

**TO:** ANSI ExSC Essential Requirements Task Group

**ExSC\_096\_2017**

**FROM:** Bob Adler

**RE:** Definition of "Health and Safety"

**DATE:** December 1, 2017

**Background:** At the meeting of ANSI's Essential Requirements Task Group, held on November 9, 2017, several members asked that I share my definition of what constitutes a health and safety standard for purposes of the proposal I have offered to amend ANSI's Essential Requirements. Keeping in mind ANSI's previous unsuccessful attempts to define what constitutes a "safety" standard, I have attempted to provide a working definition of what constitutes a health and safety standard.

As a starting point, I repeat my proposal:

A health and safety standard shall include any standard that is intended to protect end users, such as consumers or employees, from death, injury, or illness. Any matter that is the subject of official concern by any federal or state health and safety organization shall presumptively be considered a health and safety standard subject to this section in the event that the matter should be considered for development as an American National Standard.

I also repeat my commentary on the proposal:

This section makes clear that the suggested changes will apply only to health and safety standards. This is an expansion of the current scope of section 2.3 of the Essential Requirements which applies only to "safety standards." This section recognizes that health issues are as critical to protecting the public as safety issues. This also recognizes that most agencies that address safety issues also address health issues. To that end, this section defines the term "health and safety standard." Essentially, it uses a common-sense approach by covering those standards that address issues relating to death, injury, or illness from products by end users. A good rule of thumb would be to look to whether a health and safety agency like FDA, CPSC, OSHA, USDA would exercise jurisdiction over the product. If so, the standard should generally be considered a health and safety standard. For the most part, this section addresses products used by consumers or workers. In a limited number of instances, a concern broader than products may also be considered. For example, OSHA relies on standards that are designed to protect workers from falls, excessive cold or heat, or noise.

**Further Thoughts:** Here are some further thoughts that I have had since our meeting.

- a. Expanded Approach Beyond Health and Safety Standards: After I met with the task force, as I understand it, several members floated the notion of expanding the proposal beyond health and safety standards to include all ANSI standards. I have serious misgivings about such an approach. Although I have no reason to doubt the sincerity of this suggestion, I believe that such a comprehensive change in the Essential Requirements would undermine any serious consideration of my proposal. Merely contemplating the substantially expanded scope of analysis that would be required leads me to the conclusion that smaller steps in applying changes to the Essential Requirements makes the most sense. I see no need at this point to bring additional complexity to the table. There will be enough time to expand its scope at a later point if ANSI wishes.
- b. Impossibility of Precise Definition of “Health and Safety Standard”: Perhaps the most important conclusion that I have reached is the impossibility of drawing precise lines between what is a health and safety standard and what is not. As I understand it, after a serious and time-consuming effort to define the term “safety standard,” ANSI abandoned the effort. To think that it would be easier or more likely to develop a precise definition of “health and safety standard” is probably unreasonable. Nonetheless, I do believe that a useful working definition can be developed, and I have attempted to do so in this memo.
- c. A Working Definition – Look to Existing Laws: In order to help draw lines regarding the term “health and safety standard,” I look to work already done by the Congress and various government agencies. Most stakeholders affected by current law have an intimate knowledge of where their interests are affected by government rules. Accordingly, I think the best approach is to build on the definitions currently applied by government agencies – with a few modifications. To help draw boundaries, I also offer examples of issues not contemplated in my proposal. Needless to say, any SDO that wishes to adopt the principles of my proposal are free and welcome to do so.

## Proposed Definition of “Health and Safety Standard”

A “health and safety standard” shall include any standard that is intended to protect individual end users, such as consumers or employees, from death, injury or illness. Any matter subject to the jurisdiction of the following federal agencies shall presumptively be considered a health and safety standard. Examples include:

- Environmental Protection Agency (EPA)
- United States Department of Agriculture (USDA)(*limited to consumer products under USDA jurisdiction*)
- National Highway Traffic Safety Administration (NHTSA)
- Consumer Product Safety Commission (CPSC)
- Food and Drug Administration (FDA)
- Occupational Health and Safety Administration (OSHA)
- U.S. Coast Guard (*limited to consumer products under the Coast Guard’s jurisdiction*)
- Nuclear Regulatory Commission (*limited to diagnostic and therapeutic uses of radioisotopes*)
- Federal Aviation Administration (*limited to products under the FAA’s jurisdiction specifically used by consumers*)

In addition, matters that directly affect the health and safety of individual end users that are incorporated into building codes or electrical codes shall be considered health and safety standards.

*Exclusions:* Matters that may affect the population at large or individuals who are not end users of products shall generally not be considered health and safety standards. This would include matters relating to national defense or terror-related risks. Thus, standards or rules from departments or agencies such as these would generally not be considered health and safety standards:

- Department of Defense (including Coast Guard rules not addressing individual products)
- Department of Homeland Security
- Bureau of Alcohol, Tobacco, and Firearms
- Drug Enforcement Administration
- Nuclear Regulatory Commission (licensing and regulation of nuclear power facilities)

*Comment:* This section makes clear that the suggested changes will apply only to health and safety standards. (Of course, SDOs that wish to adopt the principles of this section are welcome to do so.) This is an expansion of the current scope of section 2.3 of the Essential Requirements which applies only to “safety standards.” This section recognizes that health issues are as critical to protecting the public as safety issues. This also recognizes that most agencies that address safety issues also address health issues. To that end, this section defines the term “health and safety standard.” Keeping in mind that no precise definition that addresses every possible situation that might arise is possible, this proposal adopts a common-sense approach by covering those standards that address issues relating to death, injury, or illness from items intended for end users. For the most part, this section addresses products used by consumers or workers. A good rule of thumb would be to look to whether a health and safety agency like FDA, CPSC, OSHA, USDA, NHTSA (and similar agencies) would exercise jurisdiction over the product. If so, the standard should presumptively be considered a health and safety standard. In a limited number of instances, a concern broader than products may also be considered. For example, OSHA relies on standards that are designed to protect workers from falls, excessive cold or heat, or noise.