6-20-1977

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The siege on our voluntary system of standards

By John J. Obrutz

The voluntary system of standards development that has served for decades is challenged by proposed legislation that may end it.

Many thousands of products of every type and description are made so that they conform to standards, certifications, codes and safety regulations developed by several hundred voluntary and non-profit organizations. Of these, a small number have played a major role in this effort for many decades.

The standards and codes they develop have a tremendous impact on the market place—both domestic and foreign. They may deal with just about anything from the efficiency and performance of household appliances to the design and safety of industrial boilers (IA, Jan, 17, 1977, p. 29).

This voluntary system of standards development is now under serious attack. Its opponents have fired a barrage of charges contending that the system “frustrates our national goals, is strewn with abuses, excludes competition, restricts trade and is a tool created by and used for the benefit of the large corporations.” In short, they’re demanding that the voluntary standards system be placed under government control.

Proponents of the existing system bitterly oppose government domination over the system. They ask: How could standards development, a technical, tedious and painstaking process even under the best of conditions, be handled effectively and expeditiously by a slow-moving bureaucracy?

The battle lines have been drawn. Lined up with the opponents of the present system of voluntary standards development are four highly influential U.S. senators—James Abourezk of South Dakota, sponsor of Senate Bill S.825; Edward Kennedy of Massachusetts, chairman of the Senate Subcommittee on Antitrust and Monopoly of the Judiciary Committee which is conducting the hearing on this bill; Birch Bayh of Indiana, a co-sponsor; and Hubert Humphrey of Minnesota, also a co-sponsor.

Actually, bill S.825 is a reintroduction of bill S.3555, better known as the “Triple Nickels,” which was introduced last year during the 94th Congress but was never acted upon.

Senator Abourezk contends that his proposed bill “attempts to eliminate existing anticompetitive and deceptive conduct in the standardization process and the duplication, confusion and waste in the present system.”

In essence, the bill, titled the “Voluntary Standards and Accreditation Act of 1977,” provides for developing a uniform national standardization process for all standards as well as certification activities that are undertaken by any private organization.

One of its provisions assigns the task to the Federal Trade Commission (FTC) to say what the rules will be for setting criteria for standards development and product certification. The FTC would have power to enforce its rules. The proposed bill also gives authority to the Secretary of Commerce to give financial assistance to non-profit standards development organizations so that they have balanced participation in their activities and to set up and maintain appeals committees.

The Secretary of Commerce would also have broad powers pertaining to our participation in international standards development activities. Under the bill’s provisions, he would set up an Institute of Standards and Accreditation within the National Bureau of Standards to develop resources, facilities and expertise necessary.

It would be the Secretary’s respon-
sibility to designate and remove representatives involved with U.S. participation in international standards activities.

The bill further directs the Secretary to establish a National Voluntary Laboratory Accreditation Program. This program would determine which areas of technology or products are in the public interest for testing laboratory accreditation. Further, it would establish the criteria through committees for testing laboratories to become accredited.

Still another addition to the government machinery for standards development is the establishment of a 21-member National Standards Management Board. Its members would be appointed by the President, subject to the Senate's approval.

It would be the duty of this Board to develop the rules, procedures, policies and criteria pertaining to the management and coordination of national standards development activities.

Still another provision of the bill requires that the Secretary establish in the Institute a Library of Standards containing complete information on both national and international standards activities. The Library, however, would not compete with private standards organizations in the sale of documents, a major source of income for some.

Without provisions in bill S.825, Abourezk contents, the standards development organizations and testing-certification laboratories "serve as private regulatory agencies. They operate with very little federal and state oversight, determine what products you and I will be able to purchase and which manufacturers will or will not enter the market place. "Manufacturers and producers, under the auspices of an engineering society or trade association," Abourezk continues, "determine through the established 'voluntary' procedures the specifications for performance, design and construction for the full range of producer and consumer goods."

He adds emphatically, "Product standards, listings and certificates are unquestionably today's most convenient modes for restraining trade and deceiving consumers. "Cases, documented in the Antitrust Subcommittee's hearing record, show that if we let these activities go unchecked, they will make a mockery of the term 'free enterprise,'"

In introducing the bill in the Senate, Abourezk cited cases which he claims illustrate the abuses in the voluntary standards system. One is that of a small manufacturer who for eight years tried to get the American National Standards Institute (ANSI) to develop a standard for an automatic vent damper that supposedly would save energy for those using the device.

"For eight years," Abourezk charges, "the company wound around in bureaucratic redtape and artful excuses of the standards developer and the testing laboratory. "The upshot was," says Abourezk, "the standards committee refused to develop a standard, the testing laboratory, which is the secretariat of the standards committee (ANSI Z-21), refused to issue its seal approval, and the American public was denied an inexpensive energy conservation device."

To bolster his argument in citing this example as an "abuse" of the standards development process, Senator Abourezk contends that a similar device has been used in Europe for more than 40 years; that Washington Gas Light Co. found the device could save a homeowner with an average furnace $7.20 per month; that Mississippi State University, Memphis Light and Water Div., and Michigan Consolidated Gas Co. made similar findings; that "every organization that tested the device," including the Consumer Product Safety Commission, found it intrinsically safe.

Abourezk further charges that the device, if used, could save America the equivalent of one-half million barrels of oil a day. But "industry said we could not have it." He then asks rhetorically: "And just who in private industry told us this? The American Gas Association and the American National Standards Institute."

Another example Abourezk cites is that of a small manufacturer who marketed a low-water cutoff device. In doing so, he took away a large account from a dominant competitor who controlled 80 pct of that market.

Shortly thereafter, according to the account, the chairman and vice chairman of the relevant standards committee of the American Society for Mechanical Engineers (ASME) got together and decided that an official letter from ASME saying that the device in question didn't meet the ASME code would be useful. The committee vice president, incidentally, was also said to be a vice president of the dominant competitor at the time.

Soon thereafter, such a letter appeared "and for all practical purposes," Abourezk notes, "the small manufacturer found the marketplace closed."

Hearings held by the Senate Antitrust and Monopoly Subcommittee in 1975 to a look into this incident revealed that the vice chairman allegedly destroyed the communica-
The ASME, meanwhile, assigned its Professional Practice Committee to look into the circumstances. Its report in the form of a resolution concluded that the vice president had conducted himself properly and "finds no improper or unethical conduct in his actions . . ."

In his statement at the hearings on the bill before the Judiciary Subcommittee on Antitrust and Monopoly in April, Ralph Nader made the point that the use of standards to exclude competitors from the marketplace "is particularly disturbing in view of the ineffectual record of antitrust laws against such practices. Aside from per se antitrust violations such as price fixing, the courts generally refused to apply antitrust sanctions to trade standards groups.

Nader further argues that "few small businesses whose products have been excluded from the marketplace, and even fewer consumers, can afford to pursue long and expensive antitrust legislation."

Deception of consumers is another charge that has been levelled at the standards development groups to either boost or maintain sales. In one case, notes Nader, the Illuminating Engineering Society (IES) wrote excessive lighting level recommendations that consume $3.5 billion more in electricity than is necessary.

In schools, for example, the lighting level recommendations are more than twice what they were in 1958, going from 30 to 70 footcandles, the equivalent of ten 100-watt bulbs for a 10-ft by 10-ft area. Lighting levels are twice those recommended by the Federal Energy Administration (FEA).

What's behind the writing of such standards? The reason, notes Nader, is that the IES "is essentially a trade organization . . . promoting its interest rather than the general public's." Among its membership, most sell lighting products and services.

Nader cross-sections the IES to show "the undue industry influence." About half its officers represent companies that sell lighting equipment or electricity; half its income is derived from the lighting industry; the "candlepower pushers," in Naders terms, largely control the technical committees where standards writing takes place; and sellers or installers of equipment or electricity preside over half the committees.

The electrical industry took the brunt of another Nader charge. In this instance, he blamed the standards developed by Underwriters Laboratories (UL) the largest tester of household electrical products in the U.S., for "the installation of hazardous aluminum wiring in over two million homes from 1965 to 1972" which resulted in numerous fires and personal injury and death.

Nader traces this to "the long string of weak UL standards that began in 1966 when UL gave the go-ahead (with only minimal restrictions) for wiring certain outlets and switches with aluminum, despite aluminum's known propensity to overheat and cause fires."

Again, Nader charges that UL's failure to protect the public stems from the fact it relies too heavily on product manufacturers in developing its standards. "UL derives most of its income," he notes, "from manufacturers who pay for testing their products."

But aside from the financial base, Nader contends that the UL gives manufacturers "a special role" in shaping its standards. In developing the aluminum wiring standards, it not only solicited the views of manufacturer advisory groups, but in addition, sponsored a special advisory committee that strengthened the aluminum wiring industry's hand. Thus, 73 pct of the committee's non-UL members represented sellers of aluminum wiring products.

What concerns people like Senator Abourezk, Nader and many others is the added importance and severity that the abuses and faults of the system assume when various government bodies adopt them into law. Once voluntary standards are used as the base for statutes and regulations, which is common practice, they attain mandatory status.

Moreover, many of the state and local agencies adopting standards into their statutes, the critics say, do so without having the time or expertise to scrutinize the standards carefully or develop their own standards.

Blind acceptance of standards by state and local authorities has its greatest impact in the areas of health and safety. Nader cites the standards for aluminum wiring and testing of plastic products, and their adoption into many state and local construction codes, "to demonstrate how this faith in private standards is sadly misplaced."

Nader, in fact, charges that the standards writing groups encourage and "lobby" for government adoption of their standards so that they would have the effect of law.

The example he cites to support this charge is ANSI's own 1976 annual report which notes that the reason for federal government adoption of so many standards is "ANSI's and its federated membership's successful efforts to encourage use of consensus standards in implementing legislation."

ANSI has been successful in get-
How standards development must move through channels

NFPA Technical Staff action required.

The large corporations also take much of the criticism for the manner in which the standards groups operate. Only a few weeks ago, Senator Abourezk addressed the National Fire Protection Association (NFPA) in Washington, saying: “All the rules and regulations in the world cannot mask the basic fact of financial and practical domination of even the best standards groups by the corporate leaders in every industry.

“Something very crucial disappears,” he said, “once business itself unhampered starts testing goods and setting standards... Their main concern, quite rightly, must be to recoup their investments, increase profits and grow in volume. This puts them in direct conflict with the consumer—and the society—with interest in innovation and in reducing waste.”

The so-called “Fire Monopoly” has come under some particularly harsh criticism from its opponents. “It consists of the National Fire Protection Association (NFPA), Underwriters Laboratory (UL), and a broad spectrum of allies consisting of those who have learned how to grow wealthy by being regulated by the Fire Monopoly,” said Richard M. Patton, president, Patton, Inc., Columbus, Ohio, at the recent Senate Judiciary subcommittee hearings.

“The NFPA Congress and its more than 200 codes and standards, which includes millions of regulations that have the power of law, have a greater impact on our lives than any other power base in American, save only the Federal Government.”

Patton charges that the NFPA and UL “were created by the fire insurance industry to serve the needs of the fire industry. Insurance is a tax on cash flow. Insurers transfer money from all those who buy insurance to those that suffer a loss. The insurer takes a portion of the money transfer... Fire insurance works best when the burn rate is healthy, but not excessive.”

Ironically, at the very same Senate subcommittee hearings at which Patton made these charges of the “Fire Monopoly,” Charles S. Morgan, president of the National Fire Protection Association also spoke.

Here’s what he said in part: “In summary, Mr. Chairman, we (NFPA) support the concept of regulation and oversight by the federal government of the procedures by which standards are developed within the private sector to assure that such activities embrace procedural fairness and are free from illegal practices.”

And then he added, “We support the view that rules for accreditation of standards developing organizations, and rules and procedures by which their standards are to be developed, be the responsibility of a representative body such as the National Standards Management Board and not that of some other, differently constituted government agency.”

In its general support of Bill S.825, the NFPA is one of the few voluntary standards groups that does so.

Opponents of the bill were at a complete loss to explain the manner in which the hearings were being conducted. Said one representative of a standards group: “For days, we’ve heard statements made at the April hearings charging us with every imaginable abuse of power. We’ve been called arbitrary, discriminatory, unfair, tyrannical and even corrupt. We’ve been accused of stacking our committees to exclude small business and consumer groups. Yet, would you believe that the major standards writing groups were not advised as to when the hearings were to be held, they were not invited to present statements before the subcommittee, and when they wrote asking to be given an opportunity to speak, for the most part, received no replies.”

And he added: “It wasn’t until...”

“The bill will greatly weaken, not strengthen our efforts.”

William T. Cavanaugh

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The voluntary system has served this country well.

Melvin R. Green

after they protested vigorously that organizations such as ANSI, ASTM, EIA and UL were eventually given a chance to present statements at the May hearings. It was quite obvious that they wanted to hear primarily from friendly witnesses."

The representative continued: "All that goes through my mind are the accusations that were fired at us (standards organizations) at the April hearings. We supposedly delayed the standards process; we dragged our feet; we procrastinated; we stalled; we used diversionary tactics and all the rest. Yet, now, they didn't want to hear us out."

Those organizations that did receive a response to a request to make a statement at the hearings, the reply from the subcommittee's counsel, John Ray, advised these groups that they had already presented their views on the previous "Triple Nickels" bill in the 94th Congress and therefore would not be scheduled for any oral presentation at the current hearings.

Opponents of bill S.825 are still pondering as to whether this was a reason or an excuse so that their views would not become known. They wonder, too, whether the subcommittee is seriously trying to get the bill's merits or whether its views would not become known. They wonder, too, whether the subcommittee is seriously trying to get the bill's merits or whether its views would not become known.

"I submitted a statement on the Bill S.3555 that was introduced but not acted upon in the 94th session of Congress. I was denied an opportunity to testify on this earlier bill and since I received no acknowledgment of receipt of my written testimony I do not know that it was included in the record of the earlier bill."

And the statement goes: "I suggest that an effort be made to locate this previous testimony and apply it in the record to details of the previous bill that are duplicated in the present bill. If the previous statement cannot be located, let me know so that I can provide a copy. However, there are major additions to the present bill that warrant specific additional comments."

The statement speaks for itself.

Any statement that may have been made with regard to the "Triple Nickels" bill in the last Congress may be partially or totally inappropriate with regard to bill S.825 in view of its revisions.

What is more serious is that the individual making this statement, Frank La Que, was denied the chance to speak about the bill, did not know whether it became part of the record, nor did he know whether, in fact, the subcommittee ever received his statement during that last Congress.

What is even more serious is that Frank La Que again submitted a statement pertaining to the current bill. Thus far, he has not been able to present it orally; again, he has not been informed as to whether it will become part of the record; and again, he does not know whether the subcommittee received the statement.

One might ask: Is it really that serious? Yes. Perhaps what the subcommittee should know, but has not acknowledged, is that Frank La Que has been involved with standards development for almost 50 years through various technical societies, nationally and internationally. Here's some of his background: President of ASTM; Chairman of the Panel on Engineering and Commodity Standards, Dept. of Commerce Advisory Board; President of ANSI; President of International Standards Organization; Deputy Asst. Secretary of Commerce and Director of Office of Product Standards.

One might now ask: What kind of credentials is the subcommittee seeking for one to be expert in the field of standards?

Many opponents of Bill S.825 agree that greater participation by government agencies and consumer groups is highly desirable and necessary. Others contend that the standards organizations work intimately with government agencies and have taken any number of steps to encourage greater consumer participation. Much the same could be said of the standards organizations facing with small business.

The ASTM, for example, has long since abolished registration fees at its meetings. Participation in its activities is conducted on a cost-nothing basis. And says William T. Cavanaugh, ASTM's managing director: "Indeed, we have gone so far as to create a fund to support the out-of-pocket travel and related expenses of those who, for one reason or another, cannot organizationally or individually support such activity."

Some months ago, the Secretary of Commerce asked the Office of Management and Budget (OMB) to propose a government-wide policy that would provide uniform federal interaction with the various standards-setting bodies. The proposal was developed and approved by the Interagency Committee on Standards Policy (ICSP), a committee drawn from 22 federal agencies and departments and chaired by the Department of Commerce.

The OMB circular's aim is one of cooperation with standards groups "to develop, improve, and use standards for materials, products, systems and services."

But the OMB circular recognizes the importance of the role that standards-setting organizations have played in the past as well as the present. It states in part: "Over the years, an effective system of voluntary consensus standards activities has developed under the leadership of the ASTM, ASME ANSI and many others. In this voluntary system, a wide range of interests meld their expertise and compromise their differences, with the result that standards produced are solidly based and widely accepted."

It continues, "Federal reliance on such standards, wherever practicable, will reduce the cost of developing standards and minimize confusion."
The OMB circular also takes cognizance of the cooperative role required for product and compliance testing and certification. It also gives attention to the protection of free and fair enterprise, innovation, technical progress, product safety and other factors. And it calls for full accountability for all Federal laws, policies and national objectives, including such things as antitrust, national security, product safety and conflict of interest.

Says Cavanaugh about the OMB circular: "ASTM strongly supports the policy... This is, of course, not only the result of recent policy discussions in the Society but the natural outcome of almost eighty years of operation in a mode very similar to that described in the proposed OMB Circular."

Although the standards developing organizations generally endorse the OMB proposals, Senator Aborek isn't sold on them. "I agree with many of the stated goals of the program," he says, "but I am alarmed at the possibility that it may further entrench the failings of the existing system.

At the Senate hearings of the Subcommittee on Antitrust and Monopoly held in late May, Jordan Baruch, Assistant Secretary for Science and Technology, Department of Commerce, commented on some of the specific provisions in the proposed Bill S.825.

He noted that the bill covers international standards and certification programs much of which has already been included in the "International Voluntary Standards Cooperation Act of 1973," forwarded to Congress by the Secretary of Commerce.

Baruch also notes that the bill directs the Secretary of Commerce to set up a National Voluntary Laboratory Accreditation Program. This, too, "is essentially the same as the Department's National Voluntary Accreditation Program."

After noting other areas of the Department's and Secretary's involvement as proposed by the bill, he concluded: "The Administration recognizes that problems exist in the standards development process. However, it is the Administration's position at this time that, pending further study it appears legislation may not be necessary to address these problems."

La Que points out that increasing collaboration in standardization activities by government agencies and the private sector is highly desirable. But "what is at issue is whether legislation represented by Bill S.825 is actually required."

Title IV of the bill which calls for the establishment of the National Standards Management Board is already being fulfilled in its objective by the Inter Agency Committee on Standards Policy on the government side and by ANSI and its affiliated U.S. National Committee for the International Electrotechnical Commission in the private sector, says La Que.

He notes, too, that the Institute at the NBS that's called for the bill to deal with international standardization "ignores the fact that national and international standardization are mutually dependent, inseparable activities."

In recent years, ANSI has been called upon frequently by government agencies to organize and manage programs to provide standards for use in regulations and for procurement.

Provisions in the bill to promote collaboration by establishing the Board and Institute are not needed from the government side and may impair collaboration from the private sector by disrupting what is already a smooth working operation.

But aside from the bill's specific provisions, Donald L. Peyton, executive vice president of ANSI, contends that the bill "would destroy this nation's voluntary standards system... and decimate the ranks of voluntary participants." It would place the system under "unwarranted federal regulation."

In his statement before the subcommittee, he refused to charge and cited the record, the operation, the freedoms, and the constant vigil over the system to safeguard the rights of everyone.

"The positive contributions of voluntary standards to the nation for more than a century are legion and far outweigh the few alleged abuses brought forth in the cursory examination given the voluntary standards system by the Subcommittee staff."

What about abuses in the system? Although recourse is available through its own committees and machinery, government agencies and the courts, Peyton points out that "no cases against ANSI have been brought to the courts by government or private parties."

Peyton contends that mandatory regulations over the standards developing process is definitely not the answer. "Before this subcommittee turns individual consumers' choices over to the federal bureaucracy, ANSI would suggest it review the results of mandatory consumer-related regulations over the past decade—ignition interlock seat belts; cyclamates; saccharine ban; detergents; pesticide bans; and finally the now infamous 15-year federal government efforts on the on-again off-again flammable fabric standards."

Mel Green, managing director, ASME, disputes the allegations of the cases of abuses reported to the subcommittee. In one case, he says, there's "nothing that attacks the particular standard or its development, or would justify placing the voluntary standards system under government regulation and administration."

He adds, "ASME supports the concepts of recognized accreditation for standards-defining bodies by ANSI, of open procedures, of fair review processes and public participation. The federal government can encourage these measures by providing for its agencies to participate within the ANSI framework. ASME supports the federal Inter-Agency Committee which has recently been recommended by OMB concerning federal interaction with non-federal standards bodies.

"Such measures," he concludes, "offer constructive means for dealing with perceived problems in a way which will save rather than destroy this system which has served this country so well."

The big question now is: Will the Senate Subcommittee on Antitrust and Monopoly preserve a voluntary standards system that's the envy of the world or will it foster a mandatory system that will add another burden to an over-burdened bureaucracy?"