

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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H-160725

MAR 10 1978

The Honorable John D. Dingell, Chairman
Subcommittee on Energy and Power
Committee on Interstate and Foreign
Commerce
House of Representatives

Dear Mr. Chairman:

This letter is in response to your inquiry concerning our letter of January 5, 1977, to Mr. Hugh E. Witt, Administrator, Office of Federal Procurement Policy, commenting on the proposed OMB Circular on Federal Interaction with Commercial Standards Setting Bodies. In the next to the last paragraph of our letter, we stated that "the legal implications of this proposed circular also need greater examination." You have asked that we identify specifically the legal implications to which we were referring.

The legal implications we had in mind were those recognized and set forth in section 7a of the proposed circular wherein it was stated:

"Each agency will, within six months of the date of this Circular, implement the policy principles in paragraph 6 to the extent compatible with its mission responsibilities. In taking this action, the agency should recognize the positive contribution of standardization and related activities, such as product and compliance testing and certification. It must, however, be recognized that these activities, if improperly conducted, could suppress free and fair competition; impede innovation and technical progress; exclude safer and less expensive products; or otherwise adversely affect trade, commerce, health, or safety. Full account shall be taken of applicable Federal laws, policies, and national objectives including, for example, laws and regulations relating to antitrust, national security, product safety, and conflict of interest." (Emphasis supplied.)

Thus while the circular indicated that standardization and related activities might offer positive benefits when properly conducted, it

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also recognized that many harmful, and possibly illegal, results might be achieved if conducted improperly.

We note that in recognition of the possibility or existence of such problems, legislation has been proposed which would provide for Federal regulation of standards-setting bodies and their related activities, including the development of a uniform standardization process specifically designed to guard against the dangers of anti-trust or product safety act violations, undue restrictions on competition, procurements, etc. See S. 825, 95th Cong., 1st Sess., and H.R. 3184, 95th Cong., 1st Sess. Hearings have been set by the Senate Judiciary Committee on S. 825 for mid-April.

In view of these concerns, we were suggesting to Mr. Witt that it might be premature to mandate participation in standards-setting bodies and related activities until these problems had been thoroughly studied and resolved.

Sincerely yours,

R.F.KELLER

Comptroller General
of the United States