DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2011–0628]

Clarification of Prior Interpretations of the Seat Belt and Seating Requirements for General Aviation Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of prior interpretations.

SUMMARY: This action clarifies prior interpretations of FAA's seat belt and seating requirements. These prior interpretations state that the shared use of a single restraint may be permissible. This clarification states that the use of a seat belt and/or seat by more than one occupant is permitted only if the seat usage conforms to the limitations contained in the approved portion of the Airplane Flight Manual (AFM). In addition, before multiple occupants use the same seat and/or seat belt, if the pertinent information is available, the pilot in command (PIC) must also check whether: The seat belt is approved and rated for such use; and the structural strength requirements for the seat are not exceeded. This clarification also emphasizes that, because it is safer for each individual person to have his or her own seat and seat belt, whenever possible, each person onboard an aircraft should voluntarily be seated in a separate seat and be restrained by a separate seat belt.

DATES: May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Alex Zektser, Attorney, Regulations Division, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3073; email: *Alex.Zektser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2009, a Pilatus PC–12/45 descended and impacted the ground near the approach end of a runway at Bert Mooney Airport in Butte, Montana. After investigating this incident, the National Transportation Safety Board (NTSB) determined the following.

At the time of the impact, the Pilatus PC–12/45 airplane was operating as a personal flight under the provisions of 14 CFR part 91. The pilot and the 13 airplane passengers were killed, and the airplane was destroyed by impact forces and the postcrash fire. Among the 13 passengers were six adults and seven children. Because the flight was a single-pilot operation, eight seats in the cabin and one seat in the cockpit were available to the 13 passengers. Thus, the number of passengers exceeded the number of available seats. The NTSB was unable to determine the original seating position for most of the occupants, but the bodies of four children, ages 3 to 9 years, were found farthest from the impact site, indicating that these children were likely thrown from the airplane because they were unrestrained or improperly restrained. The NTSB noted that if the accident had been less severe and the impact had been survivable, any unrestrained occupant or occupants sharing a single restraint system would have been at a much greater risk of injury or death.

NTSB Request and Proposed Clarification

As a result of the March 22, 2009 incident described above, the NTSB has requested that the FAA withdraw its prior interpretations of 14 CFR 91.107(a)(3), which permit the shared use of a single restraint system. In response to the NTSB's request, the FAA proposed to clarify that § 91.107(a)(3) permits multiple occupants to use one seat belt and/or seat, but that such use is only appropriate if: (1) The belt is approved and rated for this type of use; (2) the structural strength requirements for the seat are not exceeded; and (3) the seat usage conforms with the limitations contained in the approved portion of the AFM (14 CFR 23.1581(j)).

The FAA received six comments in response to its proposed clarification. After considering the information provided in the comments, the FAA clarifies its prior interpretations of the seat belt and seating requirements of 14 CFR 91.107(a)(3) as follows.

Discussion of the Final Clarification

For part 91 operations, § 91.107(a)(3) requires that ''each person on board a U.S. registered civil aircraft * * * must occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about him or her during movement on the surface, takeoff, and landing.'' For commercial operations under part 121, § 121.311 requires that each person ''occupy an approved seat or berth with a separate safety belt properly secured about him.'' Under both parts, children under the age of two may be held by an adult who is occupying an approved seat or berth and no restraining device for the child is used.

When § 121.311 and § 91.107 (previously § 91.14) were first promulgated in 1971, the FAA clarified that the separate use provision for safety belts under part 121 was not intended to apply to part 91 operations. Rather, part 91 ''requires only that each person on board occupy a seat or berth with a safety belt properly secured about him.'' 36 **Federal Register** 12511 (July 1, 1971). The FAA has previously interpreted this provision as not requiring separate use of safety belts. *See* Legal Interpretation 1990–14. At the time, this allowance was permissible because seat belts were generally rated in terms of strength and some were rated for more than one occupant to accommodate side-by-side seating arrangements (i.e., bench seats) in certain aircraft that are commonly used in operations conducted under part 91. Thus, under the previous interpretations, the use of a seat belt and seat by more than one occupant may have been appropriate only if: (1) The belt was approved and rated for such use; (2) the structural strength requirements for the seat were not exceeded; and (3) the seat usage conformed with the limitations contained in the approved portion of the Airplane Flight Manual (14 CFR 23.1581(j)). *See* 36 FR 12511; *see also* 14 CFR 23.562, 23.785; Legal Interpretation 1990–14; Legal Interpretation to Mr. C.J. Leonard from Hays Hettinger, Associate Counsel (July 26, 1966).

In its comment, the NTSB stated that the shared use of a single seat belt by multiple occupants is never appropriate because this type of use drastically reduces the safety of the occupants. The NTSB asked the FAA to interpret § 91.107(a)(3) in a way that discourages the ''unsafe practice of allowing multiple occupants to share a single seat and/or restraint system that [is] not certified for more than one occupant.''

Because this is a clarification of prior interpretations and not a rulemaking, the FAA is limited in what it can do in this matter. An interpretation of a regulation cannot ignore the ''indications of the agency's intent at the time of the regulation's promulgation.'' *Air Transport Ass'n of America, Inc.* v. *F.A.A.,* 291 F.3d 49, 53 (DC Cir. 2002). As discussed above, when the FAA first promulgated the section that ultimately became § 91.107(a)(3), the agency stated that, in contrast to part 121, part 91 did not require that each person have a separate seat and/or seat belt. *See* 36 FR 12511. Because the FAA cannot rewrite § 91.107(a)(3) through interpretation, the FAA is bound in this matter by the agency's stated intent at the time of this section's promulgation—that a separate

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 the approval and rating for a 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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[FR Doc. 2012–12554 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

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

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; revocation; extension of compliance date.

SUMMARY: On October 11, 2011, the Consumer Product Safety Commission (''Commission'' or ''CPSC'') announced that it was revoking its interpretation of the term ''unblockable drain,'' as used in the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001 et seq. (''VGBA''). The Commission set a compliance date of May 28, 2012, for those who installed VGBA-compliant drain covers on or before October 11, 2011, in reliance on the Commission's initial interpretation. The Commission sought written 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. The Commission is extending the compliance date to May 23, 2013, for those who have installed VGBA-compliant unblockable drain covers on or before October 11, 2011, in reliance on the Commission's original interpretive rule.[1]

DATES: This document does not alter the current requirement that public pools and spas be in compliance with the VGBA, which became effective on December 19, 2008. The compliance date for those who installed VGBA-compliant unblockable drain covers on or before October 11, 2011, in reliance on the Commission's April 27, 2010 interpretation of unblockable drains is extended to May 23, 2013.

FOR FURTHER INFORMATION CONTACT: Perry Sharpless, Directorate for Laboratory Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2288, or email: *psharpless@cpsc.gov.*

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, as described at 16 CFR 1450.2(b), 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

[1] Commissioners Adler, Nord, and Northup voted to extend the compliance date to May 23, 2013. Chairman Tenenbaum voted against extending the compliance date to May 23, 2013.