



VOLUNTARY STANDARDS: IN THE PUBLIC INTEREST? ¹

**R. David Pittle, Ph.D.
Senior Vice-President
Consumers Union²**

**CFA Consumer Assembly
Washington, D.C.**

March 11, 2004

¹ Oral presentation may differ slightly from written text.

² Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Headquarters Office

101 Truman Avenue • Yonkers, New York 10703-1057 • (914) 378-2000 • 914-378-2992 (fax)
<http://www.consumerreports.org>

Good afternoon.

When I think of Voluntary Standards, I'm reminded of the man who was given the job of painting the white lines down the middle of a highway. On the first day he painted six miles; the next day three miles; and on the following day he painted less than a mile. When the foreman asked the man why he kept painting less each day, he replied, "Sorry, boss, but I just can't do any better. Every day I keep getting farther away from my paint can."

Sometimes we start out with what seems to be a good strategy, but as time goes on, we fail to stop and take a close look at what we are doing. We can get locked-in to a failing strategy.

I speak to you this afternoon as a former consumer member of the F-15 standards setting committee of ASTM, a former commissioner of the CPSC, and currently a member of the UL Consumer Advisory Committee. And I work in an organization whose staff regularly serves on a variety of voluntary standards committees, and we evaluate the details of voluntary standards on a regular basis. In one way or another, I have been involved in voluntary standards activity for more than 30 years. I want to share with you what I have seen each time I have stopped and taken a close look at what we were doing.

In thinking about the broad question posed for today's session—Are voluntary safety standards in the public interest? —I have come to the unequivocal answer: It all depends. It all depends on a number of factors.

I want to say upfront that there are many hundreds if not thousands of voluntary industry standards currently in force and broadly complied with from which consumers receive significant benefits. It's hard to say (but it almost doesn't matter) what the individual motives were when a group of interested parties sat down and agreed to what a standard should require. It could address the question of product quality, of interchangeability of parts, of product safety, or of consistent meanings for label claims. Standards come in many varieties and address a broad range of issues. Products that comply with the standard usually carry visible certification marks of some kind to help consumers know which comply and which do not.

Controversies arise when the agreed-to standard unnecessarily or unfairly favors one technology or one manufacturer or one type of product. The critical issue then becomes how open and inclusive the standards writing process is, and how well it reflects the true needs of the marketplace, rather than a single narrow commercial interest. My guess is that you will hear a lot more about maintaining a quality standards process from Jim McCabe from ANSI, a member of our panel.

At this point, I want to comment on the word “voluntary,” which can be misleading. Very often, there is nothing voluntary about voluntary standards. For example, compliance with UL standards is virtually required if a manufacturer of electrical products and components wants to sell its products in most jurisdictions in the U.S. Local building codes, for example, may simply require that electrical products used in their jurisdictions must meet UL requirements or requirements developed by some other recognized standards body. Manufacturers can ill-afford ignoring these standards. There may not be a legal requirement to comply, but there is certainly a strong economic incentive. Most homebuilders, for example, simply will not buy non-complying components for their construction jobs. And let’s not forget the impact that product liability can have on a manufacturer that does not follow accepted industry practice.

I want to focus my remarks today on a narrow but important question: “When should we rely on the voluntary standards process to solve a problem, and more specifically, a safety problem?” How can you predict whether that approach will result in an adequate standard with significant compliance by the industry? There are those who say “always,” and there are those who say “never.” From my experience, they are both wrong. There are distinct advantages to using the “voluntary” approach, as well as serious drawbacks. I once held one of those polar views, but my thinking has evolved to approaching the question on a case-by-case basis. The trick is finding clues to guide you when you are trying to decide.

In its simplest form, when an industry group supplemented by other interested parties sits down on its own and solves a problem by creating a standard of excellence, or a code of conduct, or a safety standard, and when all producers comply with that standard, I call that self-regulation at its best. They saw a problem, and they addressed it. If handled right, that approach can be efficient and beneficial to consumers. Indeed, before CPSC, NHTSA, EPA and others were created, this was the principal way many safety problems were dealt with.

However, not every problem was addressed. In fact, far too many serious safety problems were poorly addressed through industry self-regulation—or not addressed at all. One could easily wonder whether the industries involved cared a wit about the safety of their consumers. Often during my tenure at CPSC, I heard industry spokespersons blame the victims for the injuries rather than focusing on how they could fix the safety problem with their products.

I am reminded here of a wonderful quote by late and wonderful Betty Furness: If industry continues to show contempt for the consumer, it will reap contempt from the consumer. And from Congress, it will reap statutes—which could then become the most spectacular case of statutory reaper in history.

Indeed, during a very short span of our history, Congress did step in and use its power to correct defects in the marketplace that were not being dealt with through industry self-regulation. In creating agencies like NHTSA, CPSC, FDA, and EPA, Congress set a broad, overall standard that unreasonable risks of injury, illness, and death must be reduced or eliminated through the work of an economically disinterested agency of government, with the expertise and authority to protect the lives and health of consumers. They recognized that neither the marketplace nor self-regulation could sufficiently handle some of the serious safety issues confronting consumers day in and day out.

These agencies were granted the authority to set mandatory standards, with penalties to manufacturers and retailers who sold non-complying products. In most cases, they have the authority to order recalls of defective products and provide consumers with refunds, repairs, or replacements. (Can you believe that there is no federal authority to order the recall of tainted meat from the marketplace?) And of course, even with all this power, they are still in position to encourage industry self-regulation.

This is the theory—and then there is the reality.

The reality is that these agencies are under-funded and under-staffed to do an adequate job in a timely manner. (CPSC staff numbered 900 in 1980, today around 500. For jurisdiction over some 15,000 different products, they are understaffed.)

The reality is that the due process requirements built into the statutes are used to the fullest by the affected industries to challenge and delay almost every action taken by an agency. (Virtually every regulation that CPSC promulgated during my tenure was challenged in court. We ultimately got them through, but it was a very long and expensive process.)

The reality is that the agencies are too often headed by political appointees who do not share the same passion and commitment embodied in the mission of the agency—as enunciated by Congress. We see safety regulators who regularly blame the victim rather than use their authority to push the industry to reduce the risks through design changes.

And the reality is that the political mood has changed in Congress since these agencies were created. Indeed, during my first nomination hearing in 1973, each and every senator gave me a firm directive to use the powers of CPSC to protect consumers and to do so in vigorous, timely fashion. At the end of my second term, those same committees (but with different members) were giving a very different message: don't be too hard on business, why should we protect consumers from themselves, remember the costs to business, etc. It was a different message.

But there is another reality. Consumers are injured or killed while using consumer products at unacceptably high rates. For example, over 10,000 consumers, one third of all vehicle-occupant deaths, are the result of vehicle rollovers each year. 1.1 million consumers are sickened or die from tainted poultry each year, a number we believe can be reduced by better health practices by the industry. This reality exists regardless of who is in the White House or who controls congress. This is the reality we cannot ignore.

So against this background, these safety agencies are confronted at every turn with whether they should marshal their scarce resources to attempt mandatory regulation or defer to self-regulation, and accept whatever the industry is willing to do in its voluntary program.

Here are some serious concerns that I believe need to be resolved by any decision maker who is considering whether to defer its responsibility to "voluntary" standards or industry self-regulation.

- What is the attitude of the industry? Have they spent a lot of time and energy trying to convince you there is no problem to begin with? Not much chance of success if they have. (chain saw example)
- Who will be involved in setting the standard? Will they include consumers and other major stakeholders? Will the process fund independent technical experts selected by consumers to represent their interests? Will the process fund consumer expenses and honoraria?
- Will the process be open to the public? Will it be transparent, with all decisions made in a clear open process for all to see and comment on? Will closed, secret meetings be banned?
- Will the agency put the proposed voluntary standard out for public comment? Will it be evaluated fully and openly? Will the industry abide by agency decisions about changes?
- Will the agency reject any proposal considered inadequate? Is it prepared to move to a mandatory process if the voluntary process bogs down or produces a weak proposal? Or will it simply defer to whatever the industry produces.
- How will compliance be enforced? Will there be sanctions for non-compliance? Will non-complying products be recalled, and who will enforce the recall? (bunk bed example)

The promise by an industry to take voluntary action is seductively attractive to an under-funded agency, but too often it is made to diffuse government focus and delay the agency from getting heavily involved. And too often those promises are implemented in a weak manner or not implemented at all. The agency must realize that the promise of taking voluntary action in the future could well be a tactical maneuver to delay action long enough until, say, there is a change in administration or until people simply forget the promise.

In summary, deferring to voluntary standards has terrific upsides and miserable downsides. The unfortunate reality is that there are not enough governmental resources to mandate the solutions to all the health and safety problems confronting consumers. Self-regulation can work in limited cases, but it takes strong oversight. We, as consumer activists and consumer leaders, have to press for careful use of this approach.

Unfortunately, there are political appointees at safety agencies whose values and commitment are not in sync with agency's safety mission. And while we may wish it otherwise, we all have to transform our wishes to action. We need to press congress on the importance of correcting health and safety problems, and of appointing only those regulatory nominees who have a demonstrated commitment to solving the problem.

I have tried in these few minutes to outline some key questions for which we should insist on getting competent answers. This is not an academic issue. It is our health and safety that is directly impacted by these decisions.

In closing, I have one more suggestion: Next time, be sure to carry the paint can with you.

Thank you.