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Working Copy Statement of the U.S. Chamber of Commerce on S.825, Voluntary Standards and Accreditation Act

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My name is Duane D. Pearsall. I am President of the Statitrol Division, Emerson Electric Company. I am from Lakewood, Colorado. Until its merger with Emerson in March of this year, Statitrol was an independent manufacturer of home smoke alarms and commercial smoke detectors. In short, we were a small business firm, and I am here today to speak from that perspective on behalf of the Chamber of Commerce of the United States as a member of its Small Business Council.* I am accompanied by Fred Byset, Executive of the Chamber's Antitrust and Trade Regulation Committee.

This is my first appearance before a Senate Committee, but I am not uncomfortable. Indeed, I feel completely at ease talking about, and opposing, S. 825. In Statitrol, we have had a great depth of experience in all three of the principal areas addressed by this bill. That is, National Product Standardization, International Standardization and Testing Laboratory Accreditation.

The fire protection industry, perhaps more than any other, has demonstrated an outstanding performance record for its development of voluntary consensus standards. The National Fire Codes, published yearly by the National Fire Protection Association (NFPA), are nationally recognized and widely adopted by the Federal, state and local governments.

Since the beginning of Statitrol, some 13 years ago, we have invested much of our time and energy to serving on committees of this association. In addition, we have been active in the National Electrical Manufacturers Association (NEMA) and model code organizations such as the International Conference of Building Officials, whose Uniform Building Code is used in 21 percent of all cities over 10,000 population.

* Named as Small Business Person of the Year for 1976 by the U.S. Small Business Administration.
We also maintain active memberships in the other two major model code organizations, the Building Officials and Code Administrators International and the Southern Building Code Congress International, which prepares the Southern Standard Building Code. I should add, parenthetically, that hundreds of other small businesses like ours devote thousands of man-hours each year to upgrade and improve safety standards.

International standardization is also a matter of daily concern to our company, because we export smoke alarms to Japan and to most major countries of Europe. In our export, it is necessary first to seek approval through health authorities for the use of radiation materials in each country. And, because our product is designed to protect lives and property, we must also secure "performance" approvals in every major country.

Because ours is a safety product, certification by a recognized and reliable laboratory is essential before any significant marketing is possible. In the fire protection industry, a reliable laboratory test and certificate gives confidence to the buying public that the product can be operated safely -- and, more important, that it will perform dependably.* Consequently, since our first certification in 1966, we have been in personal contact with every major certification laboratory in the United States, Canada, England, France, Germany and Japan. Over the years, we have had about 200 laboratory certifications. There may be as many as 20 pending at any one time.

From this background of personal involvement and observation, I am in perfect accord with the National Chamber's decision to oppose S. 825, a bill with three principal purposes:

1) Direct government involvement and supervision of private and voluntary industrial standards development -- through regulation by the Federal Trade Commission (FTC) and a new agency to be created, the National Standards Management Board (NSMB);

2) Direct government supervision and control of American participation in international standards development, an activity pursued successfully up to now by private industry;

3) Mandatory programs by the Department of Commerce to accredit testing laboratories, an activity now operating on a voluntary basis.**

* For many products, laboratory tests are concerned only with safety of operation. A laboratory label on a toaster, for example, promises safe operation, but not dependable performance.

** See Title 15, Part 7, Code of Federal Regulations.
I agree with the Chamber position, even though small business firms are supposed to benefit from the bill's enactment. My reasoning is simple. I see no small business benefit in the proposal, but I do see hazards.

Equally important, the basis laid for standards regulation in the bill's "Findings of Fact" is a gross overstatement. Indeed, my experience tells me that much of it is just not true. If these alleged evils are the bill's only justification, then the measure is totally unnecessary because the evils are not present.

I have seen nothing, for example, to show that the present system "poses economic hardships for small business concerns." Or, that there is "widespread consumer deception." By taking up the bill's other "Findings of Fact", in relation to my own experience, I can illustrate that it actually poses a threat to small business concerns, and that a case to establish its necessity has not been made.

Findings of Fact

Items 1-5, Role of Standards

We find no cause for objection in these first five items. Indeed, they recite accepted understandings of the voluntary standards process. As recited, standards are a necessary aid to the buying and selling of products in many lines of commercial activity, and the need will continue to grow. Developed by consensus of knowledgeable and intimately concerned people, accepted standards for consumer and producer goods alike, help assure product safety, identification, and compatible interchange. In addition, the closely related simplification process tends to reduce the spreading of indiscriminate product sizes and shapes.

Finally, we certainly agree that the "expertise to develop sound technical standards lies more in the private sector than in the Government." This acknowledgment of government incapacity, however, is not at all consistent with the bill's substantive provisions. Consider that they provide for supervision of all standards making by a National Board, regulation of individual proceedings by the FTC, and the substitution of government for private standards in some cases. These provisions give the government functions which the findings of fact say it cannot perform.

Item 6, Government Product Decisions

Beginning with this item, there is an overriding insinuation that the government should determine which products will be available to the public. It
may be faulty drafting, but we can reach no other conclusion from a statement
that the government relies on private standards development and certification
"in deciding what products will be made available to the public." The same
theme runs through the bill analysis at page S-3169 of the March 1, 1977
Congressional Record, where it defines the National Standards Management Board
as a "mechanism to ensure the effective management and coordination of our
standards system." There is further evidence of the plan for governmental
control of private affairs in Section 107 which allows the FTC to order the
substitution of government standards for standards developed privately.

I said earlier that this is my first appearance before a Senate Committee.
It is a sobering experience. I always thought that in our market system products
are invented, produced and sold by enterprising people. It is frightening to
learn that there is serious consideration of plans like this to replace market
decisions with government decisions. And I will not be consoled by any suggestion
that S. 825 is designed to improve the market system. A few more "improvements" like
this and there will be very little left of the free market system.

Item 7, Government Use of Standards

I react here much like I did to Item 6, in shocked disbelief. Analyzed,
this finding justifies S. 825 by saying that the present system "has impeded the
efficient use of existing standards by government agencies ... ." Up to now,
I believed that goods were produced and marketed for the benefit of the public,
mainly private people. I did not know that my function was to serve the govern-
ment. Naively, I thought it was the other way around.

In countries where consumer goods are subordinated to producer goods,
industry is commonly arranged to accommodate the government. But here, our
primary concern is the consumer. Any accommodation to the government should be
incidental. The industrial structure should not be completely discommoded to
suit government convenience.

Item 8, Failure to Develop Needed Standards

This is the groundwork for creation of a National Standards Management
Board under Title IV of the bill. In effect, it says that management and
coordination of standards activities by government is the only way to bring
about the development of needed standards and the removal of duplication.

Those of us who are involved daily with standards compliance, and less
frequently with standards making, know that there is no failure to promulgate
needed standards. One has to understand that there is a continuing process of
upgrading standards, a continuing historical reaction to technical developments.

Sometimes, we may think that the process is too slow. I remember a personal experience when I was impatient, maybe even frustrated; I wanted to get a product on the market, make money.

Our product, carrying the trade name "Smoke Guard," was the first battery powered home detector in this country. But we did not reach the market overnight. When we first tried to market the detector, there was no applicable standard, and we could not get laboratory certification for general distribution.* My procedure was to seek a standard from the National Fire Protection Association (NFPA). Ultimately, the NFPA did develop a standard, and we received a favorable laboratory certificate allowing general distribution.

The whole process took about two years. Normally it takes only about six months for laboratory testing and certification after a standard is in place. At the time, I felt a good deal of anxiety; my company was having financial difficulties. But on reflection, it was the proper procedure. The standards making body and the laboratory were concerned about safety. To put a product on the market purporting to detect fires which does not perform dependably, is far more dangerous than no detector at all. A poorly performing detector gives a false sense of security.

Item 9, Adverse Effects on Competition

This so-called "finding of fact" implies that the existing private standards system is commonly misused to stifle competition. In Statitrol experience, living within the disciplines of our industry, standardized to protect consumers, there has been no restriction of competition to my knowledge. The introduction of our battery powered detector was the beginning of an industry, now representing over five million units a year and $200 million in sales. The number of manufacturers has grown from less than five to approximately fifty in the past three years. Equally important, from the competitive and consumer benefit points of view, the prices are now lower than they once were.

Item 10, Inadequate Due Process

As we read this "finding," parties requesting new standards or certification are pretty much at the mercy of the standards making bodies and the testing laboratories. If a new standard is not developed or a certificate is

* We did obtain certification from a second laboratory, but only for limited distribution.
denied, an aggrieved party must accept the decision, with only minimal opportunity to appeal.

Again turning to personal experience, I have found that this is not the case. When we were seeking a standard for our battery powered home detector, I went directly to the NFPA Household Fire Warning Committee. As I told you earlier, my quest was successful; we did obtain a standard. But if the Committee had not responded to my request, that would not have ended the matter. An appeal procedure at the NFPA would have allowed me to pursue it further. The laboratory was also sympathetic during that time. When it became apparent that a standard would be developed by NFPA, the laboratory expedited the testing.

On another occasion, I was seeking laboratory certification for a commercial ionization detector. It failed a reliability test, however, and could not be approved according to the standards. But the laboratory did not reject the product summarily; it simply postponed testing to allow correction. In fact, we received advice and suggestions from the laboratory people about how to make the corrections. The result: ours was the first commercial ionization detector to receive a label of approval in the United States.

From these experiences, I can only say that I had abundant opportunity to present my case. Or, to put it in the bill's terms, there was no lack of "due process."

Item 11, Consumer Deception

This "finding" is a relatively short statement, saying, "Standardization can be a means for widespread consumer deception." I suppose one could say that about any kind of activity, social and political as well as commercial. But, according to my experience, it cannot be said that standardization is in fact a means of consumer deception. Furthermore, the potential for abuse is remote.

By the sheer volume of interests involved in consensus standards, the potential for abuse is minimal. The structure is designed to prevent consumer deception. Take our industry, for example, and the Household Fire Warning Equipment Committee of NFPA. It is made up of twelve people, and chaired by an official from the National Bureau of Standards. Interests represented include consumers, testing agencies, manufacturers, the Fire Marshals Association of North America, and the insurance industry.

This organization provides a complete system of checks and balances. I cannot imagine how it could be better equipped by some other structure.
Item 12, Hardships for Small Business

Again, the "finding" is brief: "The present standardization process poses grave economic hardships for small business concerns." If any organization has a right to object to this statement, it has to be Statitrol. Earlier, I mentioned our difficulties in getting detectors on the market; at that time, my company was down to two people, me and a secretary.

The sympathy, personal attention and assistance provided by the existing system was our salvation. We were brought back from the brink of financial disaster and put on the road to success. Because of help from the present system, our sales have grown from a half million to over ten million dollars in the past four years.

If there is anything on the horizon posing a hardship for small business concerns like Statitrol, it is S. 825. I say that based on experience with other federally controlled programs: the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the Employees Retirement Income Security Act (ERISA).

If a federally controlled standards program entailed the same degree of regulation and paperwork as OSHA, EPA and ERISA, small business people would be put to panic. They would be discouraged from participating in the standards process.

From the small business point of view, I am especially apprehensive about the bill's proposed laboratory accreditation process. I believe it would be an encouragement for larger firms to set up their own testing laboratories as subsidiaries. The large capital outlay for test equipment in our industry could only be made by a big firm. At a minimum, the needed capital would reach three to five million dollars. And it would take from two to five years to bring laboratory personnel up to the level of competence now available.

Item 13, No Safeguards

We see little difference between this and "Item 9, Adverse Effects on Competition." It also duplicates "Item 11, Consumer Deception." It asserts that there are no safeguards in the present system to prevent restraints of trade and protect consumers. My comments on Items 9 and 11 are equally applicable here, but I can add two further thoughts.

This "finding" seems to imply that manufacturers dominate the standards making process, and contrive to keep competitors out of the business by setting standards so rigidly high that smaller firms cannot comply. In our industry, I have seen no evidence at all that this is happening.
Recall the balanced structure of NFPA's Household Fire Warning Committee: consumers, testing agencies, manufacturers, fire marshals, insurance companies. This structure simply does not permit manufacturers to dominate or manipulate the standards process. In short, proprietary interests are not allowed to control.

I want to be candid, however, and not overstate the case. Manufacturing members of a committee do look carefully at standards which will permit new competing products to enter the market. In my own case, when we were trying to get a standard for our battery powered detector, one manufacturer expressed reservations. But the challenge was legitimate, raising questions about reliability of the battery. Nevertheless, his opinion did not dominate, and in the end a standard was granted. That manufacturer is now marketing a similar product.

My second thought concerns the antitrust laws. I am not legally trained, but I have been advised that the antitrust laws are quite adequate to take care of any use of the standards process to restrain trade. The Sherman Act, I am told, gives any injured party the right to sue a violator for triple damages, and prescribes heavy fines and jail sentences.

At hearings of March 3 of this year in the House of Representatives,* Joe Sims, Deputy Assistant Attorney General, stated my understanding of the antitrust rule. He said:

...the legality of industry standards...turns on the reasonableness of any competitive effects the standards may have. It is never reasonable for a group to intentionally adopt standards for the purpose of disadvantaging competitors, and a standards-setting group which excludes competition is open to accusation of such anticompetitive purpose.

Admittedly, I am not here to make a legal argument; my competence is in presenting facts about how standards are made. Nevertheless, it seems to me that the rule given by Mr. Sims is a complete answer to this "finding of fact." There are legal safeguards against trade restraints.

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* Hearings on Federal Participation in Voluntary Standards Making before the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce.
Item 14, Impediment to International Activities

If the present system can adversely affect "the balance of trade and the balance of payments," as this "finding" alleges, I have not seen it. We are encountering stiff standards for our products abroad, but we are meeting the challenge successfully. Even as a small enterprise, we are exporting much more in our product line, while meeting international standards, than is being imported into the United States.

In our company, we have participated in international seminars among fire protection agencies of the United States, Europe and Japan. Consistently, we have found ways to integrate international thinking. I cannot envision how the government could improve the process or increase our exports.

To suggest that the United States could single-handedly develop an international standard is fantasy, and we need to consider the possible negative effects of government directed activities. Foreign representatives are already suspicious of the United States. The Germans are especially resent American intrusions. Government direction and supervision of our activities just might raise whispers of economic nationalism.

Conclusion

Discussion, point-by-point, of the bill's "purpose" in Section 4 might seem like an orderly thing to do, since we took that approach with "Findings of Fact." The "Purpose" statements, however, largely repeat the "Findings of Fact", with references, for example, to such things as "anticompetitive activities" and "consumer deception." Consequently, to avoid duplication, we will forego detailed comment on the "Purpose" items.

Nevertheless, I do want to reiterate (1) that necessity for such intimate governmental control over private activities as proposed in S. 825 has not been established; and (2) that the bill is not a benefit to small business, as it is represented to be.

In addition, I cannot resist mentioning that this measure is not in keeping with current political thought. Almost daily, we read and hear of regulatory reform, the reduction of paperwork, and a lessening of governmental involvement in private affairs. This bill, on the other hand, would mean more regulation by existing agencies, the creation of a new and more powerful agency, and of course all of the attendant and added paperwork.
National Test Course ETC -
Next month, etc. - present before
1. FTC - NSF - easy to identify areas of econ. benefit
2. NACE -

Shirt of partibility - efforts sooner shall be public accept
and - lower case - no standard
teaching for power

I'm thinking some of what they're bringing
Selling all to everyone else, great. Not great?
ASME, ANSI, etc. - are triple - all controlled secret
- not professional

400 - prep. publish
20000 - first sale
ASTM - question capeshead
Recent real state of affairs:
David Kerrigan, etc. (another prod.)
This will be a case - decisive - avoid good safety role, etc.
reviewed old plastic flammable ASTN story
Ceros, intents - geared to health - fabric & plastics -

Browning wire - not for you.
Baker present now. I got it.

Fighting just - with knowledges.
This date off. stem coming. Not depend on all
"consumer" voices unheard.