



United States
CONSUMER PRODUCT SAFETY COMMISSION
4330 East West Highway
Bethesda, MD 20814

BALLOT VOTE SHEET

DATE: **MAY 10 2010**

TO: The Commission
Todd Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*
Maruta Budetti, Executive Director *MB*

FROM: Philip Chao, Assistant General Counsel *PC*
Hyun S. Kim, Attorney *HSK*

SUBJECT: Virginia Graeme Baker Pool and Spa Safety Act Compliance Form--
Submission for Office of Management and Budget Review

BALLOT VOTE DUE: **MAY 17 2010**

Attached for Commission consideration is the draft second *Federal Register* notice requesting approval to conduct information collection activities under the Virginia Graeme Baker Pool and Spa Safety Act verification of compliance form as required by the Paperwork Reduction Act of 1995 (PRA).¹ Such collections of information are subject to approval by the Office of Management and Budget (OMB) under the PRA. The first step in obtaining OMB approval is the publication of a *Federal Register* notice providing the opportunity for public comment on the proposed collection of information. That *Federal Register* notice was published on September 21, 2009 (74 FR 48064). Several comments were received which are addressed in the draft notice.

¹ The verification compliance form does not fall within the scope of the authority delegated to the Office of the General Counsel under Order No. 0315.8, which is limited solely to those *Federal Register* notices required by the PRA where such notices involve the obtaining of information of facts or opinions by imposing reporting or recordkeeping requirements on ten or more persons, other than employees of the United States; or collections of information associated with procurement of goods or services; or collections of information undertaken as "Follow-up activities for products-related injuries."

Please indicate your vote on the following options:

I. Approve the publication of the draft notice in the *Federal Register*.

(Signature)

(Date)

II. Approve the publication of the draft notice in the *Federal Register* with changes.
(Please specify.)

(Signature)

(Date)

III. Do not approve the publication of the draft notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice; Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2009-0073]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (“CPSC”) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (“OMB”) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202-395-6974, or e-mailed to oir_submission@omb.eop.gov. All comments should be identified by the CPSC Docket No. CPSC-2009-0073 and the title “Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form.” The written comments should also be submitted to the CPSC, identified by Docket No. CPSC-2009-0073, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no

longer accepting comments submitted by electronic mail (e-mail) except through www.regulations.gov.

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Linda Glatz,

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Consumer Product Safety Commission

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301-504-7671

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SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance.

TITLE: Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form (Docket No. CPSC-2009-0073).

The Virginia Graeme Baker Pool and Spa Safety Act (“Pool and Spa Safety Act”) went into effect on December 19, 2008 (Pub. L. No. 110-140). The Pool and Spa Safety Act applies to public pools and spas and requires that each swimming pool and spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or drain cover pursuant to section 1404(b) of the Act (“Drain Cover Standard”). In addition to the anti-entrapment devices or systems, each public pool and spa in the United States with a single main drain other than an unblockable drain is required to be equipped with one or more of the following devices and systems designed to prevent entrapment by pool or spa drains: safety vacuum release system (“SVRS”); suction-limiting vent system; gravity drainage system; automatic pump shut-off system or drain disablement. The Pool and Spa Safety Act is designed to prevent the tragic and hidden hazard of drain entrapment and eviscerations in public pools and spas.

The CPSC staff will use a “Verification of Compliance Form” to collect the information necessary to identify drain covers at pools and spas that do not meet the requirements of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or spa drain cover. This compliance form may be viewed at <http://www.regulations.gov>, Docket No. CPSC-2009-0073, Supporting and

Related Materials. CPSC investigators or designated State or local government officials will use the form which will be filled out entirely at the site during the normal course of the pool and spa inspection. Using the form, the inspectors will collect information regarding the pool or spa facility; identify the type, location and features of the pool or spa; describe the drain covers, anti-entrapment device/systems, sump or equalizer lines at the site; and report on whether any actions are necessary to bring the pool or spa into compliance.

In the FEDERAL REGISTER of September 21, 2009, (74 FR 48064), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. Seven comments were received. Several commenters suggested the time burden allotted for the pool operators to participate in the pool inspection was insufficient.

Based on the public comments and CPSC staff's experience inspecting 1,200 pools and spas, the estimated burden hours for pool operators have been increased from 0.5 hours to 3.0 hours.

One commenter recommended that State or local officials use the proposed compliance form during the inspections to ensure consistency. In addition, the commenter stated that CPSC staff should accept findings by State or local officials and not re-inspect the pool.

CPSC staff is working with State and local officials to avoid a duplication of effort regarding pool inspections. State and local officials are conducting a limited number of pool and spa inspections to determine if the requirements of the Pool and Spa Safety Act have been met. CPSC staff will follow up with the pool owner or operator if corrective action is needed.

One commenter recommended an additional requirement for pool operators to state how the facility will monitor the security of the drain cover (i.e., insure it stays fastened in place) and note the expiration date for the cover. Another commenter suggested that the pool operators provide documentation that drain covers and/or SVRS were correctly installed.

CPSC staff is aware of the importance of ensuring the security of the drain cover, but those are policies for the facility to implement, and are not a part of the inspection. However, CPSC staff will request that the pool owner or operator provide the expiration date for the drain covers in the compliance form.

One commenter suggested that, in order to minimize the burden, an electronic form should be used and the pool owners/operators should fill it out before the inspection. A few commenters requested additional questions, or the use of different terms in the compliance form.

The purpose of the compliance form is to ensure that the CPSC inspection and data collection procedures are completed by CPSC staff or the designated State or local government official. The compliance form is not intended to be filled out by the pool owner or operator. Based on the CPSC staff's experience with the compliance form to date, the information obtained through the form adequately identifies drain covers at pools and spas that do not meet the requirements of ASME/ANSI A112.19.8, and except for the inclusion of the expiration date of the drain cover, we will not otherwise revise the compliance form at this time.

One commenter recommended that CPSC partner with local departments of health, industry, or a non-profit so it can inspect a more representative sample of pools.

CPSC is contracting with State and local officials to conduct pool inspections that follow guidelines provided by CPSC for inspecting pools for compliance with the Pool and Spa Safety Act. The State and local officials can conduct the pool inspections when they do their regular visits to these pools. CPSC staff will follow up with the pool owner or operator if corrective action is needed.

BURDEN ESTIMATES: The CPSC staff estimates that there may be approximately 700 facilities inspected annually. Because the investigators will be talking to either the pool owner/operator or pool staff at the time of the inspection and asking questions to help complete the form, the CPSC staff estimates that the burden hours for pool owners or pool staff to respond to the questions will be approximately 3 hours per inspection. Thus, the estimated total annual burden hours for respondents are approximately 2,100 hours (700 inspections x 3 hours per inspection). Although respondents may include either junior or senior pool staff, CPSC staff based the annualized cost to respondents based on the compensation for management-level employees, since such employees may be the most knowledgeable of the pool or spa used. The CPSC staff estimates that the annualized cost to all respondents is approximately \$99,624 based on an hourly wage of \$47.44 per hour ($\$47.44 \times 2,100$) (Bureau of Labor Statistics (“BLS”), December 2008, all workers, service, management, professional, and related).

The CPSC staff estimates that it will take an average of 2.5 hours to review the information collected from the oral communications with pool owners/operators or staff. The annual cost to the Federal government of the collection of information in these regulations is estimated to be \$19,361. This is based on an average wage rate of \$55.97 (the equivalent of a GS-14 Step 5 employee). This represents 70.1 percent of total compensation

with an additional 29.9 percent coming from benefits (BLS, September 2008, percentage total benefits for all civilian management, professional, and related employees), or \$79.84 x 242.5 hours.

Dated: _____.

Todd A. Stevenson, Secretary
Consumer Product Safety Commission.

DRAFT