

Calendar No. 199104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-153 }TECHNOLOGY ADMINISTRATION
AUTHORIZATION ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1141

SEPTEMBER 29 (legislative day, SEPTEMBER 25), 1995.—Ordered to be
printed

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WASHINGTON : 1995

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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{ REPORT
104-153

**TECHNOLOGY ADMINISTRATION AUTHORIZATION ACT OF
1995**

SEPTEMBER 29 (legislative day, SEPTEMBER 25), 1995.—Ordered to be printed

Mr. PRESSLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1141]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1141) to authorize appropriations for the activities of the Under Secretary of Commerce for Technology, and for Scientific and Technical Research Services and Construction of Research Facilities activities of the National Institute of Standards and Technology, for fiscal years 1996, 1997, and 1998, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to authorize appropriations to the Technology Administration (TA) of the Department of Commerce (DOC) for each of the fiscal years 1996, 1997, and 1998 as follows:

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION TECHNOLOGY ADMINISTRATION BUDGET
SPREADSHEET FOR FISCAL YEARS 1996 TO 1998

[In millions of dollars]

	Fiscal year		Proposed fiscal year		
	1995 appropria- tion	1996 request	1996 Senate au- thorization	1997 Senate au- thorization	1998 Senate au- thorization
National Institute of Stand- ards and Technology (NIST)					
Scientific and Technical Re- search and Services (STRS)	247.0	310.0	263.0	263.0	263.0

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION TECHNOLOGY ADMINISTRATION BUDGET
SPREADSHEET FOR FISCAL YEARS 1996 TO 1998—Continued

[In millions of dollars]

	Fiscal year		Proposed fiscal year		
	1995 appropriation	1996 request	1996 Senate authorization	1997 Senate authorization	1998 Senate authorization
Industrial Technology					
Services (ITS)	439.7	643.0	427.0	427.0	427.0
Advanced Technology Program (ATP)	361.0	491.0			
Manufacturing Extension Program (MEP)	74.7	147.0			
Baldrige Quality Award Program .	4.0	5.0			
Construction of Facilities	35.0	70.0	60.0	60.0	60.0
Total, NIST	700.7	1,023.0	750.0	750.0	750.0
DoC/TA	8.25	14.0	5.0	0.0	0.0
Total, Technology Administration	708.95	1,037.0	755.0	750.0	750.0

BACKGROUND AND NEEDS

Technology Administration. Under the leadership of the Under Secretary of Commerce for Technology, the Technology Administration (TA) provides advice on technology policy, supports technology development programs, and disseminates technology information. The Undersecretary oversees the three major components of the TA: (1) the Office of Technology Policy, (2) the National Institute of Standards and Technology (NIST), and (3) the National Technical Information Service (NTIS). The mission of the Office of Technology Policy is to evaluate, develop, and promote policies and programs that facilitate private sector innovation and U.S. industrial competitiveness. With its FY 1995 budget of \$701 million, NIST (formerly the Bureau of Standards) is, by far, the largest of the three TA activities. NIST conducts in-house research and development and standards activities in support of U.S. industry. In addition, through its Industrial Technology Services account, NIST funds two external technology grant and assistance programs: the Advanced Technology Program (ATP), which provides grants to high-tech ventures to develop technologies with commercial potential, and the Manufacturing Extension Partnership (MEP), which provides manufacturing assistance to small- and medium-sized businesses through regional centers. NIST also manages the Malcolm Baldrige National Quality Award, which is given to U.S. companies that excel in quality achievement and total quality management. NTIS is a self-financed agency that collects and sells to the public technical information generated by U.S. government and foreign sources.

In recent years, of all the TA activities, the greatest controversy has involved NIST's grant programs—the ATP and the MEP. Supporters of the ATP argue it strengthens the U.S. economy by providing U.S. companies with a critical helping hand by funding com-

mercially relevant research and development ventures that private capital sources would be unlikely to finance. However, critics of the ATP view it as "corporate welfare" and believe that the goal of increased U.S. competitiveness is better achieved through a combination of deregulation, tax reform, tort reform, and more vigorous enforcement of trade agreements.

The MEP has been viewed by critics of NIST in a more favorable light. Through its 42 centers (7 funded by NIST and 35 funded by the Department of Defense's Technology Reinvestment Project) and smaller local activities, the MEP provides assistance to small-and medium-sized firms seeking to modernize their plants. Supporters assert that this is precisely the kind of assistance that these firms need, because it is difficult for owners and managers of small companies to find high-quality, unbiased information, advice, and assistance. However, some believe that the MEP concept of using extension agents to visit industries to identify and address their needs is not a cost-effective model and is particularly inefficient in rural states where the agents must travel great distances. Its critics also argue that the MEP makes insufficient use of advanced computer networking to deliver needed technical assistance to U.S. companies.

Fastener Quality Act (P.L. 101-592). The Fastener Quality Act requires that fasteners used in critical industrial applications (e.g., airplanes, bridges, etc.) be tested in accredited labs to insure they meet specifications. To facilitate the traceability of substandard fasteners, the Act also prohibits manufacturers and distributors from commingling fasteners from more than two different lots in the same container. In 1992, after five two-day hearings, the Fastener Advisory Committee created under the Act determined that the legislation was unworkable because it would impose prohibitive costs and administrative costs on the industry. The Fastener Advisory Committee recommended changes in the Act that would (a) allow a manufacturer to establish the chemistry of a finished lot of fasteners through a certification provided by the provider of the raw material, (b) allow the sale of fasteners having minor nonconformances which do not affect performance if the purchaser agrees to accept them, and (c) permit commingling of fasteners from difficult lots under some circumstances.

In August 1992, NIST published proposed regulations for notice and comment to implement the Act. However, NIST has yet to promulgate final rules because of the pending deliberations in Congress. During the 103rd Congress, the Science Subcommittee held a hearing on the proposed changes in the Fastener Quality Act. The Senate subsequently approved those changes as part of a larger bill, S. 4/H.R. 820 (the National Competitiveness Act); however, the 103rd Congress adjourned without the Senate-House conference on S. 4/H.R. 820 resolving the difference between the House and Senate versions of the bill.

LEGISLATIVE HISTORY

On February 6, 1995, the Administration submitted its FY 1996 budget request for the TA to the Congress. On January 31, the Subcommittee on Science, Technology, and Space held an oversight hearings on the TA and other science and technology pro-

grams at the Department of Commerce (DOC). The Subcommittee heard testimony about the TA from three witnesses: The Honorable Ronald H. Brown, Secretary of Commerce; Dr. Mary Lowe Good, Under Secretary of Commerce for Technology; and Dr. Arati Prabhakar, Director, National Institute of Standards and Technology. On August 1, the Full Committee held a hearing on the future of the DOC, which included an examination of the programs and activities of the TA and NIST. At the hearing, testimony about TA and NIST was heard from Secretary Brown, as well as a panel of outside witnesses consisting of: Mr. Sergio Mazza, President, American National Standards Institute; Dr. Edward Hudgins, Director of Regulatory Studies, CATO Institute; Dr. Richard Gowen, President, South Dakota School of Mines and Technology; Mr. Robert W., Goss, President and Chief Executive Officer, Nanophase Technologies Corporation; and Mr. Gary W. Jones, President and Chief Executive Officer, FED Corporation.

On August 9, Senator Pressler, chairman of the Committee, introduced S. 1141, a bill to authorize appropriations for the TA for FY 1996, 1997, and 1998. The bill was cosponsored by Senator Burns. On August 10, the Committee met in open executive session and, without objection, ordered the bill reported without amendment.

SUMMARY OF MAJOR PROVISIONS

1. *Technology Administration.* As reported, S. 1141 authorizes a total of \$755 million for the TA for FY 1996 and \$750 million for each of fiscal years 1997 and 1998. The authorized funding for the TA is allocated among its activities as follows:

a. *Office of Technology Policy.* The bill allocates \$5 million in FY 1996 for the Office of Technology Policy, but no funding is authorized for FY 1997 AND 1998. The bill also requires the Secretary of Commerce to submit with the DOC's FY 1997 budget submission a strategic plan for phasing out the Office of Technology Policy during FY 1996.

b. *NIST.* For NIST, the bill authorizes a total of \$750 million for each of fiscal years 1996, 1997, and 1998. For each of those fiscal years, the bill allocates \$263 million to its internal research and standards work; \$427 million to its Industrial Technical Services (ITS) account (which funds ATP, MEP, and the quality programs); and \$60 million to its Construction of Facilities account. Out of the moneys authorized for the ITS account, the bill authorizes \$10 million in each of fiscal years 1996, 1997, and 1998 for an Experimental Program to Stimulate Competitive Technology (EPSCOT) that would fund research and outreach activities in rural and sparsely populated states.

2. *Fastener Quality Act Amendments.* The bill would make changes in the Fastener Quality Act that would allow minor nonconformance in fastener specifications consistent with consensus standards organizations' policies, exempt distributors from the Act's commingling prohibition, and allow the fastener manufacturers to use a certification from the metal supplier to establish the chemistry of the finished fasteners.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and Section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC August 31, 1995.

Hon. LARRY PRESSLER,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1141, the Technology Administration Authorization Act of 1995.

Enacting S. 1141 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROSEMARY MARCUSS
(For June E. O'Neill).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1141.
2. Bill title: Technology Administration Authorization Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on August 10, 1995.
4. Bill purpose: S. 1141 would authorize appropriations for the fiscal years 1996 through 1998 for the Under Secretary for Technology of the Department of Commerce and for various programs within the National Institute of Standards and Technology (NIST). The bill also would amend provisions of the Fasteners Quality Act regarding laboratory accreditation, commingling of fasteners, and enforcement of the act.
5. Estimated cost to the Federal Government: Assuming appropriations of the authorized amounts, CBO estimates that enacting S. 1141 would result in costs to the federal government of about \$2.1 billion over the 1996–2000 period, primarily for NIST expenditures. Other provisions of the bill would have no additional budgetary impact. The following table summarizes the estimated budgetary effects of S. 1141.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Projected Spending Under Current Law:						
Budget Authority ¹	857	0	0	0	0	0
Estimated Outlays	468	392	312	133	18	0
Proposed Changes:						
Authorization Level	0	755	750	750	0	0
Estimated Outlays	0	285	472	650	457	278

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Projected Spending Under S. 1141:						
Authorization Level ¹	857	755	750	750	0	0
Estimated Outlays	468	677	784	783	475	278

¹ The 1995 level is the amount appropriated for that year.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On July 19, 1995, CBO provided a cost estimate for H.R. 1870, the American Technology Advancement Act of 1995, as ordered reported by the House Committee on Science on June 28, 1995. Both bills would authorize appropriations for the Under Secretary of Technology and for programs within NIST, and amend the provisions of the Fasteners Quality Act. S. 1141, however, also includes an authorization for the Industrial Technology Services of NIST, while H.R. 1870 does not include any authorization for this program. In addition, S. 1141 includes authorization amounts for the NIST programs for 1996 through 1998, while H.R. 1870 only applies to 1996. CBO estimated that enacting H.R. 1870 would result in costs to the Federal Government of about \$343 million over the 1996–2000 period.

10. Estimate prepared by: Rachel Forward.

11. Estimate approved by: Carl R. Cullhan, for Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

S. 1141, as reported, reauthorizes the DOC's TA for fiscal years 1996 through 1998. The TA conducts measurements and standards activities in support of U.S. industry and manages technology grant and assistance programs to increase U.S. competitiveness. The bill also makes changes in the Fastener Quality Act, which is implemented by NIST, in order to correct or clarify certain provisions in the current law. The Committee believes that the bill will not subject any individuals or businesses affected by the bill to additional regulation, will not increase the paperwork requirement for such individuals or businesses, and will not have an adverse impact on individual privacy.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

This section permits the Act to be cited as “the Technology Administration Authorization Act of 1995.”

SECTION 2—AUTHORIZATION OF APPROPRIATIONS

Subsection (a) authorizes \$5,000,000 in FY 1996 for the activities of the Under Secretary for Technology and the Office of Technology Policy, a \$9 million decrease from the President's budget request for FY 1996. This subsection also requires that, with the FY 1997

budget submission for the DOC, the Secretary of Commerce submit to Congress a strategic plan for phasing out the Office of Technology Policy during FY 1996.

The Committee believes that, in the current budget environment, we must eliminate TA programs that are not essential to the agency's goals and missions. The provisions of subsection (a) reflect the Committee's view that, regardless of the merit of the Office of Technology Policy, it is not an indispensable activity within the DOC and, to the extent any essential functions can be identified, such functions can be satisfactorily performed by NIST. The Committee intends that the \$5 million authorized in FY 1996 for the Under Secretary of Technology/Office of Technology Policy account be used primarily to execute the phase out plan mandated under the subsection and secondarily to carry out the normal operational functions funded by that account. The bill does not authorize funds for FY 1997 and 1998 for that account based on the assumption that the activities traditionally funded thereunder will have been either eliminated or transferred to NIST by the end of FY 1996.

Subsection (b) authorizes, for each of fiscal years 1996, 1997, and 1998, \$263 million for Scientific and Technical Research Services, \$427 million for Industrial Technology Services and \$60 million for Construction of Facilities. However, within the Industrial Technology Services account, the bill does not authorize any appropriations for Advanced Technology Program grants awarded after October 1, 1995.

The bill's three-year authorization for NIST recognizes the agency's important and legitimate role in promoting U.S. industrial competitiveness by working with industry to develop and apply measurements, standards, and technology. The bill provides \$263 million for the NIST internal research programs and standards activities in such areas as chemical science and technology, physics, materials science and engineering, electronics, manufacturing, computer technology, building and fire research, and mathematics. This basic research and standards work at NIST may be its most important function. Increasingly, standards are being used by foreign markets to close their markets to U.S. industries. There is little question that standards will become an increasingly potent trade weapon to hinder market entry by U.S. firms or retaliate against the U.S. In recognition of this, the bill fully funds NIST's lab and standards programs from FY 1996 through FY 1998 at their FY 1995 funding level.

The bill also provides strong support for NIST's Industrial Technology Services (ITS) account, which funds the agency's Advanced Technology Program and the Manufacturing Extension Partnership. The bill authorizes \$427 million a year from FY 1996 through FY 1998 for the ITS account, \$216 million decrease from the President's FY 1996 budget request.

The bill provides the agency with the discretion to allocate funding among the ATP, MEP, and the quality programs within the ITS account. The bill does not authorize any ATP grants awarded after October 1, 1995. By restricting authorization for the ATP to current year awards, Congress will have more time to evaluate the value of ATP in our competitiveness strategy. Some critics believe that, since it was first funded in FY 1990, the ATP has grown too big,

too fast, without demonstrating clear benefits to U.S. industry. These critics point out that ATP grants have often gone to Fortune 500 companies like IBM, Dupont, and Texas Instruments instead of the small high-tech ventures intended as the primary focus for the ATP. Supporters of ATP point out that 55 percent of the ATP grants have gone to small firms and 70 percent of ATP-supported joint ventures involve small companies. The ATP cannot boost U.S. competitiveness alone, but must be a part of a larger national strategy to achieve that objective.

The bill also provides \$60 million for each of the three fiscal years for the Construction of Facilities in order to fund needed new construction and renovation at NIST. This funding level is sufficient to support basic safety and maintenance activities at NIST's facilities, many of which were constructed in the 1950s. Any remaining funding may be allocated at the discretion of the agency. It is the Committee's understanding that the agency is considering three new construction projects whose total cost could well, exceed \$300 million, specifically a Chemistry Science Lab in Gaithersburg, Maryland; an Advanced Technology Lab in Gaithersburg, Maryland; and an Advanced Technology Lab in Boulder, Colorado. Given prevailing budget constraints, the Committee would strongly encourage NIST to address the renovation needs of its current facilities before undertaking any new construction projects.

SECTION 3—EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE TECHNOLOGY

This section authorizes \$10 million in the Industrial Technology Services account to be allocated to a new program called the Experimental Program to Stimulate Competitive Technology (EPSCOT). EPSCOT would provide grants on a competitive and peer-reviewed basis to qualified applicants in rural and sparsely populated states whose institutions have historically not been included in the mainstream of federal research funding. The grants awarded under EPSCOT may be for any purpose consistent with the mission of NIST, including, but not limited to, research, technology transfer, outreach activities, economic development, and education.

The Committee is concerned that institutions in rural and sparsely populated states have had difficulty getting any help from NIST in the area of manufacturing assistance. In fact, it is aware of several instances in which NIST was unresponsive to specific requests from such states for technical help. If NIST's external programs are to be continued in any form, they must benefit the entire country and not just high-tech corridors or revitalized rust-belt areas in the East and West. Based on the highly successful EPSCOT programs at the National Science Foundation and other science agencies, EPSCOT will provide grants for research and outreach work that will enable a broader community of businesses, universities, state and local governments, and individuals to contribute to today's technological revolution. At the Committee's August 1st hearing on the future of the DOC, Secretary of Commerce Ronald Brown endorsed the idea of starting an EPSCOT program at NIST.

SECTION 4—ELIMINATION OF THE NATIONAL QUALITY COUNCIL

This section repeals Section 507 of the American Technology Preeminence Act of 1991 (15 U.S.C. 3717) which established the National Quality Council. The Council, which was authorized to consider quality issues in business, education, and government, has never been activated by the DOC.

SECTION 5—FASTENER QUALITY ACT AMENDMENTS

This section would make changes in the current law that would allow minor nonconformance in specifications if such nonconformance is consistent with consensus standards organizations' policies; exempt distributors from the commingling prohibition; and allow the fastener manufacturers to use a certification from the metal supplier to establish the chemistry of the finished fasteners. These provisions were developed by NIST in consultation with the fastener industry.

The bill would also repeal Section 4 of the Act, which allows the Secretary of Commerce to waive the requirements of the Act with regard to categories of fasteners not used in critical applications and to include within the Act's coverage categories of fasteners not specifically described in the Act. The bill also would authorize the DOC to conduct investigations into matters arising under the Fastener Quality Act and reduce from 10 years to 5 years the time for retention of records required under the Fastener Quality Act. Further, the bill would strike the phrase "within 180 days after the date of enactment of this Act" in Section 13 of the Fastener Quality Act. Section 13 requires the Secretary of Commerce to issue rules implementing the Act within 180 days of enactment of the Act. Since that deadline expired four years ago without regulations having been issued, the 180-day deadline in the current law no longer has meaning. Finally, the bill repeals Section 14 of the Act, which requires the Secretary of Commerce to appoint a fasteners advisory committee. The advisory committee required under Section 14 was in fact appointed after enactment of the Fastener Quality Act and, after completing its work, was disbanded in 1994.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

[Note: Changes in existing law are shown as that law is carried in the United States Code, whether or not a particular title has been enacted into positive law. Changes to tables of sections are not shown.]

TITLE 15—COMMERCE AND TRADE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACT

COMPETITIVE TECHNOLOGY PROGRAM

SEC. 31. (a) FINDINGS.—Congress finds that—

(1) it is in the National interest for the federal government to take appropriate steps in order to strengthen the competitiveness of research institutions and industry in our rural and less populous states that historically have not been included as full partners in the federal research and development enterprise;

(2) the research institutions in our rural and less populous states represent a valuable and productive research and technological base that has generated important breakthrough advances in science and technology and helped boost the Nation's economy;

(3) as part of its mission to help increase U.S. competitiveness, the National Institute of Standards and Technology (NIST) of the Department of Commerce, has an important role in strengthening and broadening the research and technology base in our rural and less populous states;

(4) the Experimental Program to Stimulate Competitive Research (EPSCOR) at the National Science Foundation and similar programs at the National Aeronautics and Space Administration and other federal science agencies have been extremely successful in strengthening the research base of our rural and less populous states by funding, on a competitive, peer-reviewed basis, research grant proposals from those states; and

(5) the establishment at NIST of a program based on the EPSCOR concept would both build on the progress of the other federal agencies' EPSCOR activities and further broaden the Nation's scientific and technology base to embrace the quality research institutions in rural and less populous states.

(b) POLICY.—It is the policy of the United States that—

(1) NIST should conduct appropriate programs and activities to strengthen and broaden the Nation's scientific and technology capabilities and infrastructure;

(2) NIST should develop programs and activities to support research efforts in our rural and less populous states to enhance U.S. industrial competitiveness; and

(3) such programs and activities should be coordinated and made consistent with the Experimental Program to Stimulate Competitive Research at the National Science Foundation and similar programs at other federal science agencies.

(c) REQUIREMENTS.—

(1) COMPETITION.—Through the National Institute of Standards and Technology, the Secretary of Commerce shall establish an Experimental Program to Stimulate Competitive Technology (EPSCOT). EPSCOT shall provide grants on a competitive and peer-reviewed basis to qualified institutions in eligible States. Such grants shall be awarded for any purpose consistent with and in furtherance of the mission of the Institute including, but not limited to, research, technology transfer, outreach activities,

economic development, and education. In evaluating a grant application under EPSCOT, the Secretary of Commerce shall consider—

(A) the application's merit and relevance to mission of the Institute;

(B) the potential for the grant to serve as a catalyst to enhance the ability of researchers in the State to become more competitive for regular civilian research funding;

(C) the potential for the grant to improve the environment for science, mathematics, and engineering education in the State; and

(D) the need to assure the maximum, distribution of grants among eligible States, consistent with merit.

(2) SUPPLEMENTAL GRANTS.—The Secretary of Commerce shall endeavor, where appropriate, to supplement grants made under subsection (a) with such grants for fellowships, traineeships, equipment, or instrumentation as practicable.

(3) DEFINITIONS.—For the purposes of this section—

(A) the term “qualified institutions” means small and medium-sized companies, colleges, universities, not-for-profit institutions, local and state governments, individuals with a record of achievement in science and technology, and any other persons or entities deemed qualified by the Secretary of Commerce, but not large companies and

(B) the term “eligible states” means State designated as eligible to compete in the National Science Foundation's Experimental Program to Stimulate Competitive Research.

(e) AUTHORIZATION OF APPROPRIATIONS.—To implement EPSCOT and any related activities, the Secretary of Commerce shall ensure that up to \$10,000,000 from the appropriations authorized for the Industrial Technology Services account at the National Institute of Standards and Technology are used for purposes of establishing and developing an Experimental Program to Stimulate Competitive Technology Research at the agency.

SEC. [31.] 32. This Act may be cited as the National Institute of Standards and Technology Act.

CHAPTER 63—TECHNOLOGY INNOVATION

[§ 3717. National Quality Council

[(a) ESTABLISHMENT AND FUNCTIONS.—There is established a National Quality Council (hereafter in this section referred to as the “Council”). The functions of the Council shall be—

[(1) to establish national goals and priorities for Quality performance in business, education, government, and all other sectors of the Nation;

[(2) to encourage and support the voluntary adoption of these goals and priorities by companies, unions, professional and business associations, coalition groups, and units of government, as well as private and nonprofit organizations;

[(3) to arouse and maintain the interest of the people of the United States in Quality performance, and to encourage the adoption and institution of Quality performance methods by all

corporations, government agencies, and other organizations; and

[(4) to conduct a White House Conference on Quality Performance in the American Workplace that would bring together in a single forum national leaders in business, labor, education, professional societies, the media, government, and politics to address Quality performance as a means of improving United States competitiveness.

[(b) MEMBERSHIP.—The Council shall consist of not less than 17 or more than 20 members, appointed by the Secretary. Members shall include—

[(1) at least 2 but not more than 3 representatives from manufacturing industry

[(2) at least 2 but not more than 3 representatives from service industry;

[(3) at least 2 but not more than 3 representatives from national Quality not-for-profit organizations;

[(4) two representatives from education, one with expertise in elementary and secondary education, and one with expertise in post-secondary education;

[(5) one representative from labor;

[(6) one representative from professional societies;

[(7) one representative each from local and State government;

[(8) one representative from the Federal Quality Institute;

[(9) one representative from the National Institute of Standards and Technology;

[(10) one representative from the Department of Defense;

[(11) one representative from a civilian Federal agency not otherwise represented on the Council, to be rotated among such agencies every 2 years; and

[(12) one representative from the Foundation for the Malcolm Baldrige National Quality Award.

[(c) TERMS.—The term of office of each member of the Council appointed under paragraphs (2) through (7) of subsection (b) shall be 2 years, except that when making the initial appointments under such paragraphs; the Secretary shall appoint not more than 50 percent of the members to 1 year terms. No member appointed under such paragraphs shall serve on the Council for more than 2 consecutive terms.

[(d) CHAIRMAN AND VICE CHAIRMAN.—The Secretary shall designate one of the members initially appointed to the Council as Chairman. Thereafter, the members of the Council shall annually elect one of their number as Chairman. The members of the Council shall also annually elect one of their members as Vice Chairman. No individual shall serve as Chairman or Vice Chairman for more than 2 consecutive years.

[(e) EXECUTIVE DIRECTOR AND EMPLOYEES.—The Council shall appoint and fix the compensation of an Executive Director, who shall hire and fix the compensation of such additional employees as may be necessary to assist the Council in carrying out its functions. In hiring such additional employees, the Executive Director shall ensure that no individual hired has a conflict of interest with the responsibilities of the Council.

[(f) FUNDING.—There is established in the Treasury of the United States a National Quality Performance Trust Fund, into which all funds received by the Council, through private donations or otherwise, shall be deposited. Amounts in such Trust Fund shall be available to the Council, to the extent provided in advance in appropriations Acts, for the purpose of carrying out the functions of the Council under this Act.

[(g) CONTRIBUTIONS.—The Council may not accept private donations from a single source in excess of \$25,000 per year. Private donations from a single source in excess of \$10,000 per year may be accepted by the Council only on approval of two-thirds of the Council.

[(h) ANNUAL REPORT.—The Council shall annually submit to the President and the Congress a comprehensive and detailed report on—

[(1) the progress in meeting the goals and priorities established by the Council;

[(2) the Council's operations, activities, and financial condition;

[(3) contributions to the Council from non-Federal sources;

[(4) plans for the Council's operations and activities for the future; and

[(5) any other information or recommendations the Council considers appropriate.]

CHAPTER 80—FASTENERS

FASTENER QUALITY ACT

§ 5401. Findings and purpose

(a) FINDINGS.—The Congress finds that—

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

(2) millions of mismarked, substandard, counterfeit, and other nonconforming fasteners have been sold in commerce to end-users in the United States, and their use has dramatically increased the risk of equipment and infrastructure failures;

(3) both the military and civilian sectors of the economy have encountered unnecessary, unwarranted, and dangerous equipment and construction failures, as well as extraordinary expenses, as a result of the use of nonconforming fasteners;

[(4) the sale in commerce of nonconforming fasteners and the use of nonconforming fasteners in numerous critical applications have reduced the combat readiness of the Nation's military forces, endangered the safety of other Federal projects and activities, and cost both the public and private sectors large sums in connection with the retesting and purging of fastener inventories;]

[(5)] (4) the purchase and use of nonconforming fasteners stem from material misrepresentations about such fasteners made by certain manufacturers, importers, and distributors engaged in commerce;

[(6)] (5) current fastener standards of measurement evaluate bolts and other fasteners according to multiple criteria, including strength, hardness, and composition, and provide grade

identification markings on fasteners to make the characteristics of individual fasteners clear to purchasers and users;

[(7)] (6) current tests required by consensus standards, designed to ensure that fasteners are of standard measure, are adequate and appropriate for use as standards in a program of high-strength fastener testing;

[(8)] (7) the lack of traceability [by lot number] of fasteners sold in commerce is a serious impediment to effective quality control efforts; and

[(9)] (8) the health and safety of Americans is threatened by the widespread sale in commerce of mismarked, substandard, and counterfeit fasteners, a practice which also harms American manufacturers, importers, and distributors of safe and conforming fasteners, and workers in the American fastener industry.

(b) PURPOSE.—In order to protect public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the traceability of fasteners [used in critical applications] *in commerce*, and generally to provide commercial and governmental customers with greater assurance that fasteners meet stated specifications, it is the purpose of this Act to create procedures for the testing, certification, and distribution of certain fasteners used in commerce within the United States.

§ 5402. Definitions

As used in this Act, the term—

(1) “alter” means to alter—

(A) by through-hardening,

(B) by electroplating of fasteners [having a minimum tensile strength of 150,000 pounds per square inch] *having a minimum Rockwell C hardness of 40 or above*, or

(C) by machining;

(2) “consensus standards organization” means the American Society for Testing and Materials, American National Standards Institute, American Society of Mechanical Engineers, Society of Automotive Engineers, *International Organization for Standardization*, or any other *consensus* standardsetting organization determined by the Secretary to have comparable knowledge, expertise, and concern for health and safety in the field for which such organization purports to set standards;

(3) “container” means any package of fasteners traded in commerce;

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

(5) “fastener” means—

(A) a—

(i) screw, nut, bolt, or stud having internal or external threads, or

(ii) a load-indicating washer,

with a nominal diameter of 5 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, which contains any

quantity of metal and is held out as meeting a standard or specification which requires through-hardening,

(B) a screw, nut, bolt, or stud having internal or external threads which bears a grade identification marking required by a standard or specification, *or*

(C) a washer to the extent that it is subject to a standard or specification applicable to a screw, nut, bolt, or stud described in subparagraph (B), **[or]**

[(D) any item within a category added by the Secretary in accordance with section 4(b),]

except that such term does not include any screw, nut, bolt, or stud that is produced and marked as ASTM A 307 Grade A *or produced in accordance with STM F 432*;

(6) “grade identification marking” means any symbol appearing on a fastener purporting to indicate that the fastener’s base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization or **[other person]** *government agency*;

(7) “importer” means a person located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States for resale or such person’s use within the United States;

(8) “Institute” means the National Institute of **[Standard]** *Standards and Technology*;

(9) “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 and submitted for inspection and testing at one time;

(10) “manufacturer” means a person who fabricates fasteners, or who alters any item so that it becomes a fastener;

[(11) “original equipment manufacturer” means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products;]

[(12)] (11) “private label distributor” means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor’s distinguishing insignia;

[(13)] (12) “Secretary” means the Secretary of Commerce;

[(14)] (13) “standard and specifications” means the provisions of a document published by a consensus standards organization[, a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener] *or a government agency*; and

[(15)] (14) “through-harden” means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving a uniform hardness.

§ 5403. Special rules for fasteners

[(a) WAIVER REQUIREMENT.—If the Secretary determines that any category of fastener is not used in critical applications, the Sec-

retary shall waive the requirements of this Act with respect to such category.

[(b) ADDITIONAL ITEMS.—If the Secretary determines that—

[(1) a category of screw, nut, bolt, or stud which is not described in section 3(5)(A)(i) or (b),

[(2) a category of item which is associated with a fastener described in section 3(5)(A), (B), or (C), or

[(3) a category of item which serves a function comparable to that served by a fastener so described is used in critical applications, the Secretary may include such category under section 3(5)(D) and therefore within the definition of fasteners under this Act.

[(c) NOTICE AND OPPORTUNITY FOR COMMENTS.—The Secretary shall provide advance notice and the opportunity for public comments prior to making any determination under subsections (a) and (b) and shall act through the Director in making any such determination.]

§ 5404. Testing and certification of fasteners

(a) REQUIREMENT.—

(1) No fastener shall be offered for sale or sold in commerce unless it is part of a lot which—

(A) conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and

(B) has been inspected, tested, and certified as provided in [subsections (b) and (c)] *subsections (b), (c), and (d)* of this section.

(2) (A) Paragraph (1)(B) of this subsection shall not apply to fasteners which are part of a lot of 50 fasteners or less if, within 10 working days after the delivery of such fasteners, or as soon as practicable thereafter—

(i) inspection, testing, and certification as provided in [subsections (b) and (c)] *subsections (b), (c), and (d)* is carried out; and

(ii) written notice detailing the results of such inspection, testing, and certification is sent (I) to all purchasers of such fasteners, except retail sellers and retail consumers, and (II) to any retail seller or retail consumer who, prior to delivery, requests such written notice.

(B) If a fastener is sold under this paragraph, each purchaser of such fastener, except for retail sellers and retail consumers unless such retail sellers and retail consumers request such notice in advance, shall be provided, contemporaneously with each sale and delivery, written notice stating that such fastener has not yet been inspected, tested, and certified as required by this Act.

(b) INSPECTION AND TESTING.—

(1) The manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample, as provided in paragraph (2) of this subsection, of the fasteners in such lot to determine whether the lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured. Such inspection and testing shall be performed

by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6. The standards and specifications to which the manufacturer represents such lot has been manufactured shall be disclosed by the manufacturer to the laboratory at the time the lot is submitted for inspection and testing under this paragraph. The manufacturer of a lot may perform the inspection and testing required by this paragraph in a laboratory which it owns or with which it is otherwise affiliated, if such laboratory is accredited in accordance with the procedures and conditions specified by the Secretary under section 6; unless the Secretary finds that, as to a specific type of fastener and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety of the public or industrial workers.

(2) The size, selection, and integrity of the sample to be inspected and tested under paragraph (1) shall be governed—

(A) by the standards and specifications to which the manufacturer represents the fasteners in the sample have been manufactured; or

(B) if such standards and specifications do not provide for the size, selection, or integrity of the sample, by sampling procedures prescribed by the Secretary, who shall to the extent practicable use consensus testing standards and related materials.

Nothing in this paragraph shall prohibit a purchaser from requiring the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards and specifications or in the applicable sampling procedures prescribed by the Secretary.

(c) LABORATORY REPORT OF TESTING.—If a laboratory performing the inspection and testing under subsection (b)(1) determines, as to the characteristics selected under the sampling procedures prescribed by the Secretary and based on the sample examined, that a lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured, the laboratory shall provide to the manufacturer a written inspection and testing report with respect to such lot. The report, which shall be in a form prescribed by the Secretary by regulation, shall—

(1) state the manufacturer's name, the part description, and the lot number and note the grade identification mark and insignia found on the fastener;

(2) reference the standards and specifications disclosed by the manufacturer with respect to such lot under subsection (b)(1) [or, where applicable, certified by the manufacturer under section 7(c)(1)];

(3) list the markings and characteristics selected under the Secretary's procedures for testing [, such as the chemical, dimensional, physical, mechanical, and any other] significant characteristics required by the standards and specifications described in paragraph (2) and specify the results of the inspection and testing under subsection (b)(1);

(4) *except as provided in subsection (d)*, state whether, based on the samples provided as representative of the lot, such lot has been found after such inspection and testing to conform to such standards and specifications; and

(5) bear the original signature of a laboratory employee or officer determined by the Secretary to be responsible for the accuracy of the report and of the inspection and testing to which it relates.

(d) ALTERNATIVE PROCEDURE FOR CHEMICAL CHARACTERISTICS.— Notwithstanding the requirements of subsections (b) and (c), a manufacturer shall be deemed to have demonstrated, for purposes of subsection (a)(1), that the chemical characteristics of a lot conform to the standards and specifications to which the manufacturer represents such lot has been manufactured if the following requirements are met:

(1) The coil or heat number of metal from which such lot was fabricated has been inspected and tested with respect to its chemical characteristics by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

(2) Such laboratory has provided to the manufacturer, either directly or through the metal manufacturer, a written inspection and testing report, which shall be in a form prescribed by the Secretary by regulation, listing the chemical characteristics of such coil or heat number.

(3) The report described in paragraph (2) indicates that the chemical characteristics of such coil or heat number conform to those required by the standards and specifications to which the manufacturer represents such lot has been manufactured.

(4) The manufacturer demonstrates that such lot has been fabricated from the coil or heat number of metal to which the report described in paragraphs (2) and (3) relates.

In prescribing the form of report required by subsection (c), the Secretary shall provide for an alternative to the statement required by subsection (c)(4), insofar as such statement pertains to chemical characteristics, for cases in which a manufacturer elects to use the procedure permitted by this subsection.

§ 5405. Laboratory accreditation

(a) ESTABLISHMENT OF ACCREDITATION PROGRAM.—

(1) **[Within 180 days after the date of enactment of this Act, the]** *The Secretary, acting through the Director, shall issue regulations which shall include—*

(A) procedures and conditions, including sampling procedures referred to in section 5, for the accreditation by the Institute of laboratories engaged in the inspection and testing of fasteners under section 5.

(B) procedures and conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), using to the extent practicable the requirements of national or international consensus documents intended to govern the operation of accreditation bodies, under which private entities may apply for approval by the

Secretary to engage directly in the accreditation of laboratories in accordance with the requirements of this Act; and

(C) conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements of this section.

(2) Upon establishing a laboratory accreditation program under paragraph (1), the Secretary shall publish a notice in the Federal Register stating that the Secretary is prepared to accept applications for accreditation of such laboratories.

(3) No accreditation provided under the terms of this subsection shall be effective for a period of greater than 3 years.

(b) LABORATORY ACCREDITATION PROCEDURES.—Existing Institute accreditation procedures stated in part 7 of title 15, Code of Federal Regulations, as in effect on the date of enactment of this Act, supplemental as the Secretary considers necessary, shall be used to accredit laboratories under the accreditation program established under subsection (a).

(c) ENSURING COMPLIANCE.—

(1) The Secretary shall ensure that—

(A) private entities accrediting laboratories under procedures and conditions established under subsection (a)(1)(B) comply with such procedures and conditions, and

(B) laboratories accredited by such private entities, or by foreign governments pursuant to subsection (a)(1)(C), comply with the requirements for such accreditation.

(2) The Secretary may require any such private entity or laboratory to provide all records and materials that may be necessary to allow the Secretary to carry out this subsection.

(d) OPERATION OF LABORATORY ACCREDITATION PROGRAM.—

(1) The Director may hire such contractors as are necessary to carry out the accreditation program established under subsection (a).

(2) Costs to the Institute and to the Secretary for the establishment and operation of the accreditation program under this section shall be fully reimbursable to the Institute or to the Secretary, as appropriate, through fees or other charges for accreditation services under such program.

(e) RECOMMENDATIONS TO CONSENSUS STANDARDS ORGANIZATIONS.—The Director shall periodically transmit to appropriate consensus standards organizations any information or recommendations that may be useful in the establishment or application by such organizations of standards and specifications for fasteners.

§ 5406. Sale of fasteners subsequent to manufacture

[(a) DOMESTICALLY PRODUCED FASTENERS.—It shall be unlawful for a manufacturer to sell any shipment of fasteners (except fasteners for which the Secretary has waived the requirements of this Act pursuant to section 4 which are manufactured in the United States unless the fasteners are accompanied, at the time of delivery, by a written certificate by the manufacturer certifying that—

【(1) the fasteners have been manufactured according to the requirements of the applicable standards and specifications and have been inspected and tested by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6; and

【(2) an original laboratory testing report described in section 5(c) is on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.】

(a) *DOMESTICALLY PRODUCED FASTENERS.*—*It shall be unlawful for a manufacturer to sell any shipment of fasteners covered by this Act which are manufactured in the United States unless the fasteners—*

(1) have been manufactured according to the requirements of the applicable standards and specifications and have been inspected and tested by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6; and

(2) an original laboratory testing report described in section 5(c) and a manufacturer's certificate of conformance are on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.

(b) **FASTENERS OF FOREIGN ORIGIN.**—

(1) Except as provided in paragraph (2) of this subsection, it shall be unlawful—

(A) for any person to sell to any importer, and

(B) for any importer to purchase,

any shipment of fasteners which are manufactured outside the United States unless delivery of such shipment to such importer is accompanied by a manufacturer's certificate as described in subsection (a) an original laboratory testing report described in section 5(c), with respect to each lot from which such fasteners were taken, and any other relevant lot identification information.

(2) The requirement under paragraph (1) of this subsection that the delivery of such a shipment to such importer be accompanied by an original laboratory testing report shall not apply in the case of fasteners imported into the United States—

(A) as products manufactured within a nation which is party to a congressionally-approved free trade agreement with the United States that is in effect, so long as the Secretary certifies that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory testing report for such fasteners; or

(B) as Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles.

(c) **OPTION FOR IMPORTERS AND PRIVATE LABEL DISTRIBUTORS.**—

(1) Notwithstanding section 5(a) and subsections (a) and (b) of this section, delivery of a lot, or portion of a lot, of fasteners may be made to an importer or private label distributor with-

out the required original copy of the laboratory testing report if—

(A) the manufacturer provides to the importer or private label distributor a manufacturer's certificate certifying that the fasteners have been manufactured according to the requirements of the applicable standards and specifications; and

(B) the importer or private label distributor assumes responsibility in writing for the inspection and testing of such lot or portion by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

(2) If the imported or private *label* distributor assumes the responsibility in writing for the inspection and testing of such lot or portion, the provisions of section 5(a) and subsections (a) and (b) of this section shall apply to the importer or private label distributor in the same manner and *to the same* extent as to a manufacturer; except that the importer or private label distributor shall provide to the testing laboratory the manufacturer's certificate described under paragraph (1) of this subsection.

(d) ALTERATIONS SUBSEQUENT TO MANUFACTURE.—

(1) Any person who significantly alters a fastener so that such fastener no longer conforms to the description in the relevant [certificate] *test report* issued under section 5(c), and who thereafter offers for sale or sells such altered fastener, shall be treated as a manufacturer for purposes of this Act and shall cause such altered fastener to be inspected and tested under section 5 or this section as though it were newly manufactured, unless delivery of such fastener to the purchaser is accompanied by a written statement noting the original lot number, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(2) Any person who knowingly sells an altered fastener and who did not alter such fastener shall provide to the purchaser a copy of the statement required by paragraph (1).

[(e) COMMINGLING.—

[(1) Subject to paragraph (2), it shall be unlawful for any manufacturer or any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from different lots in the same container; except that such manufacturer or such person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations: Provided, That any container which contains like fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

[(2) Paragraph (1) does not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturers.]

(e) COMMINGLING.—*It shall be unlawful for any manufacturer, importer, or private label distributor to commingle like fasteners*

from different lots in the same container; except that such manufacturer, importer, or private label distributor may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations: Provided, that any container which contains the fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

[(f) SUBSEQUENT PURCHASER.—

[(1) It shall be unlawful for any person to sell fasteners, of any quantity, to any person who purchases such fasteners—

[(A) for sale at wholesale, or

[(B) for assembling components of a product or structure for sale,

unless the container of fasteners sold is conspicuously marked with the number of the lot from which such fasteners were taken, except that this requirement shall not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer.

[(2) If a person who purchases fasteners for purposes other than those described in paragraph (1) (A) and (B) so requests either prior to the sale or at the time of sale, the seller shall conspicuously mark the container of fasteners with the lot number from which such fasteners were taken]

(f) SUBSEQUENT PURCHASER.—If a person who purchases fasteners for any purpose so requests either prior to the sale or at the time of sale, the seller shall conspicuously mark the container of the fasteners with the lot number from which such fasteners were taken.

(g) REGULATIONS.—The Secretary may issue such regulations as may be necessary to ensure compliance with the provisions of this section.

§ 5408. 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, and history of prior violations, the effect on ability to continue to be 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 section 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 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.*—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.

§ 5409. Recordkeeping requirements

(a) LABORATORIES.—Laboratories which perform inspections and testing under section 5(b) shall retain for ~~【10 years】~~ *5 years* all records concerning the inspection and testing, and certification, of fasteners under section 5.

(b) MANUFACTURERS, IMPORTERS, PRIVATE LABEL DISTRIBUTORS, AND PERSONS WHO MAKE SIGNIFICANT ALTERATIONS.—Manufacturers, importers, private label distributors, and persons who make significant alterations shall retain for ~~【10 years】~~ *5 years* all records concerning the inspection and testing, and certification, of fasteners under section 5, and shall provide copies of any applicable laboratory testing report or manufacturer's certificate upon request to ~~【any subsequent】~~ *the subsequent* purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

§ 5412. Regulations

The Secretary shall ~~【within 180 days after the date of enactment of this Act】~~ issue regulations as may be necessary to implement this Act.

【§ 5413. Advisory committee

~~【Within 90 days after the date of enactment of this Act, the Secretary shall appoint and advisory committee consisting of representatives of fastener manufacturers, importers, distributors, end-users, independent laboratories, and standards organizations. The Secretary and Director shall consult with the advisory committee—~~

~~【(1) prior to promulgating any regulations under this Act; and~~

~~【(2) in such other matters related to fasteners as the Secretary may determine.】~~