

Calendar No. 417

106TH CONGRESS
1ST SESSION

S. 795

[Report No. 106-224]

A BILL

To amend the Fastener Quality Act to strengthen the protection against the sale of mismarked, misrepresented, and counterfeit fasteners and eliminate unnecessary requirements, and for other purposes.

NOVEMBER 19, 1999

Reported with amendments

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IN THE SENATE OF THE UNITED STATES

APRIL 14, 1999

Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. FRIST, Mr. BURNS, Mr. BREAUX, Mr. ASHCROFT, Mr. ABRAHAM, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 19, 1999

Reported by Mr. MCCAIN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend the Fastener Quality Act to strengthen the protection against the sale of mismarked, misrepresented, and counterfeit fasteners and eliminate unnecessary requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fastener Quality Act
3 Amendments Act of 1999”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 Section 2 of the Fastener Quality Act (15 U.S.C.
6 5401) is amended to read as follows:

7 **“SEC. 2. FINDINGS.**

8 “The Congress finds that—

9 “(1) the United States fastener industry is a
10 significant contributor to the global economy, em-
11 ploying thousands of workers in hundreds of commu-
12 nities;

13 “(2) the American economy uses billions of fas-
14 teners each year;

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

20 “(4) a small number of mismarked, misrepre-
21 sented, and counterfeit fasteners do enter commerce
22 in the United States; and

23 “(5) multiple criteria for the identification of
24 fasteners exist, including grade identification mark-
25 ings and manufacturer’s insignia, to enable pur-

1 chasers and users of fasteners to accurately evaluate
2 the characteristics of individual fasteners.”.

3 **SEC. 3. DEFINITIONS.**

4 Section 3 of the Fastener Quality Act (15 U.S.C.
5 5402) is amended to read as follows:

6 **“SEC. 3. DEFINITIONS.**

7 “As used in this Act, the term—

8 “(1) ‘accredited laboratory’ means a fastener
9 testing facility used to perform end-of-line testing
10 required by a consensus standard or standards to
11 verify that a lot of fasteners conforms to the grade
12 identification marking called for in the consensus
13 standard or standards to which the lot of fasteners
14 has been manufactured, and which—

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

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

24 “(2) ‘consensus standard’ means the provisions
25 of a document that describes fastener characteristics

1 published by a consensus standards organization or
2 a Federal agency, and does not include a proprietary
3 standard;

4 “(3) ‘consensus standards organization’ means
5 the American Society for Testing and Materials, the
6 American National Standards Institute, the Amer-
7 ican Society of Mechanical Engineers, the Society of
8 Automotive Engineers, the International Organiza-
9 tion for Standardization, any other organization
10 identified as a United States consensus standards
11 organization or a foreign and international con-
12 sensus standards organization in the Federal Reg-
13 ister at 61 Fed. Reg. 50582-83 (September 26,
14 1996), and any successor organizations thereto;

15 “(4) ‘Director’ means the Director of the Na-
16 tional Institute of Standards and Technology;

17 “(5) ‘distributor’ means a person who pur-
18 chases fasteners for the purpose of reselling them at
19 wholesale to unaffiliated ~~entities or individuals~~ *per-*
20 *sons within the United States, and, for purposes of*
21 *this paragraph, (an original equipment manufac-*
22 *turer and its dealers shall be considered affiliated*
23 ~~entities persons~~ *persons for purposes of this Act); Act;*

24 “(6) ‘fastener’ means a metallic screw, nut,
25 bolt, or stud having internal or external threads,

1 with a nominal diameter of 6 millimeters or greater,
2 in the case of such items described in metric terms,
3 or 1/4 inch or greater, in the case of such items de-
4 scribed in terms of the English system of measure-
5 ment, or a load-indicating washer, that is through-
6 hardened or represented as meeting a consensus
7 standard that calls for through-hardening, and that
8 is grade identification marked or represented as
9 meeting a consensus standard that requires grade
10 identification marking, except that such term does
11 not include any screw, nut, bolt, stud, or load-indi-
12 cating washer that is—

13 “(A) part of an assembly;

14 “(B) in a package containing no more than
15 100 of any one screw, nut, bolt, stud, or load-
16 indicating washer at the time of sale;

17 “(C) produced and marked as ASTM A
18 307 Grade A, or a successor standard thereto;

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

21 “(E) specifically manufactured for use on
22 an aircraft if the quality and suitability of those
23 fasteners for that use has been approved—

24 “(i) by the Federal Aviation Adminis-
25 tration; or

1 “(ii) by a foreign airworthiness au-
2 thority as described in part 21.29, 21.500,
3 21.502, or 21.617 of title 14 of the Code
4 of Federal Regulations;

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

7 “(G) manufactured to a proprietary stand-
8 ard, whether or not such proprietary standard
9 directly or indirectly references a consensus
10 standard or any portion thereof;

11 “(7) ‘fastener quality assurance system’
12 means—

13 “(A) a system that meets the require-
14 ments, including revisions from time to time,
15 of—

16 “(i) International Organization for
17 Standardization (ISO) Standard 9000,
18 9001, 9002, or TS16949;

19 “(ii) Quality System (QS) 9000
20 Standard;

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

23 “(iv) Aerospace Basic Quality System
24 Standard AS9000; or

25 “(B) any fastener manufacturing system—

1 “(i) that has as a stated goal the pre-
2 vention of defects through continuous im-
3 provement;

4 “(ii) that seeks to attain the goal stat-
5 ed in clause (i) by incorporating—

6 “(I) advance quality planning;

7 “(II) monitoring and control of
8 the manufacturing process;

9 “(III) product verification em-
10 bodied in a comprehensive written
11 control plan for product and process
12 characteristics, and process controls
13 (including process influence factors
14 and statistical process control), tests,
15 and measurement systems to be used
16 in production; and

17 “(IV) the creation, maintenance,
18 and retention of electronic, photo-
19 graphic, or paper records required by
20 the control plan regarding the inspec-
21 tions, tests, and measurements per-
22 formed pursuant to the control plan;
23 and

24 “(iii) that—

1 “(I) is subject to certification in
2 accordance with the requirements of
3 ISO/IEC Guide 62, including revisions
4 from time to time, (or another docu-
5 ment approved by the Director under
6 section 10(a)) by a third party who is
7 accredited by an accreditation body in
8 accordance with the requirements of
9 ISO/IEC Guide 61, including revisions
10 from time to time, (or another docu-
11 ment approved by the Director under
12 section 10(b)); or

13 “(II) undergoes regular or ran-
14 dom evaluation and assessment by the
15 end user or end users of the screws,
16 nuts, bolts, studs, or load-indicating
17 washers produced under such fastener
18 manufacturing system to ensure that
19 such system meets the requirements
20 of clauses (i) and (ii);

21 “(8) ‘grade identification marking’ means any
22 grade-mark or property class symbol appearing on a
23 fastener purporting to indicate that the lot of fas-
24 teners conforms to a specific consensus standard,

1 but such term does not include a manufacturer’s in-
2 signia or part number;

3 “(9) ‘importer’ means a distributor located with-
4 in the United States who contracts for the initial pur-
5 chase of fasteners manufactured outside the United
6 States;

7 “~~(9)~~ (10) ‘lot’ means a quantity of fasteners of
8 one part number fabricated by the same production
9 process from the same coil or heat number of metal
10 as provided by the metal manufacturer;

11 “~~(10)~~ (11) ‘manufacturer’ means a person who
12 fabricates fasteners for sale in commerce;

13 “~~(11)~~ (12) ‘proprietary standard’ means the
14 provisions of a document that describes characteris-
15 tics of a screw, nut, bolt, stud, or load-indicating
16 washer and is issued by a person who—

17 “(A) uses screws, nuts, bolts, studs, or
18 load-indicating washers in the manufacture, as-
19 sembly, or servicing of its products; and

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

1 ~~“(12)~~ (13) ‘record of conformance’ means a
2 record or records for each lot of fasteners sold or of-
3 fered for sale that contains—

4 “(A) the name and address of the manu-
5 facturer;

6 “(B) a description of the type of fastener;

7 “(C) the lot number;

8 “(D) the nominal dimensions of the fas-
9 tener (including diameter and length of bolts or
10 screws), thread form, and class of fit;

11 “(E) the consensus standard or specifica-
12 tions to which the lot of fasteners has been
13 manufactured, including the date, number, revi-
14 sion, and other information sufficient to iden-
15 tify the particular consensus standard or speci-
16 fications being referenced;

17 “(F) the chemistry and grade of material;

18 ~~and~~

19 “(G) the coating material and characteris-
20 tics and the applicable consensus standard or
21 specifications for such coating; *and*

22 “(H) *the results or a summary of results of*
23 *any tests performed for the purpose of verifying*
24 *that a lot of fasteners conforms to its grade iden-*
25 *tification marking or to the grade identification*

1 *marking the lot of fasteners is represented to*
 2 *meet;*

3 “~~(13)~~ (14) ‘represent’ means to describe one or
 4 more of a fastener’s purported characteristics in a
 5 document or statement that is transmitted to a pur-
 6 chaser through any medium;

7 “~~(14)~~ (15) ‘Secretary’ means the Secretary of
 8 Commerce;

9 “~~(15)~~ (16) ‘specifications’ means the required
 10 characteristics identified in the contractual agree-
 11 ment with the manufacturer or to which a fastener
 12 is otherwise produced, except that the term does not
 13 include proprietary standards; and

14 “~~(16)~~ (17) ‘through-harden’ means heating
 15 above the transformation temperature followed by
 16 quenching and tempering for the purpose of achiev-
 17 ing uniform hardness.”.

18 **SEC. 4. SALE OF FASTENERS.**

19 (a) IN GENERAL.—Sections 5 through 7 of the Fas-
 20 tener Quality Act (15 U.S.C. 5404 through 5406) are re-
 21 pealed, and the following new section is inserted after sec-
 22 tion 3 of such Act:

23 **“SEC. 4. SALE OF FASTENERS.**

24 “(a) GENERAL RULE.—It shall be unlawful for a
 25 manufacturer or distributor, in conjunction with a sale or

1 ~~offer for sale of a fastener, the sale or offer for sale of fas-~~
2 ~~teners from a single lot,~~ to knowingly misrepresent or
3 falsify—

4 “(1) the record of conformance for the lot of
5 fasteners;

6 “(2) the identification, characteristics, prop-
7 erties, mechanical or performance marks, chemistry,
8 or strength of the lot of fasteners; or

9 “(3) the manufacturer’s insignia.

10 “(b) REPRESENTATIONS.—A direct or indirect ref-
11 erence to a consensus standard to represent that a fas-
12 tener conforms to particular requirements of the con-
13 sensus standard shall not be construed as a representation
14 that the fastener meets all the requirements of the con-
15 sensus standard.

16 “(c) SPECIFICATIONS.—A direct or indirect contrac-
17 tual reference to a consensus standard for the purpose of
18 identifying particular requirements of the consensus
19 standard that serve as specifications shall not be con-
20 strued to require that the fastener meet all the require-
21 ments of the consensus standard.

22 “(d) USE OF ACCREDITED LABORATORIES.—In the
23 case of fasteners manufactured solely to a consensus
24 standard or standards, end-of-line testing required by the
25 consensus standard or standards, if any, for the purpose

1 of verifying that a lot of fasteners conforms with the grade
 2 identification marking called for in the consensus standard
 3 or standards to which the lot of fasteners has been manu-
 4 factured shall be conducted by an accredited laboratory.”.

5 (b) EFFECTIVE DATE.—Section 4(d) of the Fastener
 6 Quality Act, as added by subsection (a), shall take effect
 7 2 years after the date of enactment of this Act.

8 **SEC. 5. MANUFACTURERS’ INSIGNIAS.**

9 Section 8 of the Fastener Quality Act (15 U.S.C.
 10 5407) is redesignated as section 5 and is amended—

11 (1) by amending subsection (a) to read as fol-
 12 lows:

13 “(a) GENERAL RULE.—Unless the specifications pro-
 14 vide otherwise, ~~a fastener that is required~~ *fasteners that*
 15 *are required* by the applicable consensus standard or
 16 standards to bear ~~an~~ insignia identifying ~~its~~ *their* manu-
 17 facturer shall not be offered for sale or sold in commerce
 18 unless—

19 “(1) the ~~fastener~~ *fasteners bear* such an
 20 insignia; and

21 “(2) the manufacturer has complied with the
 22 insignia recordation requirements established under
 23 subsection (b).”; and

1 (2) in subsection (b), by striking “and private
2 label” and all that follows and inserting “described
3 in subsection (a).”.

4 **SEC. 6. REMEDIES AND PENALTIES.**

5 Section 9 of the Fastener Quality Act (15 U.S.C.
6 5408) is redesignated as section 6 and is amended—

7 *(1) by striking paragraph (1) of subsection (b)*
8 *and inserting the following:*

9 “(b) *CIVIL PENALTIES.*—

10 *“(1) Any person who is determined by the Sec-*
11 *retary, after notice and an opportunity for a hearing,*
12 *to have—*

13 *“(A) negligently violated section 7 or any*
14 *regulation under section 7 shall be liable to the*
15 *United States for a civil penalty of not more*
16 *than \$10,000 for each violation;*

17 *“(B) committed gross negligence in vio-*
18 *lating section 7 or any regulation under section*
19 *7 shall be liable to the United States for a civil*
20 *penalty of not more than \$35,000 for each viola-*
21 *tion;*

22 *“(C) recklessly or intentionally violated sec-*
23 *tion 7 or any regulations under section 7 shall*
24 *be liable to the United States for a civil penalty*
25 *of not more than \$50,000 for each violation;*

1 “(D) violated section 4(a) or any regulation
2 under section 4(a) shall be liable to the United
3 States for a civil penalty of not more than
4 \$50,000 for each violation; or

5 “(E) violated any other provision of this
6 Act or any other regulation under this Act shall
7 be liable to the United States for a civil penalty
8 of not more than \$25,000 for each violation.”;

9 ~~(1)~~ (2) by striking “of this section” in sub-
10 section (b)(3) and inserting “of this subsection”;

11 ~~(2)~~ (3) by inserting “arbitrate,” in subsection
12 (b)(4) after “Secretary may”;

13 ~~(3)~~ (4) in subsection (d)—

14 (A) by inserting “(1)” after “ENFORCE-
15 MENT.—”; and

16 (B) by adding at the end the following:

17 “(2) The Secretary shall establish and maintain a
18 hotline system to facilitate the reporting of alleged viola-
19 tions of this Act, and the Secretary shall evaluate allega-
20 tions reported through that system and report any credible
21 allegations to the Attorney General.”.

22 **SEC. 7. RECORDKEEPING REQUIREMENTS.**

23 Section 10 of the Fastener Quality Act (15 U.S.C.
24 5409) is redesignated as section 7 and is amended by

1 striking subsections (a) and (b) and inserting the fol-
2 lowing:

3 “Manufacturers *and importers* shall retain the record
4 of conformance for fasteners for 5 years, on paper or in
5 photographic or electronic format in a manner that allows
6 for verification of authenticity. Upon request of a dis-
7 tributor who has purchased a fastener, or a person who
8 has purchased a fastener for use in the production of a
9 commercial product, the manufacturer *or importer* of the
10 fastener shall make available information in the record of
11 conformance to the requester.”.

12 **SEC. 8. RELATIONSHIP TO STATE LAWS.**

13 Section 11 of the Fastener Quality Act (15 U.S.C.
14 5410) is redesignated as section 8.

15 **SEC. 9. CONSTRUCTION.**

16 Section 12 of the Fastener Quality Act (15 U.S.C.
17 5411) is redesignated as section 9 and is amended by
18 striking “in effect on the date of enactment of this Act”.

19 **SEC. 10. CERTIFICATION AND ACCREDITATION.**

20 Sections 13 and 15 of the Fastener Quality Act (15
21 U.S.C. 5412 and 5414) are repealed, and the following
22 new section is added at the end of that Act:

23 **“SEC. 10. CERTIFICATION AND ACCREDITATION.**

24 “(a) CERTIFICATION.—A person publishing a docu-
25 ment setting forth guidance or requirements for the cer-

1 tification of manufacturing systems, including fastener
2 manufacturing systems, by an accredited third party may
3 petition the Director to approve such document for use
4 as described in section 3(7)(B)(iii)(I). The Director shall
5 act upon a petition within 180 days after its filing, and
6 shall approve such petition if the document provides equal
7 or greater rigor and reliability as compared to ISO/IEC
8 Guide 62.

9 “(b) ACCREDITATION.—A person publishing a docu-
10 ment setting forth guidance or requirements for the ap-
11 proval of accreditation bodies to accredit third parties de-
12 scribed in subsection (a) may petition the Director to ap-
13 prove such document for use as described in section
14 3(7)(B)(iii)(I). The Director shall act upon a petition
15 within 180 days after its filing, and shall approve such
16 petition if the document provides equal or greater rigor
17 and reliability as compared to ISO/IEC Guide 61.

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

1 “(d) APPROVAL OF ACCREDITATION BODIES.—A
2 person publishing a document setting forth guidance or
3 requirements for the approval of accreditation bodies to
4 accredit laboratories may petition the Director to approve
5 such document for use as described in section 3(1)(B).
6 The Director shall act upon a petition within 180 days
7 after its filing, and shall approve such petition if the docu-
8 ment provides equal or greater rigor and reliability as
9 compared to ISO/IEC Guide 58.”.

10 **SEC. 11. APPLICABILITY.**

11 At the end of the Fastener Quality Act, as amended
12 by section 10, add the following:

13 **“SEC. 11. APPLICABILITY.**

14 “The requirements of this Act shall be applicable only
15 to fasteners fabricated 180 days or more after the date
16 of the enactment of this Act, except that if a manufacturer
17 or distributor of fasteners fabricated before that date pre-
18 pares a record of conformance for such fasteners, rep-
19 resentations about such fasteners shall be subject to the
20 requirements of this Act.”.