

[Products Liability Law Daily Wrap Up, FINAL RULES—SPORTS AND RECREATIONAL EQUIPMENT—Direct final rule incorporates by reference new standard for pool/spa suction fittings, \(May 29, 2019\)](#)

Products Liability Law Daily Wrap Up

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Rule will take effect in November 2020.

The Consumer Product Safety Commission (CPSC) issued a direct final rule incorporating sections of the Association of Pool and Spa Professionals (APSP) standard APSP–16 2017, *Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs*, into the Virginia Graeme Baker Pool and Spa Act (VGBA, or Act). The rule will go into effect on November 24, 2020, unless the agency receives significant adverse comment by June 24, 2019. If CPSC receives timely significant adverse comments, the agency will publish notification in the Federal Register, withdrawing this direct final rule before its effective date (*CPSC Final Rule, 84 FR 24021*, May 24, 2019).

Background. The VGBA (15 U.S.C. 8001 et seq.), which took effect on December 19, 2008, purports to prevent drain entrapment and child drowning in swimming pools and spas. In part, the Act requires that drain covers must comply with entrapment protection requirements specified by the joint ASME/ANSI A112.19.8 performance standard, or any successor standard. The VGBA also states that public pools must be equipped with drain covers that meet the requirements of the ASME/ANSI or any successor standard. The VGBA provides that if a successor standard to ASME/ANSI/A112.19.8 is proposed and CPSC determines the successor standard is in the public interest, the agency must incorporate the revision into the mandatory drain cover standard.

On August 5, 2011, CPSC recognized the APSP standard, APSP–16 2011, as the successor standard to ASME/ANSI A112.19.8. CPSC incorporated by reference APSP–16 2011 into 16 CFR part 1450 (76 FR 47436). ASME/ANSI A112.19.8 and its successor standard, APSP–16 2011, contain requirements that address hair entrapment, body entrapment, and, in a limited way, limb entrapment. On March 27, 2018, APSP notified CPSC of the publication of a successor pool drain cover standard to APSP–16 2011, in conjunction with ANSI and the International Code Council (ICC), ANSI/APSP/ICC–16 2017 (APSP–16 2017).

Successor standard. APSP–16 2017 establishes materials, testing, use, installation, and marketing requirements for new or replacement bather-accessible suction outlet fitting assemblies (SOFA), other than maintenance drains, that are designed to be fully submerged for use in any pool. The successor standard also contains a new effective date; changes to physical testing requirements; new definitions; new labeling requirements for the drain cover; and new requirements that apply to the installation of the drain cover, to pools, to the operation of pools, and to pool owners.

APSP–16 2017 contains many changes that extend beyond the requirements for the drain cover or SOFA itself, and thus, exceed CPSC’s authority under section 1404(b) of the VGBA. The voluntary standard can have such provisions. However, CPSC does not have authority to enforce them as mandatory standard provisions. These changes include requirements that can be separated into the following categories: Installation of the SOFA; requirements applicable to pools; activities of pool owners; and changes to statutory definitions. Finally, CPSC will not adopt section 3.2.4 of APSP–16 2017 because it contains a printing error.

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