seat and/or seat belt for each person is not required in all circumstances for part 91 operations.

In addition, the FAA notes that changing §91.107(a)(3) may have far-reaching consequences that would best be addressed through a rulemaking. For example, in its comment, the NTSB acknowledged that some older airplanes currently have bench-style seating that can accommodate multiple passengers with one restraint system. The FAA notes that airplanes with these bench-style seats make up a significant portion of the part 91 community. In addition, aircraft with these types of seating have a significant diversity in their specific seating restraint arrangements—some aircraft with bench seats have a seat belt equipped for each individual passenger while other aircraft with bench seats have a single shared seat belt for use by everyone in the bench seat. Because a significant portion of the part 91 community currently uses some manner of a shared seat/seat belt, the FAA would need to consider, as part of a rulemaking, the effects that changing §91.107(a)(3) would have on those members of the part 91 community.

Nevertheless, even though §91.107(a)(3), as previously interpreted by the agency, may allow for shared use of a single restraint in certain situations, the FAA agrees with NTSB that having each passenger use a separate seat and a separate seat belt can be significantly safer than having passengers share a seat and/or seat belt. Accordingly, the FAA strongly encourages PICs in part 91 operations to ensure, whenever possible, that each passenger is seated in a separate seat and restrained by a separate restraint system. With regard to children, the FAA also strongly encourages children to be restrained in a separate seat by an appropriate child restraint system during takeoff, landing, and turbulence.

In its comments, the NTSB also expressed a concern that this clarification could be interpreted to permit multiple occupants to share a single shoulder harness. In response to NTSB’s concern, the FAA emphasizes that the proposed clarification was drafted to address the shared use of seats and/or seat belts—not shoulder harnesses. Because the proposed clarification did not address shoulder harnesses, this clarification is limited solely to the shared use of seats and/or seat belts in part 91 operations.

In their comments, the NTSB and an individual commenter also asserted that the structural strength requirements for a seat and/or seat belt are not always available to a general aviation pilot because this information is typically not included in the AFM. The individual commenter added that many older aircraft do not have an AFM, but instead have an owner’s manual that contains even less information.

In response to these comments, the FAA notes that, even though the pertinent information is sometimes not contained in the AFM, information about seat usage limitations and seat belt approval and rating can, in many cases, be obtained from the equipment manufacturer. However, the FAA agrees with the commenters that this information cannot always be obtained from the equipment manufacturer. Accordingly, before multiple occupants are permitted to use the same seat and/or seat belt, if the pertinent information is available, the PIC should check whether: (1) The seat belt is approved and rated for such use; and (2) the structural strength requirements for the seat are not exceeded.

In addition, before seating multiple occupants in the same seat and/or seat belt, PICs should always check to ensure that the seat usage conforms to the limitations contained in the approved portion of the AFM or the owner’s manual. Owner’s manuals for older aircraft typically show the permissible seating arrangements that are to be used for the aircraft, and the number of people using a seat and/or seat belt should not exceed the number of people shown in the owner’s manual seating arrangement.

Issued in Washington, DC, on May 18, 2012.


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SUPPLEMENTARY INFORMATION:

A. Background

In September 2011, the U.S. Consumer Product Safety Commission voted to publish in the Federal Register a final rule regarding the revocation of the prior definition of “unblockable drain.” (76 FR 62605). The Federal Register notice invited comments regarding the ability of those who had installed VGBA-compliant unblockable drain covers on or before October 11, 2011, in reliance on the Commission’s initial interpretation, to come into compliance with the revocation by May 28, 2012.

B. Comments

The majority of comments the Commission received were unrelated to the ability of the respondents to comply with the May 28, 2012 effective date. The comments that did address the May 28, 2012 compliance date fell into four basic categories. These comments were addressed in the staff’s briefing memorandum, “Summary of public
the change for one year because they had relied upon the original interpretation and installed unblockable drain covers and now would have to go back and "redo" their work, which they said would penalize them unfairly for their compliance with the prior interpretation. The commenter also noted that the unblockable drain covers were far more expensive than typical smaller fittings, and asserted that they represented a major investment on the basis that, once the covers were installed, additional equipment would not be required. The other commenter requested that the Commission delay the implementation date to January 1, 2013, or prior to 2013 operation dates for seasonal pools and spas. The commenter also stated that regulated pools and spas that had already invested to comply with the requirements of the VGBA would be required to add secondary anti-entrapment systems or make other modifications at considerable expense, in addition to expenditures necessary to comply with state law and U.S. Department of Justice pool and spa accessibility requirements.

Response: Commission staff agrees that those who relied upon the Commission's interpretive rule and installed an unblockable drain cover in lieu of installing a secondary system. Thus, Commission staff believes it seems reasonable to provide firms that relied on the Commission's prior interpretation the time to budget and plan for the expenditure needed to install a secondary system.

2. Apply prospectively (4 comments).

Comment: Commenters in this category cited the lack of injuries as a reason to apply the revocation only to facilities that are newly constructed or renovated in the future.

Response: Commission staff does not agree with prospective application to new construction or renovation. The law has required pools to be compliant with the VGBA for almost four years. Only firms that relied on the unblockable drain interpretive rule of April 27, 2010, and installed VGBA-compliant unblockable drain covers on or before October 11, 2011, are affected by the revocation decision. Thus, prospective application is overly broad, and applying it to firms that did not install VGBA-compliant unblockable drain covers on or before October 11, 2011, would not follow the statutory mandated effective date, would create confusion, and would unduly complicate enforcement.

3. Comments Requesting Delay of Enforcement (2 comments).

Comment: Two commenters requested that the Commission delay the implementation of the enforcement. One commented that the CPSC delay implementation of the enforcement of the revocation of the unblockable drain interpretive rule is with respect to pool operators who relied on the Commission's April 27, 2010 decision and installed VGBA-compliant unblockable drain covers on or before October 11, 2011. The guidance to those firms is that your unblockable drain cover is VGBA-compliant and does not need to be removed; but pool operators need to install a secondary anti-entrapment system to come into compliance, unless the pool uses a gravity drain system or the underlying drain is unblockable. Accordingly, if a pool operator installed an unblockable drain cover over a drain that is blockable, staff believes it is reasonable to allow them time to budget and plan for the expenditure required to install a secondary anti-entrapment system.

C. Commission Determination

Upon being presented with the staff briefing package, the Commission voted to extend the compliance date to May 23, 2013. Only firms that relied on the unblockable drain interpretive rule of April 27, 2010, and installed VGBA-compliant unblockable drain covers on or before October 11, 2011, will have until May 23, 2013, to install a secondary system, as necessary. Firms that did not rely on the unblockable drain interpretive rule of April 27, 2010, and did not install VGBA-compliant unblockable drain covers on or before October 11, 2011, should be compliant with the VGBA, and will not have additional time to come into compliance if they are not.

Dated: May 17, 2012.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

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BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 610, and 680

[Docket No. FDA–2011–N–0080]

RIN 0910–AG16

Amendments to Sterility Test Requirements for Biological Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a