

Attachment 5

Text of the Fastener Quality Act

PUBLIC LAW 101-592-NOV. 16, 1990 104 STAT. 2943

Public Law 101-592

101st Congress

(As amended by P.L.104-113 and P.L. 105-234 and P.L. 106-34)

An Act

To require that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing, and certification, in accordance with standardized methods, of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in

Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fastener Quality Act."

SECTION 2. FINDINGS.

The Congress finds that-

(1) the United States fastener industry is a significant contributor to the global economy, employing thousands of workers in hundreds of communities;

(2) the American economy uses billions of fasteners each year;

(3) state-of-the-art manufacturing and improved quality assurance systems have dramatically improved fastener quality, so virtually all fasteners sold in commerce meet or exceed the consensus standards for the uses to which they are applied;

(4) a small number of mismarked, misrepresented, and counterfeit fasteners do enter commerce in the United States; and

(5) multiple criteria for the identification of fasteners exist, including grade identification markings and manufacturer's insignia, to enable purchasers and users of fasteners to accurately evaluate

the characteristics of individual fasteners.

SECTION 3. DEFINITIONS.

As used in this Act, the term-

(1) "accredited laboratory" means a fastener testing facility used to perform end-of-line testing required by a consensus standard or standards to verify that a lot of fasteners conforms to the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured, and which--

(A) meets the requirements of ISO/IEC Guide 25 (or another document approved by the Director under section 10(c)), including revisions from time to time; and

(B) has been accredited by a laboratory accreditation body that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under section 10(d)), including revisions from time to time;

(2) "consensus standard" means the provisions of a document that describes fastener characteristics published by a consensus standards organization or a Federal agency, and does not include a proprietary standard;

(3) "consensus standards organization" means the American Society for Testing and Materials, the American National Standards Institute, the American Society of Mechanical Engineers, the Society of Automotive Engineers, the International Organization for Standardization, any other organization identified as a United States consensus standards organization or a foreign and international consensus standards organization in the Federal Register at 61 Fed. Reg. 50582-83 (September 26, 1996), and any successor organizations thereto;

(4) "Director" means the Director of the National Institute of Standards and Technology;

(5) "distributor" means a person who purchases fasteners for the purpose of reselling them at wholesale to unaffiliated persons within the United States (an original equipment manufacturer and its dealers shall be considered affiliated entities for purposes of this Act);

(6) "fastener" means a metallic screw, nut, bolt, or stud having internal or external threads, with a nominal diameter of 6 millimeters or greater, in the case of such items described in metric terms, or 1/4 inch or greater, in the case of such items described in terms of the English system of measurement, or a load-indicating washer, that is through-hardened or represented as meeting a consensus standard that calls for through-hardening, and that is grade identification marked or represented as meeting a consensus standard that requires grade identification marking, except that such term does not include any screw, nut, bolt, stud, or load-indicating washer that is--

(A) part of an assembly;

(B) a part that is ordered for use as a spare, substitute, service, or replacement part, unless that part is in a package containing more than 75 of any such part at the time of sale, or that is a part

contained in an assembly kit;

(C) produced and marked as ASTM A 307 Grade A, or a successor standard thereto;

(D) produced in accordance with ASTM F 432, or a successor standard thereto;

(E) specifically manufactured for use on an aircraft if the quality and suitability of those fasteners for that use has been approved--

(i) by the Federal Aviation Administration; or

(ii) by a foreign airworthiness authority as described in part 21.29, 21.500, 21.502, or 21.617 of title 14 of the Code of Federal Regulations;

(F) manufactured in accordance with a fastener quality assurance system; or

(G) manufactured to a proprietary standard, whether or not such proprietary standard directly or indirectly references a consensus standard or any portion thereof;

(7) "fastener quality assurance system" means--

(A) a system that meets the requirements, including revisions from time to time of--

(i) International Organization for Standardization (ISO) Standard 9000, 9001, 9002, or TS16949;

(ii) Quality System (QS) 9000 Standard;

(iii) Verband der Automobilindustrie e. V. (VDA) 6.1 Standard; or

(iv) Aerospace Basic Quality System AS9000; or

(B) any fastener manufacturing system -

(i) that has as a stated goal the prevention of defects through continuous improvement;

(ii) that seeks to attain the goal stated in clause (i) by incorporating--

(I) advance quality planning;

(II) monitoring and control of the manufacturing process;

(III) product verification embodied in a comprehensive written control plan for product and process characteristics, and process controls (including process influence factors and statistical process control), tests, and measurement systems to be used in production; and

(IV) the creation, maintenance, and retention of electronic, photographic, or paper records required by the control plan regarding the inspections, tests, and measurements performed pursuant to the

control plan; and

(iii) that--

(I) is subject to certification in accordance with the requirements of ISO/IEC Guide 62 (or another document approved by the Director under section 10(a)), including revisions from time-to-time, by a third party who is accredited by an accreditation body in accordance with the requirements of ISO/IEC Guide 61 (or another document approved by the Director under section 10(b)), including revisions from time-to-time; or

(II) undergoes regular or random evaluation and assessment by the end user or end users of the screws, nuts, bolts, studs, or load-indicating washers produced under such fastener manufacturing system to ensure that such system meets the requirements of clauses (i) and (ii);

(8) "grade identification marking" means any grade-mark or property class symbol appearing on a fastener purporting to indicate that the lot of fasteners conforms to a specific consensus standard, but such term does not include a manufacturer's insignia or part number;

(9) "importer" means a distributor located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States;

(10) "lot" means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer;

(11) "manufacturer" means a person who fabricates fasteners for sale in commerce;

(12) "proprietary standard" means the provisions of a document that describes characteristics of a screw, nut, bolt, stud, or load-indicating washer and is issued by a person who--

(A) uses screws, nuts, bolts, studs, or load-indicating washers in the manufacture, assembly, or servicing of its products; and

(B) with respect to such screws, nuts, bolts, studs, or washers, is a developer and issuer of descriptions that have characteristics similar to consensus standards and that bear such user's identification;

(13) "record of conformance" means a record or records designated for each lot of fasteners sold or offered for sale that contains--

(A) the name and address of the manufacturer;

(B) a description of the type of fastener;

(C) the lot number;

(D) the nominal dimensions of the fastener (including diameter and length of bolts or screws), thread form, and class of fit;

(E) the consensus standard or specifications to which the lot of fasteners has been manufactured, including the date, number, revision, and other information sufficient to identify the particular consensus standard or specifications being referenced;

(F) the chemistry and grade of material;

(G) the coating material and characteristics and the applicable consensus standard or specifications for such coating; and

(H) the results or a summary of results of any tests performed for the purpose of verifying that a lot of fasteners conforms to its grade identification marking or to the grade identification marking the lot of fasteners is represented to meet;

(14) "represent" means to describe one or more of a fastener's purported characteristics in a document or statement that is transmitted to a purchaser through any medium;

(15) "Secretary" means the Secretary of Commerce;

(16) "specifications" means the required characteristics identified in the contractual agreement with the manufacturer or to which a fastener is otherwise produced, except that the term does not include proprietary standards; and

(17) "through-harden" means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving a uniform hardness.

SECTION 4. SALE OF FASTENERS

(a) GENERAL RULE- It shall be unlawful for a manufacturer or distributor, in conjunction with the sale or offer for sale of fasteners from a single lot, to knowingly misrepresent or falsify--

(1) the record of conformance for the lot of fasteners;

(2) the identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) the manufacturer's insignia.

(b) REPRESENTATIONS- A direct or indirect reference to a consensus standard to represent that a fastener conforms to particular requirements of the consensus standard shall not be construed as a representation that the fastener meets all the requirements of the consensus standard.

(c) SPECIFICATIONS- A direct or indirect contractual reference to a consensus standard for the purpose of identifying particular requirements of the consensus standard that serve as specifications shall not be construed to require that the fastener meet all the requirements of the consensus standard.

(d) USE OF ACCREDITED LABORATORIES- In the case of fasteners manufactured solely to a consensus standard or standards, end-of-line testing required by the consensus standard or

standards, if any, for the purpose of verifying that a lot of fasteners conforms with the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured shall be conducted by an accredited laboratory.

NOTE: EFFECTIVE DATE - Subsection (d) of section 4 of the Fastener Quality Act, as added by subsection (a) of this section, shall take effect 2 years after the date of enactment of this Act.

SECTION 5. MANUFACTURERS' INSIGNIAS.

(a) GENERAL RULE- Unless the specifications provide otherwise, fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer shall not be offered for sale or sold in commerce unless--

(1) the fasteners bear such insignia; and

(2) the manufacturer has complied with the insignia recordation requirements established under subsection (b);

(b) RECORDATION. - The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers described in subsection (a).

SECTION 6. REMEDIES AND PENALTIES.

(a) CIVIL REMEDIES. - (1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this Act or any regulation under this Act.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) CIVIL PENALTIES.- (1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or any regulation under this Act shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this subsection may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set

aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(4) The Secretary may arbitrate, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) CRIMINAL PENALTIES. - (1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

(d) ENFORCEMENT.- (1) The Secretary may designate officers or employees of the Department of Commerce to conduct investigations pursuant to this Act. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this Act, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) The Secretary shall establish and maintain a hotline system to facilitate the reporting of alleged violations of this Act, and the Secretary shall evaluate allegations reported through that system

and report any credible allegations to the Attorney General.

SECTION 7. RECORDKEEPING REQUIREMENTS.

Manufacturers and importers shall retain the record of conformance for fasteners for 5 years, on paper or in photographic or electronic format in a manner that allows for verification of authenticity. Upon request of a distributor who has purchased a fastener, or a person who has purchased a fastener for use in the production of a commercial product, the manufacturer or importer of the fastener shall make available information in the record of conformance to the requester.

SECTION 8. RELATIONSHIP TO STATE LAWS.

Nothing in this Act shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of this Act are in conflict with such State law.

SECTION 9. CONSTRUCTION.

Nothing in this Act shall be construed to limit or otherwise affect the authority of any consensus standards organization to establish, modify, or withdraw any standards and specifications under any other law or authority.

SECTION 10. CERTIFICATION AND ACCREDITATION.

(a) CERTIFICATION- A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director to approve such document for use as described in section 3(7)(B)(iii)(I). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if this document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62.

(b) ACCREDITATION- A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in subsection (a) may petition the Director to approve such document for use as described in section 3(7)(B)(iii)(I). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61.

(c) LABORATORY ACCREDITATION- A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director to approve such document for use as described in section 3(1)(A). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25.

(d) APPROVAL OF ACCREDITATION BODIES- A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director to approve such document for use as described in section 3(1)(B). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the

document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58. In addition to any other voluntary laboratory accreditation programs that may be established by private sector persons, the Director shall establish a National Voluntary Laboratory Accreditation Program, for the accreditation of laboratories as described in section 3(1)(B), that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under this subsection), including revisions from time-to-time.

(e) AFFIRMATION- (1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 3(7)(B)(iii)(I) shall affirm to the Director that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director under subsection (b)), including revisions from time-to-time.

(2) An accreditation body accrediting laboratories as described in section 3(1)(B) shall affirm to the Director that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under subsection (d)), including revisions from time-to-time.

(3) An affirmation required under paragraph (1) or (2) shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body, without requirement for accompanying documentation. Any such affirmation shall be considered to be a continuous affirmation that the accreditation body meets the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

SECTION 11. APPLICABILITY.

The requirements of this Act shall be applicable only to fasteners fabricated 180 days or more after the date of the enactment of the Fastener Quality Act Amendments Act of 1999, except that if a manufacturer or distributor of fasteners fabricated before that date prepares a record of conformance for such fasteners, representations about such fasteners shall be subject to the requirements of this Act.

SECTION 12. COMPTROLLER GENERAL REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Congress a report describing any changes in industry practice resulting from or apparently resulting from the enactment of section 3(6)(B) of the Fastener Quality Act, as added by section 3 of this Act.