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## Mandatory Federal Requirements for Pools or Spas to Reduce Suction Entrapment

Effective December 19, 2008, all pool and spa drain covers available for purchase must comply with the federal safety standards set forth in 15 U.S.C. §8001 et seq., the “Virginia Graeme Baker Pool and Spa Safety Act.” In addition, all new or existing *public* pools or spas—including pools or spas at hotels, apartment buildings, and members-only clubs—must be equipped with the federally mandated drain covers, and possibly one or more safety systems designed to eliminate suction entrapment.

### Purpose of the Virginia Graeme Baker Pool and Spa Safety Act:

To decrease the incident of drowning and pool-related injuries, Congress and President Bush enacted the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. §8001 et seq., on December 19, 2007. The Act establishes a mandatory federal swimming pool and spa drain cover standard as well as a grant program for states that enact laws to reduce death and injury through safety engineering and education. Lastly, the Act authorizes \$25 million to be spent over five years for a national drowning prevention education program.

### Federally Mandated Safety Drain Covers:

Beginning December 19, 2008, Section 1404(b) of the Virginia Graeme Baker Pool and Spa Safety Act requires that “each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating such swimming pool or drain cover.” 15 U.S.C. §8003(b) The safety standard referenced in the Act is the 2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas and Hot Tubs published by the American Society of Mechanical Engineers (“ASME”). The three basic components of the standard include: (1) testing for material integrity; (2) testing for body and hair

entrapment; and (3) covers that display flow rate. Visit: <http://www.cpsc.gov/phth/vgpsa.pdf>. The aforementioned ASME engineering standard is designed to decrease suction and eliminate human entrapment.

### Mandatory Public Pool Drain Covers and Safety Systems:

Section 1404(c) of the Act establishes safety requirements for each “public pool or spa”—whether newly built or pre-existing. 15 U.S.C. §8003(c) A “public pool or spa,” as defined in Section 1404(c)(2), is either open to the public generally for a fee or free of charge, or open exclusively to members of an organization and their guests, guests of a hotel, or residents of an apartment building. The term expressly includes pools or spas operated by the federal government.

Under the Act, each public pool or spa shall be equipped with anti-entrapment devices or systems that comply with the AMSE/ANSI A112.19.8 performance standard. 15 U.S.C. §8003(c)(1)(i) In addition, each public pool or spa with a main drain other than an unblockable drain shall be equipped with at least one safety vacuum release system, a suction-limiting system, or other safety system listed in the Act or determined by the CPSC to be equally effective.

To facilitate compliance with Section 1404(c), the CPSC prepared a “guidance document” which provides the staff’s interpretation of statutory terms, and answers commonly asked questions. Available at, <http://www.cpsc.gov/phth/vgpsa.pdf>. For example, the CPSC provides conceptual drawings of devices which fall within the statutory meaning of “main drain,” “unblockable drain,” and the statutorily prescribed safety systems.

### Penalties for Failure to Comply with Section 1404 of Act:

Section 1404(a) expressly states that the mandatory federal safety drain cover standard shall be

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## Mandatory Federal Requirements for Pools or Spas to Reduce Suction Entrapment (cont'd.)

treated as a consumer product safety rule issued by the CPSC under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.). 15 U.S.C. § 8003(a) The Consumer Product Safety Act ("CPSA") establishes a complex regulatory framework for keeping dangerous consumer products out of the market-place, and works in tandem with the federal consumer product safety rules administered by the CPSC.

Violation of the requirements applicable to drain covers generally, and public pools or spas in particular, will be considered to be a violation of Section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)) and may also be enforced under Section 17 of the CPSA (15 U.S.C. 2066). By operation of Section 19(a)(1) of the CPSA, each consumer product in violation of Section 1404 of the Pool and Spa Safety Act will constitute a separate offense of the CPSA, with a maximum civil penalty of \$1.825 million. The civil penalty cap may increase to as much as \$10 million if Congress adopts current proposals. Moreover, if an entity or individual "knowingly or intentionally" violates the CPSA, after a formal written notice, the violator will face criminal fines or imprisonment of up to one year, or both. 15 U.S.C. §§2069(a)(1), 2070(a); *see also*, <http://www.cpsc.gov/phth/vgpsa.pdf>.

### Current Standards May Comply with Act:

All pools and spas currently equipped to comply with ANSI/APSP-7 standard likely comply with the Virginia Graeme Baker Pool and Safety Act. In its "Summary Analysis" of the Act, the Association of Pool and Spa Professionals ("APSP") concludes that the ANSI/APSP-7 exceeds the federal standard. *Available at*, <http://www.apsp.org/clientresources/documents/2Summaryof%20P-SSafetyAct.pdf>.

For more information, visit The Water Safety Campaign 2008 Web Page sponsored by the Safe Kids USA organization which worked alongside legislators for three years to pass this consumer product safety law:

<http://www.usa.safekids.org/water/pool.html>.  
*Available at* [www.usa.safekids.org](http://www.usa.safekids.org).

### About the Authors

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