

Statement of Commissioner Ann Marie Buerkle on the Final Rule to Amend 16  
C.F.R. Part 1031

The voluntary standards process is an excellent way for industry, CPSC, and consumer advocates to work together to address technical product safety challenges and develop real life solutions to emerging safety issues. Every reputable business wants its products to be safe and dependable.

Voluntary standards development organizations are market-driven solutions developed by industry, to address the complexities of the marketplace by introducing a more efficient, reasoned and cooperative mechanism for developing safety standards.

Congress, recognizing the strength and enormous value of the standard development organizations and consensus standards, has expressed a strong preference for developing safety standards through the voluntary standards process rather than through rulemaking. Therefore taking part in the voluntary standards process is one of CPSC staff's most important roles.

I believe that the voluntary standard process helps to create a system that is fair and equitable. Standards development organizations allow for due process, for the balancing of various interests and ideas, for openness and for a consensus voting process.

When the package to amend 16 C.F.R. Part 1031 came before the Commission in September of 2013, I was a new Commissioner at the CPSC and just learning about the value and integrity of the voluntary standards process. But now, two and half years later, I have a much deeper understanding and appreciation for the value of the standards process, the technical work, and the time commitment by SDO members in developing and maintaining quality standards.

While I voted to support the final rule, my support does not come without reservation.

First, I question the need for the change in staff's level of participation. The package did not come to us organically-- in other words, this was not a response to a staff request. It came to us in response to a GAO report. So one must ask, are we trying to fix something that is not broken?

Another concern I have is that there could be confusion or conflict over how staff's position relates to the Commission's position. When staff actually votes on a voluntary standard, it is more important than ever that staff make it clear that their vote does not represent the views of any Commissioner or the Commission itself. This is not just boilerplate; it is a crucial point for everyone to understand.

I believe the potential for conflicts of interest is greatest in the case of voluntary standards for durable nursery products. The Commission is required to adopt mandatory standards for these products and to consider the voluntary standards in doing so. I urge the Executive Director to consider the complexity of this situation very carefully before authorizing any staff member to vote in this arena.

Finally, is a concern with regards to leadership. While I am confident in our staff's ability to lead a standards committee, I am concerned that leadership demands could pull staff away from their more important technical work on the voluntary standards. How will agency resources be affected when staff is serving in these leadership roles?

The motion I offered at the decisional meeting, which my colleagues unanimously supported, aims to address some of my concerns by requiring the Executive Director to provide an early report to the Commission regarding the voting and leadership activities allowed by the final rule. The report will help us gain from the staff's early experience with the new flexibility afforded them today. We hope to learn more about: (1) the range of staff's activities; (2) staff's views as to the value of any voting and leadership activity; (3) resources expended as a result of the voting and leadership activities during the same period; and (4) recommendations the staff may have regarding voting or leadership activities in light of experience. Adding this layer of accountability will allow us to better understand the costs and benefits of this policy change.

There are many remaining questions as to how this proposal will be implemented and the impact it will have on the voluntary standards process as well as our agency. Removing the current prohibitions will allow the Executive Director to make thoughtful determinations as to when and where the staff can contribute more to the process, and their own reflections, conveyed in the staff report, will allow us to make more informed decisions about these matters in the future.

I am optimistic that an increased opportunity for our staff to participate in the process could ultimately improve the voluntary standards process and enhance

safety. I look forward to understanding how the Office of the Executive Director determines the protocol and process for granting voting authority and leadership ability. I will anticipate the weekly updates in my meetings with senior staff as to when leadership and voting status have been granted. And I will also look forward to the initial staff report to better understand the overall impact of this new policy and whether it is everyone's best interest to continue. With these new roles, come added responsibilities and now greater accountability to the commission as well as the American people.

On a slightly different note, I want to emphasize another one of the GAO's observations on CPSC's participation in the voluntary standards process, namely the challenge that our meetings policy sometimes poses for the standard development process. This is not the first time it has been revealed to the commission that this policy creates burdens and challenges to collaboration and creative thinking. I hope we will heed GAO's concern and look for ways to adjust our policy where it presents an obstacle to candid exchanges and ultimately to the success of the process.

In closing, our staff is of the highest caliber and is held in high esteem by both industry and the standard organizations. My support for today's proposal is a vote of confidence in our staff, particularly the technical staff members who are regularly engaged in the voluntary standards process. It is important that staff knows how critical their opinions are to this Commission. To that end, we need to know and understand all perspectives and not just one homogeneous point of view. As we try to promote employee engagement, I hope we will consider that allowing staff to honestly express their opinions—particularly their dissenting opinions--matters not only to the decision makers but also to them.