U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
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August 4, 2010

STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE COMMISSION DECISION TO REVISE THE PROPOSED INTERPRETIVE RULE DEFINING "PUBLIC ACCOMMODATIONS FACILITY" UNDER THE VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT

Today I vote in favor of reproposing a definition of "public accommodation facility" that requires *all* inns, hotels, motels, or other places of lodging to comply with the requirements of the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act).

When Congress passed the VGB Act in 2007, it defined a "public pool and spa" to include pools in apartment complexes, public parks, and also pools or spas that are "open exclusively to patrons of a hotel or other public accommodations facility."[1] The term "public accommodations facility" is not defined in the Act, and the Commission received many questions regarding the scope of this term. In an effort to provide clarity on the question of what qualifies as a "public accommodations facility," the Commission decided to develop an interpretive rule that would provide needed clarity on the issue.

On March 15, 2010, I voted to approve publication in the *Federal Register* of a proposed interpretive rule defining the term "public accommodations facility" in a way that is consistent with the Americans with Disabilities Act (ADA) and the Civil Rights Act (CRA). Consistent with the ADA and CRA, the proposed interpretive rule expressly excluded owner-occupied establishments with five or fewer rooms for rent. Upon further reflection, however, I no longer support the exclusion of these establishments. I see no reason, based upon safety or the law, to distinguish between establishments with five or fewer rooms and establishments with six or more rooms. Indeed, the number of units in an establishment bears no relationship to whether a pool or spa on the premises may contain a deadly hazard to the patrons of such an establishment. Additionally, neither the statute nor legislative history requires or even contemplates any such exclusion as the statute never expressly refers to the ADA or CRA definitions, unlike most other federal statutes which incorporate this exclusion.

I also support amending the interpretive rule to clarify that the VGB Act definition of public accommodation includes residential investment properties that are rented to the public on a frequent and short term basis. Under existing case law, these "places of lodging" share characteristics normally associated with inns, hotels, and motels and would thus be considered "public accommodations" subject to the requirements of the VGB Act.

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[1] Section 1404(c)(2)(B)(iii) of the Act.

Today's action by CPSC will remove the exclusion for establishments with five or fewer rooms from the definition of "public accommodations facility" and directs the staff to redraft, for publication, a new proposed interpretive rule consistent with this approach. While this process will delay publication of a final interpretative rule, I believe it is the responsible approach for the Commission to pursue as consumers should be afforded the maximum level of protection envisioned by the Act in all places of lodging that are commercial in nature, regardless of the size of the establishment at which their family may choose to stay.