



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Thomas H. Moore
 Commissioner Nancy A. Nord
 Commissioner Anne M. Northup
 Commissioner Robert S. Adler

ITEM:

Public Accommodations Facility: Proposed Interpretive Rule and Withdrawal Notice
(Briefing package dated October 6, 2010)

DECISION:

The Commission voted unanimously (5-0) to: (A) approve publication in the *Federal Register* ("FR") of the draft proposed interpretive rule interpreting "public accommodations facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. § 8001, ("VGB Act"), without change; and (B) approve publication in the *FR* of the draft notice of withdrawal of the proposed interpretive rule regarding "public accommodations facility" published in the *FR* on March 15, 2010 (75 FR 12167), without change.

Commissioner Northup issued the attached statement regarding the matter.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson".

Todd A. Stevenson
Secretary

* Ballot vote due October 14, 2010



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4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON WITHDRAWING THE PROPOSED INTERPRETIVE RULE DEFINING "PUBLIC ACCOMMODATIONS FACILITY" IN THE VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT AND PUBLISHING A NEW DRAFT PROPOSED INTERPRETIVE RULE

October 14, 2010

The Consumer Product Safety Commission today voted to publish for public comment the new proposed interpretive rule drafted by staff in response to the Commission's August 4 vote. As I noted at that time, this proposed rule would adopt a different definition of "public accommodations facility" from the one that we adopted in draft form last March for purposes of enforcing the Virginia Graeme Baker Pool and Spa Safety Act. The new definition, which we are re-proposing pending a 60-day comment period, adopts an understanding of public accommodation that differs from the definition used in nearly every other federal statute of the past few decades and one that is different from the definition which the CPSC itself already uses in enforcing our crib standard against public accommodation facilities.

Although I am voting in favor of putting this definition out for public comment, I do not support broadening the definition of public accommodations facility as this new draft rule would do. I look forward to reading the public comments, and I hope that those parties affected by this unexpected change in the definition of a "public accommodations facility" will weigh in with the Commission. I also hope that the Commission will listen to those public comments. I remain open to changing my mind based on a persuasive comment, however, at this time I anticipate voting **against** the proposed definition.

The law does not require this definitional change and the cost of compliance is out of proportion with the risk. Since there is no record in the floor debate or in the conference committee report of a different intended meaning of public accommodations facility as the term is used in the House and Senate versions of the Virginia Graeme Baker Pool and Spa bill, it can only be assumed that the majority of the Members of Congress had in mind the standard definition of public accommodation. Furthermore, the staff has not presented evidence of even a single entrapment death or injury occurring in the pool or spa of a rental property. So we are stretching the law to cover a category that has never been demonstrated to pose a problem.

Commissioner Adler, the author of the re-proposal idea, explained in his comments at the August 4 hearing that this newly proposed definition means to include rental properties whose owners let them on a weekly or bi-weekly basis. I offered a clarifying amendment to incorporate such wording into the definition itself, which the Commission adopted unanimously, because I believe that the Commission's action to broaden the definition needed to be completely transparent to property owners and other affected parties.

This definitional change exemplifies the kind of overregulation that has caused Americans to lose faith in their government. It may seem like a small matter, but it is part of the incessant drip, drip, drip that

floods our citizens with overwhelming regulatory burdens. The broadened definition will cause a waste of perfectly good assets, as many rental homes may not be able to comply with this law at a reasonable cost. The average person will properly perceive forcing this expenditure as grossly wasteful. Requiring these safety measures solely for new construction or in the context of a pool or spa renovation or replacement would make far more sense. I am hoping that in the next 60 days the comments we receive will help us to clarify the impact of this rule and that the Commission can find a way to ensure pool safety without requiring wasteful spending.