

Commissioner Buerkle Statement on Proposed Rule: Safety Standard for Baby Changing Products.

On September 14, 2016, the Commission held a decisional hearing to consider a Proposed Rule: Safety Standard for Baby Changing Products. I want thank CPSC's staff for their hard work on the NPR. Our staff plays an important role in the development and improvement of voluntary standards. In fact, they now have the authority to vote on voluntary standards or chair a voluntary standards committee.

The Commission was asked to vote on an NPR for changing tables even though final balloting on the ASTM F2388-16 voluntary standard on changing tables has not yet been completed.

The outstanding issues that remain are structural integrity, barriers and the restraint system for changing tables. Additionally, there are differences and disagreements still to be worked out on the issue of warning labels. It seems to me that the package came up to the Commission prematurely. We were asked to vote on publishing a proposed standard that relates to a voluntary standard that has not been finalized. We were asked to apply more stringent requirements to a standard that is still being worked on.

The voluntary standards process is a well-regarded, time honored system comprised of professionals from industry, government and consumer groups who bring their expertise, practical experience and vision to create strong voluntary standards. It is important that this voluntary standards system maintains its integrity and that the process is not needlessly disturbed.

The Section 104 of the CPSIA provides CPSC the legal authority to move beyond the voluntary standard if we believe that improvements to the voluntary standard will further reduce the risk. I am concerned that staff may be prematurely invoking our authority to make the standards more stringent. Is it because we perceive that the debates and technical dialogue in the voluntary standards committees are taking too long? Or in the case of changing tables, was the timeline influenced by internal agency pressure on staff to meet end of year commitments? Regardless, the package was to the Commission before it was ready.

As an agency, we need to make sure that we do not reduce the quality of our draft rules or create unintended consequences in the marketplace. We must not minimize the concerns of our industry partners, make assumptions about what we think should be incorporated into a voluntary standard, or succumb to timelines that shortchange the process. If we are to recommend a more stringent standard, it is incumbent on us to make a strong showing that the additional requirements will further reduce risk. At the very least, before we say more stringent requirements are appropriate, there should be a final voluntary standard. We should be careful to give the ASTM committee ample time to consider our proposals, do the testing that is necessary to evaluate the change and also to come up with alternative procedures that accomplish the same ends, perhaps at a lower cost.

We are a government agency, and thus have a higher bar because of our legal authority. Additional authority always carries with it additional responsibility. We must not invoke our authority unless it is necessary and we make a compelling case to do so. Our staff brings a depth of knowledge to the standards process, but as a government agency we must respect and encourage creative concepts, new designs and innovation through American ingenuity. We must resist the temptation that we know best before all of the ideas are on the table for consideration.

We should not lightly override the judgments made in the consensus process just because Congress gave us the extraordinary authority to do so. When we exercise our authority, we should make sure we are doing so responsibly. We should be careful to give the voluntary standard committees ample time to digest our proposal, complete their analysis and decide on a final course of action before we move ahead.

I realize that Congress imposed a rigorous timeline with which to abide in completing Section 104 activity. My colleagues know that I strongly believe in following Congressional direction. But I also believe that if this congressional timeline is unrealistic or puts undue pressure on staff, then we should engage with the Hill and perhaps revisit the schedule for Durable Nursery Products.

A well-reasoned, data- driven, robust and thorough debate and preponderance of all the evidence is the better way to proceed. The integrity of the ASTM consensus

standard process must be maintained and proper procedures and practices upheld, as well as our own.