and Spa Safety Act Grant Program *E. W. Leland*

SUBJECT: Response to Comments on "Virginia Graeme Baker Pool and Spa Safety Act – September 2008 CPSC Staff Draft Technical Guidance on Section 1406: Minimum State Law Requirements"

1. Background

On December 19, 2007, the Virginia Graeme Baker Pool and Spa Safety Act, P.L.110-140, Title XIV (the Act) was signed into law, with an effective date of one year later.¹ The purpose of the Act is to prevent drain entrapment and child drowning in swimming pools and spas.

Section 1405 of the Act specifies that the U.S. Consumer Product Safety Commission (CPSC), subject to the availability of appropriations, shall establish a grant program for each of fiscal years (FYs) 2009 and 2010 to provide assistance to eligible States for:

- hiring and training personnel to implement and enforce standards under a State's swimming pool and spa safety law,
- the education of pool construction, installation, and service companies about the State statute, and
- the education of pool owners, pool operators, and other members of the public about the State statute and about the prevention of drowning and entrapment of children in swimming pools and spas.

Funds have been appropriated for the FYs 2009 and 2010, with FY 2009 funds available for spending through September 30, 2010, and FY 2010 funds available for spending through September 30, 2011.

Section 1406 of the Act specifies the minimum requirements that states must include in a State statute *to be eligible to apply for grants under the Act's grant program*. These requirements

¹ A copy of the Act can be accessed at www.poolsafety.gov/pssa.html.

focus on the use of 1) barriers to a child's unfettered access to swimming pools and spas and 2) devices and systems designed to prevent entrapment of children by pool or spa drains.

It is important to note that the requirements specified by Section 1406 of the Act are *minimum* requirements for a state's eligibility to apply for a grant. CPSC staff encourages states to reach beyond these minimum requirements when writing state statutes for pool and spa safety.

In September 2008, the CPSC staff provided technical guidance on these minimum requirements and requested comments from the public.² At that time, CPSC staff noted that it would assess the comments and take account of them in making the Technical Guidance document final.

2. Summary of Comments

The CPSC staff received twenty-three comments. The comments were submitted by a member of the U.S. House of Representatives, state and local government officials, pool industry representatives, safety equipment manufacturers and representatives, pool safety organizations and associations, a representative of a national standards laboratory, and individuals.³ The primary issues related to Section 1406 that were the focus of the comments were:

- The scope of the minimum eligibility requirements,
- Unblockable drains, and
- Pool barriers, including the use of isolation fencing.

Other questions addressing specific local situations, drain placement in specific pool configuration scenarios, and specific state pool and safety requirements also were submitted.⁴ The CPSC staff is providing in this memorandum a response to those comments that were related directly to the draft Technical Guidance for Section 1406 of the Act. Note that on the CPSC Web page listing of the comments⁵, the comments are listed and numbered "1" through "23". The CPSC staff responses below refer to the comments by those numbers.

3. CPSC Staff Responses to Comments

a. *Applicability of the Minimum Eligibility Requirements to Various Types of Pools and Spas*

Comments were submitted seeking clarification as to whether the minimum eligibility requirements applied to existing pools and spas, public pools, wading pools, larger inflatable pools, portable spas, and water parks.⁶ The general answer to those questions is "yes". There are some exceptions (e.g., the minimum eligibility requirements for barriers apply only to *outdoor residential* pools, while the minimum entrapment prevention requirements apply to *outdoor and indoor residential and public* pools), and where possible, these exceptions now are noted in the Technical Guidance document. (There also may be water park attraction configurations that are

² "CPSC Staff Draft Technical Guidance on Section 1406 on Minimum State Requirements for Grant Program", September 2008, www.poolsafety.gov/pssa1406guide.pdf.

³ The comments can be viewed at www.cpsc.gov/library/foia/foia09/pubcom/pssa.pdf.

⁴ For example, see comments 5, 7, 8, 9, and 15.

⁵ See footnote 3.

⁶ For example, see comments 1, 2, 3, 19, and 20.

exempt, and CPSC staff has been in correspondence with the water park industry about these specific configurations.)⁷

The Act defines “Swimming pool; spa” as “Any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and aboveground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.”⁸ CPSC staff further interprets this definition to include larger inflatable pools (or those inflatable pools that hold more than 24 inches of water) and existing pools and spas (except for those portions of Section 1406 that apply specifically to new construction or construction that occurs one year after the date of the state statute).

In the draft final Technical Guidance, CPSC staff has clarified that its interpretation of the Act is that for the *minimum eligibility requirements for barriers*, residential outdoor in-ground, on-ground, and above-ground swimming pools and spas, larger inflatable pools that can hold water over 24 inches deep, non-portable spas and hot tubs, portable spas and hot tubs, and non-portable wading pools, including existing pools and spas, all are included in the definition of “swimming pool; spa”. Thus, for minimum eligibility purposes, a state must include these types of pools, spas, and hot tubs in the barrier requirement provisions of its pool and spa safety statute.

With respect to the *minimum eligibility requirements for entrapment prevention devices*, the CPSC has clarified in the Technical Guidance document that residential and public outdoor and indoor in-ground, on-ground, and aboveground swimming pools and spas, larger inflatable pools that can hold water over 24 inches deep (regardless of whether the pool has a circulation system, portable and non-portable spas, portable and non-portable hot tubs, and non-portable wading pools, including existing pools and spas, all are included in the definition of “Swimming pool; spa”. Thus, for minimum eligibility purposes, a state must include these types of pools, spas, and hot tubs in the entrapment prevention provisions of its pool and spa safety statute.

One additional change relating to applicability was made to the draft Technical Guidance. With respect to portable spas, a comment noted that a portable spa is factory assembled and is certified for compliance to ANSI/ASME 112.19.8 and UL 1563 when it leaves the factory.⁹ The requirements in both of these standards address the entrapment issues for portable spas. The CPSC has noted in the Technical Guidance document that states with statutes that require portable spas to be certified to UL 1563 by a Nationally Recognized Testing Laboratory (NRTL) are considered to comply with the entrapment prevention provisions of the Act for these products.

b. Unblockable Drains

Three comments were received concerning the issue of an unblockable drain.¹⁰ An unblockable drain, by definition in the Act, is “a drain of any size and shape that a human body

⁷ See www.poolafety.gov/iaapa.pdf and www.poolafety.gov/iaapa2.pdf.

⁸ See Section 1403: Definitions of the Act.

⁹ See comment 11.

¹⁰ See, for example, comments 1, 6, and 14.

cannot sufficiently block to create a suction entrapment hazard.” The Act requires that every public pool and spa be equipped with drain covers that comply with the ASME/ANSI A112.19.8 performance standard. The Act also requires that each public pool and spa with a single main drain other than an unblockable drain be equipped, at a minimum, with one or more secondary anti-entrapment devices or systems.¹¹ Thus, under the Act, a pool with a single main drain that is not blockable needs only an ASME/ANSI A112.19.8 compliant drain cover to meet the requirements of the Act. A pool with a single main drain that is blockable needs a compliant drain cover and a secondary anti-entrapment system to comply with the Act.

Manufacturers have manufactured a drain cover intended to render what otherwise would be a blockable drain an unblockable drain. If the product were deemed to create an unblockable drain, it would negate the need for a secondary anti-entrapment system. The question has been asked of the Commission staff as to whether a drain cover meeting certain requirements can in fact render a blockable drain unblockable.

In July 2009, CPSC staff published draft technical guidance on this issue and received comments.^{12, 13} In addition, the Commission conducted a public hearing on November 4, 2009, to receive views from interested parties about the draft guidance.¹⁴

The CPSC staff has revised its guidance in light of the comments received at the public hearing. The staff’s proposed definition is as follows:

“Unblockable Drain: 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 the ANSI/ASME A112.19.8 – 2008a and that the rated flow through the remaining open area cannot create a suction force in excess of the values in Table 1 of that standard. For manufactured products, this is calculated or verified by laboratory testing in accordance with the Standard. For field-built outlets, this is calculated in accordance with Section 2.3.1.2 of the Standard.”

Additional information about the issue of unblockable drains is available elsewhere in the February 2010 CPSC staff briefing package.

c. Pool Barriers, including the Use of Four-Sided Isolation Fencing

CPSC staff received comments supporting the use of four-sided isolation fencing as a minimum eligibility requirement for pools and spas, although some of the comments recognized

¹¹ This requirement is important as well to the eligibility requirements of the state grant program.

¹² “Virginia Graeme Baker Pool and Spa Safety Act,” July 2009 CPSC Staff Draft Technical Guidance on Unblockable Drains,” www.poolsafety.gov/unblockable.pdf.

¹³ Comments can be viewed at www.cpsc.gov/library/foia/foia09/pubcom/drains.pdf.

¹⁴ A link to the Webcast is available at www.poolsafety.gov/vgb.html. Scroll to the “Public Hearings” section towards the bottom of the page and click on the “Unblockable Drains” link.

that the Virginia Graeme Baker Pool and Spa Safety Act allows the dwelling wall of a house to serve as the fourth side of a barrier as long as secondary safety devices are in place. The comments suggested that CPSC emphasize in its technical guidance that four-side fencing that uses a wall of the house as the fourth side is a *minimal requirement* only and that CPSC encourage state legislators to reach beyond the minimal requirements when writing their State statutes. In response, CPSC staff has provide this emphasis and encouragement in several places throughout the Technical Guidance document.

Another comment noted that there is on the market pool safety fencing made of fabric mesh that can be installed around the pool on the pool deck.¹⁵ The comment notes that the barrier requirements make no mention of this type of fencing. CPSC staff believes that mesh fencing that meets ASTM F2286, “Design and Performance Specification for Removable Mesh Fencing for Swimming Pools, Hot Tubs, and Spas” is an acceptable type of fencing for a pool, hot tub, or spa barrier. As noted in the Technical Guidance, other materials for pool fencing also are acceptable as long as the requirements for height, clearance, and horizontal spacing as specified in the Technical Guidance are met.

Three comments discussed whether aboveground and on-ground pools are exempt from the minimum eligibility barrier requirements.¹⁶ The answer is “no”. Two comments noted that CPSC staff’s interpretation of barriers for aboveground pools was inconsistent with the Act because it allows the side of the pool to serve as a barrier.¹⁷ CPSC staff would like to clarify that the aboveground and on-ground pool structure may serve as the ground level barrier for such pools ONLY if it at least 48 inches or higher. If the top of the pool structure itself is less than 48 inches high, then a barrier needs to be mounted on top of the pool structure to ensure that the 48-inch minimum height is met. In addition, if a barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the added barrier should be 4 inches. These are the same height and vertical clearance requirements for inground pools.

Furthermore, Sections 1.1.2.1.1 and 1.1.2.1.2 of the technical guidance document states requirements for configurations where a ladder or steps provides access to an aboveground pool. In these configurations, the steps or ladder shall be designed to be secured, locked, or removed to prevent access or a fence or walls meeting the requirements of the Technical Guidance should surround the steps or ladder. When the ladder or steps are secured, locked, or removed, any opening created should not allow the passage of a 4-inch diameter sphere.

CPSC staff does not believe that aboveground or on-ground pools are exempt from the minimum eligibility requirements for barriers. This is clarified in the Technical Guidance document.

¹⁵ See comment 23.

¹⁶ See comments 7, 19, and 20.

¹⁷ See comments 19 and 20.

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