

Comments
Virginia Graeme Baker Pool and Spa
Safety Act;
Public Accommodation
CPSC-2010-0102
Comments Due: December 21, 2010

INDEX OF COMMENTS

Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation
Public Submission
CPSC- 2010-0102

COMMENT	DATE	SIGNED BY	AFFILIATION
0102-0002	10/24/2010	Mark Strauch	10130 Soledad Canyon Rd. Las Cruces, New Mexico 88011
0102-0003	10/24/2010	Emilio Talipan	Address Omitted
0102-0004	10/26/2010	James Hayes	1632 Mail Service Center Raleigh, NC 27699-1632 jim.hayes@ncdenr.gov
0102-0005	10/26/2010	Joe Pollock	Nevada State Health Division 4150 Tehnology Way Ste. 101 Reno, NV 89521 jpollock@health.state.nv
0102-0006	10/26/2010	Kacie Noonan DPHHS	State on Montana Food and Consumer Safety 1500 Broadway Helena, MT 59620 knoonan@mt.gov
0102-0007	11/3/2010	Kate Eisinger	Address Omitted
0102-0008	11/10/2010	Anneli Hartmann	Address Omitted
0102-0009	11/11/2010	Cindy Smith	3620 Magnolia Way Punta Gorda, FL 33950 cindysellspuntagorda@gmail.com

COMMENT	DATE	SIGNED BY	AFFILIATION
0102-0010	11/24/2010	Paul E. Pennington	Pool Safety Council 336 West College Ave, Suite 200 Santa Rosa, CA 95401 paul@poolsafetycouncil.org
0102-0011	12/7/2010	Kathy Gough	Address Omitted
0102-0012	12/7/2010	Andre Makk	com407-reg@pandazing.net
0102-0013	12/7/2010	Charles Goldsworthy	7400 W. Oceanfront Newport Beach, CA. 92663 charles469@yahoo.com
0102-0014	12/8/2010	David Posner	Address Omitted
0102-0015	12/10/2010	Lars Larson	Address Omitted
0102-0016	12/12/2010	Brian Godfrey	Address Omitted
0102-0017	12/14/2010	Bart Miller	2075 S University Blvd, Suite 155 Denver, CO 80210
0102-0018	12/15/2010	Michael Delk Bill Young	City of Clearwater, Florida
0102-0019	12/16/2010	Arthur LaBellman	Address Omitted

COMMENT	DATE	SIGNED BY	AFFILIATION
0102-0020	12/16/2010	David Huttner	US Citizens Abroad 99 Crouch Hill London, United Kingdom N8 9RD david.huttner@gmail.com
0102-0021	12/16/2010	Ira Tane	Benchmark Home Builders 141 Railroad Street Huntington Station, NY 11746
0102-0022	12/17/2010	Tom Waymire	Address Omitted
0102-0023	12/17/2010	Geoffrey Read	212 High Point Drive Breckenridge, CO gread@mweb.co.za
0102-0024	12/20/2010	Brenna Brand	17 Highgate West Augusta, GA 30909 drrlb3@aol.com
0102-0025	12/20/2010	Jennifer Hatfield	Association of Pool & Spa Professionals 2111 Eisenhower Avenue Alexandria, VA 22314 jhatfield@apsp.org
0102-0026	12/21/2010	John Thomas	3805 Inverness Rd. Fairfax, VA 22033 itbike@verizon.net

COMMENT	DATE	SIGNED BY	AFFILIATION
0102-0027	12/21/2010	Ioana Rusu	Consumers union 1101 17th St. NW Washington, DC 20036 rusuio@consumer.org
0102-0028	12/22/2010	Matthew Scanlan	Tennessee Smoky Mountain Vacation Lodging Association P.O. Box 198888 Nashville, TN 37219-8888

PUBLIC SUBMISSION

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Received: October 24, 2010
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0002
Comment from Mark Strauch

Submitter Information

Name: Mark Strauch

General Comment

Comments attached as PDF

Attachments

CPSC-2010-0102-0002.1: Comment from Mark Strauch

MARK STRAUCH
10130 SOLEDAD CANYON RD.
LAS CRUCES, NEW MEXICO 88011

October 24, 2010

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD20814

Reference: Docket Number CPUC-2010-0102

I would like to offer the following comments on docket CPUC-2010-0102:

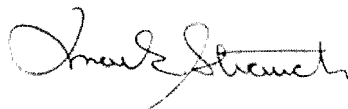
CPUC offers a tortured alternative and rationale to its original proposed rule. The CPUC notes:

The ADA, FFPCA, and CRA exclude from the definition of public accommodation an establishment located within a building that contains not more than five rooms for rent or hire that is actually occupied as a residence by the proprietor of such establishment. While there may be a rationale for this exclusion in the context of these other Federal statutes, the Commission sees no basis for this exclusion in the context of pool and spa safety.

There is a sound basis for this exclusion; avoiding some measure of Federal tyranny. CPSC staff needs to better understand and appreciate the basis for the exclusion.

CPSC, while dismissing the ADA view of public accommodation, goes on to embrace the ADA view of "other place of lodging." I do not believe that term was used in the Virginia Graeme Baker Pool and Spa Safety Act, and the CPSC is overreaching. Lastly, a number of private homes are rented on a weekly or bi-weekly basis that have pools and/or spas. Is the CPSC purposed rule covering those? This proposed rule needs to be withdrawn.

Sincerely,



Mark Strauch

PUBLIC SUBMISSION

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0003
Comment from Emilio Talipan

Submitter Information

Name: Emilio Talipan

General Comment

To whom it may concern,

I feel that the Virginia Graeme Baker Pool and Spa Safety Act provides increased safety standards for any patron of the public accommodation. It would be in the public's best interest to enact this act as soon as possible, and not get so focused on what a public accommodation is defined as.

Respectfully
Emilio Talipan

PUBLIC SUBMISSION

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0004
Comment from James Hayes

Submitter Information

Name: James Hayes
Address:
1632 Mail Service Center
Raleigh, NC, 27699-1632
Email: jim.hayes@ncdenr.gov
Phone: 919-715-0924
Fax: 919-715-4739
Organization: NCDENR Environmental Health
Government Agency Type: State

General Comment

The proposed definition for "place of public accomodation" is probably too broad for states to achieve enforcement. While bed and breakfast homes and inns are included under the authority of North Carolina rules, single-family residential structures are excluded, even if they are operated as weekly rental cottages and cabins. These places are beyond the reach of the state regulatory authority. Most rental houses on the outer banks have pools and spas that would be rendered non-compliant and the home-style spas in those structures cannot be easily brought into compliance. I think a definition this broad makes the law unenforceable at the state level.

PUBLIC SUBMISSION

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0005
Comment from Joe Pollock

Submitter Information

Name: Joe Pollock
Address:
4150 Tehnology Way Ste. 101
Reno, NV, 89521
Email: jpollock@health.state.nv
Phone: 775-687-7537
Fax: 775-687-7551
Submitter's Representative: Self
Organization: Nevada State Health Division
Government Agency Type: State
Government Agency: Nevada State Health Division

General Comment

The Nevada Administrative Code does not include pools and spas located at private residences that are only used by the occupants and guests of that residential unit. This is regardless of whether or not the unit is a rental property or not. The State of Nevada does not have sufficient staff to regulate these types of facilities. Education and self-regulation by industry is the appropriate approach. Should this revision to the rule pass, the Nevada State Health Division will defer enforcement of these facilities to the CPSC.

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Tracking No. 80b77f8e
Comments Due: December 2', 2010
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0006
Comment from Kacie Noonan

Submitter Information

Name: Kacie Noonan
Address:
1500 Broadway
Helena, MT, 59620
Email: knoonan@mt.gov
Phone: 406-444-5302
Submitter's Representative: DPHHS
Organization: State of Montana
Government Agency Type: State
Government Agency: Food and Consumer Safety

General Comment

Adjustment of the definition may conflict with our rules. See (e) and (f).

37.115.1912 WHEN LICENSE NOT REQUIRED (1) Licenses are not required for the following:

- (a) natural or recreational bodies of water;
- (b) swimming pools located on private property, including owner-occupied condominium developments, and which are used for swimming or bathing only by the owner, members of the owner's family, or their invited guests;
- (c) hot water baths for single use;
- (d) a pool or spa at a tourist home, if it is not used by the parties renting or leasing the home or if it is completely drained, cleaned, and refilled between guests;
- (e) spa pools in individual hotel or motel rooms or in individual cabins that are completely drained, cleaned, and refilled between patron use; and
- (f) pools or spas at condominium units that are leased for periods of one month or greater.

(History: 50-53-103, MCA; IMP, 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, MCA; NEW, 2010 MAR p. 80, Eff. 1/15/10.)

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0007
Comment from Kate Eisinger

Submitter Information

Name: Kate Eisinger
Address: United States,

General Comment

Upon reading this proposal, I am in agreement with the definition of public accommodations. I think that when the pools and spas in these public accommodations are in compliance with the safety requirements, people can feel safer about them and having their children there as well. Furthermore, I think that all pools and spas should have safety regulations. If an accident can happen in a public place, it can also happen privately. I understand that it is easier to regulate public places but if the pool companies were to have safety precautions to begin with more people could be at ease.

PUBLIC SUBMISSION

As of: March 15, 2011
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0008
Comment from Anneli Hartmann

Submitter Information

Name: Anneli Hartmann

General Comment

This is another example of government interference! While the intent is honorable, requiring short term rentals to comply with these restrictions is ridiculous. A lot of short term rentals are owned by individuals simply trying to keep their head above water in these hard economic times. Requiring them to retrofit their pools and spas will place an unnecessary and undue burden on them.

Please - keep the government out of our backyard pools!!!

PUBLIC SUBMISSION

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Tracking No. 80b8722d
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0009
Comment from Cindy Smith

Submitter Information

Name: Cindy Smith
Address:
3620 Magnolia Way
Punta Gorda, FL, 33950
Email: cindysellspuntagorda@gmail.com

General Comment

I am against the proposed rule to impose restrictions on private owners who rent their properties out for season, by the week, month, year, etc... The responsibility lies with the parent or guardian of the child to oversee and protect their welfare, and should NOT lie with a landlord, out of sight and in no direct control of that child. Even if protections were implemented, it is no guarantee of safety...if a parent is not properly monitoring and caring for the child, anything can happen, the child can wander off and be hit by a car, bit by a dog, or worse, kidnapped...

By passing these rules, you are going to limit the landlord's ability to rent to people with children, or even people with grandchildren, because of the liability involved and the costs involved to implement these additional safety requirements. Most counties already have in place rules relating to the construction of pools, so why the additional rules? Also, if you try implement these rules regarding a pool, what about properties on the water? Are you going to require fences and barriers to obstruct views, and access to these types of propertie because they are potentially dangerous to children? You can take this even further by even suggesting that properties with stairs be required to have barriers so children will not fall down these stairs...in other words, leave us alone, and let the parents parent, the government is restrictive enough.

PUBLIC SUBMISSION

As of: March 15, 2011
Received: November 24, 2010
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Posted: November 30, 2010
Category: Consumer Advocacy Organization
Tracking No. 80ba3c5d
Comments Due: December 21, 2010
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0010
Comment from Paul Pennington

Submitter Information

Name: Paul Pennington
Address:
336 West College Ave
Suite 200
Santa Rosa, CA, 95401
Email: paul@poolsafetycouncil.org
Phone: 877-222-4289
Fax: 202-204-5808
Submitter's Representative: Paul E. Pennington
Organization: Pool Safety Council

General Comment

As a party involved from the inception to the passing of the VGB act we here at PSC have always understood that the design of the Act was to save lives in pools and spas regardless of where those pools or spas were located. We agree wholeheartedly with the CPSC decision to change the interpretive rule to interpret the term "public accommodations facility".

Attachments

CPSC-2010-0102-0010.1: Comment from Paul Pennington

Pool Safety Council



November 24, 2010

Todd A. Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
RE: Doc. # CPSC-2010-0102-0001

Dear Secretary Stevenson;

On behalf of Pool Safety Council (PSC), a non-profit corporation, I am writing in response to a request for comments about the Consumer Product Safety Commission's (CPSC) proposed interpretive rule to interpret the term "public accommodations facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act (hereinafter "VGB Act").

Pool Safety Council a 501 (c) (4) social welfare organization has been one of the leading voices in pool safety. PSC is dedicated to improving pool safety and reducing child drowning. PSC has addressed the need for more Pool Safety awareness and products for both residential and public pools. PSC, working with Nancy Baker and Alan Korn of Safe Kids USA, were the chief proponents of the VGB Act, which requires all public pools to install layers of protection to reduce the risk of entrapment. As pool and spa safety specialists we have helped to technically consult the U.S. Senate Committee on Commerce, Science & Transportation that wrote the VGB Act. We also worked closely with Representative Wasserman Shultz (D-FL) on the House bill. Our history with the VGB Act and our deep involvement in the bettering of pool safety uniquely qualifies us to offer comments on the interpretive rule to interpret the terms "public accommodations facility" as used in the VGB act.

As a party involved from the inception to the passing of the VGB act we here at PSC have always understood that the design of the Act was to save lives in pools and spas regardless of where those pools or spas were located. **We agree whole heartedly with the CPSC decision to change the interpretive rule** to interpret the term "public accommodations facility".

Sincerely,

Paul E. Pennington
Founding Member

Dedicated to the prevention of child drowning worldwide

336 West College Ave Ste. 200 Santa Rosa, CA 95401 Phone: 877-222-4289 Fax: 202-204-5808

PUBLIC SUBMISSION

As of: March 15, 2011
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Tracking No. 80bb0a80
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0011
Comment from Kathy Gough

Submitter Information

Name: Kathy Gough

General Comment

As a short-term vacation rental property owner, I don't feel that the rule interpretation should include properties like mine. Many of us renting short-term only have a few rentals a month & there are many months where there are no rentals. Being required to be VGA compliant would put an extreme financial hardship on us. With the current economy, we've already had to reduce prices and many of us can barely cover our expenses. Most of us have our hot tubs serviced by reputable Hot Tub Management Companies. My hot tub is serviced right before and just after a guest's stay. On top of that, the hot tub is also serviced weekly. Because of this schedule, I know my hot tub is cleaner than most homeowner's who do not rent. I feel our inclusion in the rule is unnecessary.

PUBLIC SUBMISSION

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Comments Due: December 21, 2010
Submission Type: Web

Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0012
Comment from Andre Makk

Submitter Information

Name: Andre Makk
Email: com407-reg@pandazing.net

General Comment

While I would personally prefer to see regulations such as these implemented as part of local inspections required for places of public accommodation to be legally operated, I appreciate the goal of this proposed rule and legislation.

Having seen multiple stories and exposes about issues regarding the safety of pool drains in the popular news media over the years and having looked into the issue more extensively online, I find laws and regulations like this to be very in ensuring the safety of children who find themselves underwater and facing an overly powerful pool drain. Whether it results in death by drowning or lifelong disability due to evisceration of the bowel, the fates that face those who are unaware and unable to protect themselves is terrible to say the least.

By interpreting the language of this law as broadly as possible to cover as large a variety of rental properties and places of public accommodation as possible, I would hope that further injuries and deaths can be prevented.

As has been raised by other commenters, however, my concern is in the language that interprets the rule to apply to "individual condominium units or mountain lodge homes" that begin to be considered 'places of lodging' because of the frequency with which they are rented out. While I am not entirely sure of the threshold with which these definitions kick in, I would hate to see lawsuits or judgments forcing changes in the way individuals are required to install pools or spas at their vacation homes.

As a compromise on this potentially undue burden, I would suggest modifying this proposed rule to cover only houses, condos, or cabins that are rented through an outside company or when an individual is offering multiple properties for rent. Doing so would greatly mitigate the burden on someone who may simply rent out their vacation home to help with the mortgage payments, but would still ensure that companies and larger scale personal renters are required to comply with the law.

PUBLIC SUBMISSION

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0013
Comment from Charles Goldsworthy

Submitter Information

Name: Charles Goldsworthy
Address:
7400 W. Oceanfront
Newport Beach, CA, 92663
Email: charles469@yahoo.com
Phone: 949-584-4200

General Comment

I am a private homeowner who occasionally rents out a home in Breckenridge, Colorado. There is a hot tub at my house. After reviewing the proposed Pool and Spa safety act I am certain that I will be unable to comply with the regulations as they are proposed due to the expense and time commitment involved. I strongly urge you to exempt private homes from the proposed regulations as it would be impossible for anyone with part time renters to comply with what the law proposes.

PUBLIC SUBMISSION

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Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0014
Comment from David Posner

Submitter Information

Name: David Posner

General Comment

This rule should not apply to private hot tubs in private hooms that are rented to short term guests. It is infeasible, makes no sense. Thank you.

PUBLIC SUBMISSION

As of: March 15, 2011
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Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0015
Comment from Lars Larson

Submitter Information

Name: Lars Larson

General Comment

I strongly feel that this interpretation needs to include short term rentals. I feel that if home owner's are renting their house bi-weekly or weekly and profiting from this rental, that they should be responsible for the safest possible situation for their renters. This includes hot tub and swimming pool entrapment.

Hot tubs and swimming pools are a huge amenity and money maker for the landlords.

All businesses are regulated in some manner. As soon as people start making money on their 2nd or 3rd homes, they need to be responsible for the safety of their renters.

This is a serious issue and very unsafe situations exist. I do feel that the Government needs to step in and make sure the home owners are doing everything possible to remedy these existing situations.

PUBLIC SUBMISSION

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Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0016
Comment from Brian Godfrey

Submitter Information

Name: Brian Godfrey

General Comment

I am opposed to an interpretation of the VGB Pool and Spa Safety Act definition of "public accommodations facility" to include any management home or private rental home. I recently purchased a new spa for my home. At times, friends have rented my home for special occasions (girls weekends, New Years Eve, Easter Break). The hot tub remains locked when not in use and is serviced by a reputable company. The expense of retrofitting a new drain on a spa that is less than two years old along with possible water checks at least once a day if not more make this possible interpretation very cumbersome. As the spa is at a mountain home that receives minimal use, I feel the lock on the outside of the spa in addition to scheduled, routine maintenance are sufficient to keep the spa safe from small children and bacteria free.

Thank you. Brian Godfrey

PUBLIC SUBMISSION

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Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0017
Comment from Bart Miller

Submitter Information

Name: Bart Miller
Address:
2075 S University Blvd
Suite 155
Denver, CO, 80210
Submitter's Representative: Bart Miller
Organization: Bart Miller

General Comment

The Virginia Graeme Baker Pool and Spa safety Act should be interpreted to include only those facilities that are institutional. Including short term single family home rentals operated by home owners in the category of "Public Facilities" is going beyond the original legal ruling of this the act to protect the consumer. Home owners renting out homes for short term durations of daily, weekly or bi-weekly should not be included in the interpretation of public facilities.

Sincerely

Bart Miller
Breckenridge, Colorado

PUBLIC SUBMISSION

As of: March 15, 2011
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Tracking No. 80bb7864
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0018
Comment from michael delk

Submitter Information

Name: michael delk
Submitter's Representative: Bill Young
Organization: City of Clearwater
Government Agency Type: Local
Government Agency: City of Clearwater, Florida

General Comment

This regulation is appropriate to require short term rental properties to be subject to increased pool safety regulation requirements as outlined.

PUBLIC SUBMISSION

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Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0019
Comment from Arthur LaBellman

Submitter Information

Name: Arthur LaBellman

General Comment

Dear Consumer Product Safety Commission Representatives,

I am writing to express my opposition to the adoption of a new definition of the Virginia Graeme Baker Pool and Spa Safety Act. Our family occasionally rents out a property we own to friends we know when we are out of town, and the property has a hot tub on the premises. A new interpretation of the "public accommodations facility" portion of the Virginia Graeme Baker Pool and Spa Safety Act to apply to our property would be entirely inaccurate as it is not rented to the "public" but only to people we know and trust. Please do not change the definition of this Act, as the increased costs required to retrofit and maintain such a retrofitted hot tub would potentially require us to entirely cease the use of our hot tub for both ourselves and our friends who use and enjoy it. Thank you for your consideration in this matter.

Sincerely,

Arthur LaBellman

PUBLIC SUBMISSION

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Tracking No. 80bb8a85
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0020
Comment from David Huttner

Submitter Information

Name: David Huttner
Address:
99 Crouch Hill
London, United Kingdom, N8 9RD
Email: david.huttner@gmail.com
Organization: US Citizens Abroad

General Comment

Dear CPSC,

Re CPSC-2010-0102 on Spas in private condos that are rented part time.

As a tax paying US citizen abroad, we have a condo in Colorado that serves as a base during the summer. To help cover some (though not all of the costs) during ski season we try and rent our unit a bit. It has not been easy with the economy as it is.

Now it appears you want to treat someone like us as though we run a fancy hotel. And we have to fix up our perfectly decent hot tub like we are opening a health club. Basically, one wonders why a person who has tried to make some sort of investment to retain ties to the US is expected to keep dumping money into it to fill ever more obscure regulations. I live in Europe so I know all about the Nanny state - let's try to at least preserve a semblance of reasonability in the US.

Thanks for trying to balance your duties with the practical realities of our everyday lives.

PUBLIC SUBMISSION

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Comments Due: December 21, 2010
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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0021
Comment from Ira Tane

Submitter Information

Name: Ira Tane
Address:
141 Railroad Street
Huntington Station, NY, 11746
Phone: 631-421-4423
Submitter's Representative: Ira Tane
Organization: Benchmark Home Builders

General Comment

Applying commercial regulations to homes that are essentially residential and single family is wrong. These homes were not built to commercial specifications, regarding electric, plumbing or fire protection. It not appropriate to change the interpretation of a property classification due its secondary use.

In the event these mis-interpretation prevails, then in no case should an existing property be required to retrofit costly mechanical alterations to a tested and approved appliance.

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0022
Comment from Tom Waymire

Submitter Information

Name: Tom Waymire

General Comment

I own a condo in Breckenridge, Colorado and rent out my condo during the ski season. I am NOT a public accommodations facility as defined in the Act. I understand that a new definition would include any weekly or twice weekly rentals of private residences. I am opposed to this stretching of the intent of the Act. The Act was meant for hotels and motels and not for private residences.

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0023
Comment from geoffrey read

Submitter Information

Name: geoffrey read
Address:
212 high point drive
breckenridge, CO,
Email: gread@mweb.co.za

General Comment

I own a house in Breck co that is occassionally let. The hot tub is used by my family and guests.It is perfectly safe and has been for yrs. To involve me in expenses to change it seems crazy GO
READ

PUBLIC SUBMISSION

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0024
Comment from Brenna Brand

Submitter Information

Name: Brenna Brand
Address:
17 Highgate West
Augusta, GA, 30909
Email: drrlb3@aol.com
Phone: 706-736-6130

General Comment

A public accommodations facility should NOT include a private home that is rented on a short term basis!!!! What is being proposed would completely shut down this type of rental and put thousands of Short Term agencies OUT of business. The expense caused by this change would more than cripple all resort communities ----- most home owners would be forced to purchase new SPAS ,not to mention the expense required to have a spa tested 1 to 3 times a day. Imagine yourself as the renter-----and having to be disturbed 1-3 times a day just to have the spa tested!!!! Renting a private home should remain just that-----PRIVATE.

PUBLIC SUBMISSION

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Tracking No. 80bbb03b
Comments Due: December 21, 2010
Submission Type: Web

Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0025
Comment from Jennifer Hatfield

Submitter Information

Name: Jennifer Hatfield
Address:
2111 Eisenhower Avenue
Alexandria, VA, 22314
Email: jhatfield@apsp.org
Phone: 703-838-0083
Fax: 703-549-0493
Organization: Association of Pool & Spa Professionals

General Comment

The following attached file is submitted on behalf of the Association of Pool and Spa Professionals (APSP) in response to the Commission's request for public comment on October 22, 2010, CPSC proposed interpretive rule to interpret the term "public accommodation facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act (the Act). The APSP would like to ask for two clarifications and respectfully provides suggestions on each, please see attached file.

Thank you.

Attachments

CPSC-2010-0102-0025.1: Comment from Jennifer Hatfield



2111 Eisenhower Avenue
Alexandria VA 22314-4695

703.838.0083
703.549.0493 fax
www.TheAPSP.org

The Global Source and Voice for the Recreation Industry

December 20, 2010

To: CPSC Office of the Secretary

Re: Doc. # CPSC-2010-0102-0001

The following is submitted on behalf of the Association of Pool and Spa Professionals (APSP) in response to the Commission's request for public comment on October 22, 2010, CPSC proposed interpretive rule to interpret the term "public accommodation facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act (the Act). The APSP would like to ask for the following two clarifications and respectfully provides suggestions on each:

1. The proposed rule expands what was originally considered a public accommodation facility; however, it does not specify how long these newly designated public accommodation facilities will have to comply with the provisions of section 1404(c) of the Act. The APSP suggests that the Commission clarify that such facilities will have one year from the date of publication of the Final Rule to comply, consistent with Section 1404(c)(1)(A). Although immediate compliance is strongly encouraged, substantial time is required for most owners of these facilities (including single family residences) to learn that their pools, spas or hot tubs are now classified as public pools under the Act. While hotels and other facilities initially covered by the Act are expected to have regular contact with state and local health officials that regulate them, single and even most multiple family homes are not regulated in such a manner and will not have any contact with public officials that are familiar with the Act. They are also far less likely to have regular contact with the pool and spa industry. Further, this proposed new rule change will require compliance by individuals who are not accustomed to meeting CPSC rules. While the APSP will offer its assistance to the Commission to help "get the word out," it will still require a considerable amount of time for many affected owners to even learn of this Rule, and then, to take the necessary corrective actions.
2. As provided in both the February 2010 U.S. Consumer Product Safety Commission Technical Guidance Section 1406 of the Virginia Graeme Baker Pool and Spa Safety Act and Model State Legislation documents, "portable spas certified to UL 1563 by a Nationally Recognized Testing Laboratory (NRTL) are considered to comply with the entrapment prevention provisions of the Act." See *Section 2.1.1 of the Technical Guidance document and II.A of the Model State Legislation*. The APSP believes that this same guidance should apply to portable spas, i.e. hot tubs, found in public accommodation facilities. We would ask the Commission to clarify that this provision applies to public as well as residential portable spas, in the Final Rule and/or subsequent interpretations or clarifications. This will eliminate confusion for both the owner of a portable spa and the industry as to what is required when addressing

new and existing portable spas, i.e. hot tubs. Otherwise owners of effective properties will be required to remove the spa, replace it entirely or replace all the existing drain covers.

Background on portable spas:

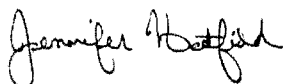
As previously reported to the CPSC, “portable” or factory produced spas require different consideration than pools and in-ground spas. A portable electric spa is a factory assembled, self-contained unit that is tested and certified for safety as a complete appliance as it leaves the factory. This evaluation and certification must comply with the “Underwriters Laboratory Standard for Safety for Electric Spas, Equipment Assemblies, and Associated Equipment, UL 1563.” Unlike pools or in-ground spas, which must be built and certified as acceptable on sight, portable spas are tested and monitored by a Nationally Recognized Testing Laboratory (NRTL) on a continuing basis. It is the NRTL that deems whether or not a portable spa complies with UL 1563.

There are no reported entrapment injuries in portable spas that comply with UL 1563. This standard requires portable spas to have at least two suction outlets three feet apart or on separate planes. Both hair and body entrapment are addressed in this standard and have been addressed within this standard since the late 1980s. Further, Underwriters Laboratory advised the APSP that in their twenty plus years of testing and certifying portable spas, they are not aware of a single reported entrapment incident involving a portable spa with multiple drains on separate planes. Portable spas have much smaller drain openings and lower suction force and therefore have not been associated with the types of entrapment injuries that SVRS or shut off devices are designed to address, such as body or limb entrapment.

The APSP, formerly the National Spa and Pool Institute (NSPI) is the world's largest trade association in the pool and spa (hot tub) industry and a leading industry advocate representing the industry. Its members include manufacturers, manufacturer's agents, distributors, retailers, builders, installers, and service professionals. All members agree to adhere to a code of business ethics and share a commitment to promote the safe design, construction, and use of pools and spas. The APSP promotes professional best practices through education, certification, research, safety initiatives, and the development of voluntary national consensus standards under the auspices of the American National Standards institute (ANSI).

The APSP has always been and continues to be a strong supporter of the Virginia Graeme Baker Pool and Spa Safety Act. We continue to work cooperatively with the CPSC on pool and spa safety guidelines and other safety initiatives. We thank the Commission for its time and consideration.

Jennifer Hatfield



APSP Government Affairs Director

jhatfield@apsp.org

941-345-3263

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0026
Comment from John Thomas

Submitter Information

Name: John Thomas
Address:
3805 Inverness Rd.
Fairfax, VA, 22033
Email: JTBIKE@VERIZON.NET
Phone: 703-277-3453

General Comment

It would seem that owners of rental properties would want to bring their pools up to the highest safety standards. When I take my family to the beach, I expect the same standards as if I was staying in a motel. Renters, whether nightly or weekly are not swimming pool experts. We expect the oven, furnace, and pool to work safely. I don't think this is too much to ask.

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0027
Comment from Ioana Rusu

Submitter Information

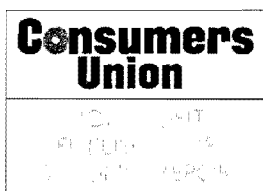
Name: Ioana Rusu
Organization: Consumers Union

General Comment

See attached file(s)

Attachments

CPSC-2010-0102-0027.1: Comment from Ioana Rusu



December 21, 2010

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Via Electronic Submission
www.regulations.gov

Re: Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Dear Sir or Madam:

Consumers Union,¹ the non-profit publisher of *Consumer Reports*®, appreciates the opportunity to comment on CPSC's proposed interpretive rule to interpret the term "public accommodation facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act. On March 15, 2010, the Commission issued an initial proposed interpretive rule on this matter, defining "public accommodation facility" as: "An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor." However, after receiving comments on this proposed rule, the Commission voted to withdraw the interpretation and proposed a new definition of "public accommodation facility" that would not contain an exclusion for an establishment with five or fewer units for rent or hire.

Consumers Union supports CPSC's proposed definition of "public accommodation facility." CU agrees that the number of residences in an establishment bears no relationship to whether a pool or spa may be a safety hazard to the residents of that

¹ Consumers Union of United States, Inc., publisher of *Consumer Reports*®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and market place economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

establishment. While the above-mentioned exclusion does have a rationale in the context of other federal statutes, such as the Americans with Disabilities Act, this rationale does not carry through in this particular context.

Thank you for the opportunity to comment on this matter. Should you have any questions or concerns, please do not hesitate to contact me at (202) 462-6262.

Sincerely,

A handwritten signature in cursive script that reads "Ioana Rusu". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Ioana Rusu
Regulatory Counsel
Consumers Union, non-profit publisher of *Consumer Reports*®
1101 17th St. NW
Washington, DC 20036
(202) 462-6262 – phone
(202) 265-9548 – fax
rusuio@consumer.org

PUBLIC SUBMISSION

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Docket: CPSC-2010-0102
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodations

Comment On: CPSC-2010-0102-0001
Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

Document: CPSC-2010-0102-0028
Comment from Tennessee Smoky Mountain Vacation Lodging Association

Submitter Information

Name: Matthew Scanlan
Address: United States,
Submitter's Representative: Matthew Scanlan
Organization: Comment from Tennessee Smoky Mountain Vacation Lodging Association

General Comment

See Attached

Attachments

CPSC-2010-0102-0028.1: Comment from Tennessee Smoky Mountain Vacation Lodging Association

Received CPSC
2010 SEP 27 A 11: 09
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Attorneys at Law

September 21, 2010

United States Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Virginia Graeme Baker Pool and Spa Safety Act
Tennessee Smoky Mountain Vacation Lodging Association

Dear Commissioners:

I submit the below comments on behalf of the Tennessee Smoky Mountain Vacation Lodging Association (the "TSMVLA"). The Tennessee Hospitality Association also supports these comments.

The TSMVLA is very concerned about the recent vote of the Commission to withdraw its previous interpretation of the term "public accommodations" and instead propose a hastily drawn alternative, which appears inconsistent with every other federal interpretation of the term. In particular, the TSMVLA represents several thousand homeowners that rent private homes in the Great Smoky Mountains. Part of the draw of these homes is that they are privately owned and furnished and are not commercial enterprises. When rented, the occupants are mostly single families and the rental homes with pools are not open to public use from others.

It seems perfectly clear that Congress used the term public accommodation knowing that it has already been defined by the Americans with Disabilities Act and the Civil Rights Act. The term also has a long history of common law behind it as well. *See, Powell v. Houtsma*, 2005 U.S. Dist. LEXIS 44528 (N.D. Ill., Feb. 25, 2005); *D'Lil v. Stardust Vacation Club*, 2001 U.S. Dist. LEXIS 23309 (E.D. Cal. Dec. 20, 2001); *Jankey v. Twentieth Century Fox Film Corp.*, 212 F.3d 1159 (9th Cir. Cal. 2000).

The definition used by the ADA recognizes that applying costly regulatory mandates on private homes is a burden on homeowners with little appreciable societal benefit. As applied to the VGBA, this idea is borne out by the Commission staff's responses to the questions posed by Commissioner Adler on June 29, 2010. According to the memo circulated on July 9, 2010 from Robert Howell, from 1999 to 2009 there were zero reports of fatalities or injuries in rental beach houses, the closest category matching the private mountain home. Clearly, the safety threat in such homes is not as great as for hotels and apartment complexes, to which the Act clearly applies. Although the TSMVLA recognizes that these are not complete or accurate numbers, it seems clear that the CPSC should not rush to apply costly fixes where no problem exists.

413868.1/2009693



Attorneys at Law

A different interpretation than the one already used in all other federal statutes will create a lengthy process in order to obtain interpretive guidance from the CPSC and other federal agencies involved with enforcement of the Act. As the commission staff points out in its July 7, 2010 memo regarding the rulemaking, it would be much more consistent if the CPSC interpreted this reference to "public accommodations" in the same way as it interprets the term under the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). Interpreting the term differently invites litigation, expense, and uncertainty among homeowners that may occasionally rent homes for a variety of reasons.

Although the TSMVLA is concerned with the application of the Act to all the mountain homes, it recognizes that many rental homes will fall within the definition of public accommodations as defined by the ADA. We further believe that the ADA definition of the act has a fairly well defined limit as to its application to private homes. The definition contemplated by the CPSC has no such limit. For example, many Americans will rent their homes to others during special events taking place in a particular city such as the Olympics or the World Cup. The definition currently contemplated by the CPSC, would subject the owners of those homes to the provisions of the Act. This is a vast expansion of government regulation on privately owned homes.

The TSMVLA believes that mountain homes rented during part of the year are not within the intended scope of the Act. As mentioned above, these homes are primarily occupied either by the owner of the home or by single families taking a trip to the mountains for one to two week periods. (actually most stays average less than 4 days in our homes) They are not open to the public in the same way as commercial pools operated by hotels or health clubs, nor are they open to numerous families such as apartment or condominium pools. Therefore, the costs associated with retrofitting these homes will far outweigh any potential benefits.

It is also important to point out that the Act already applies to all new pools assembled or purchased in the United States. The TSMVLA believes that the requirements of the Act will accomplish, to the extent possible, a dramatic reduction in the number of drowning deaths in the United States as homeowners install new pools with the safety features contained in the act.

Sincerely,

A handwritten signature in black ink that reads "Matt Scanlan". The signature is fluid and cursive.

Matthew J. Scanlan

MJS/bjj