(1) results from research and development activities conducted under this chapter; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, if the information had been obtained from a company,

may provide appropriate protection against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(c) Patent rights

With respect to patent rights, the Institutes shall be treated in the same manner as are nonprofit organizations and small business firms under chapter 18 of title 35, notwithstanding any provisions to the contrary contained in that chapter.

(Pub. L. 101–425, § 9, Oct. 15, 1990, 104 Stat. 919.)

§ 5309. Reporting

At the time the President's annual budget request for the Department is submitted, the Secretary shall provide to Congress a detailed review of the progress of the research and development activities authorized under this chapter.

(Pub. L. 101–425, § 10, Oct. 15, 1990, 104 Stat. 919.)

CHAPTER 80—FASTENERS

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§ 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 purchase and use of nonconforming fasteners stem from material misrepresentations about such fasteners made by certain manufacturers, importers, and distributors engaged in commerce;

(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;

(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;

(7) the lack of traceability of fasteners sold in commerce is a serious impediment to effective quality control efforts; and

(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 in commerce, and generally to provide commercial and governmental customers with greater assurance that fasteners meet stated specifications, it is the purpose of this chapter to create procedures for the testing, certification, and distribution of certain fasteners used in commerce within the United States.

(Pub. L. 101–592, § 2, Nov. 16, 1990, 104 Stat. 2943; Pub. L. 104–113, § 11(a), Mar. 7, 1996, 110 Stat. 780.)

AMENDMENTS

1996—Subsec. (a)(4) to (6). Pub. L. 104–113, § 11(a)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: "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;''.

Subsec. (a)(7). Pub. L. 104–113, §11(a)(2), struck out ''by lot number'' after ''traceability''.

Pub. L. 104–113, §11(a)(1), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (a)(8), (9). Pub. L. 104–113, §11(a)(1), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (b). Pub. L. 104–113, §11(a)(3), substituted ''in commerce'' for ''used in critical applications''.

SHORT TITLE

Section 1 of Pub. L. 101–592 provided that: ''This Act [enacting this chapter] may be cited as the 'Fastener Quality Act'.''

§ 5402. Definitions

As used in this chapter, the term—

(1) ''alter'' means to alter—

(A) by through-hardening,

(B) by electroplating of fasteners, 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, or any other consensus standard-setting 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 ¼ 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),

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 ASTM 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 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 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) ''private label distributor'' means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor's distinguishing insignia;

(12) ''Secretary'' means the Secretary of Commerce;

(13) ''standards and specifications'' means the provisions of a document published by a consensus standards organization or a government agency; and

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

(Pub. L. 101–592, §3, Nov. 16, 1990, 104 Stat. 2944; Pub. L. 104–113, §11(b), Mar. 7, 1996, 110 Stat. 780.)

AMENDMENTS

1996—Par. (1)(B). Pub. L. 104–113, §11(b)(1), struck out ''having a minimum tensile strength of 150,000 pounds per square inch'' after ''fasteners''.

Par. (2). Pub. L. 104–113, §11(b)(2), inserted ''consensus'' after ''or any other''.

Par. (5). Pub. L. 104–113, §11(b)(3), inserted ''or produced in accordance with ASTM F 432'' after ''307 Grade A'' in closing provisions, inserted ''or'' at end of subpar. (B), struck out ''or'' at end of subpar. (C), and struck out subpar. (D) which read as follows: ''any item within a category added by the Secretary in accordance with section 5403(b) of this title,''.

Par. (6). Pub. L. 104–113, §11(b)(4), substituted ''government agency'' for ''other person''.

Par. (8). Pub. L. 104–113, §11(b)(5), substituted ''Standards'' for ''Standard''.

Pars. (11), (12). Pub. L. 104–113, §11(b)(6), redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: ''''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;''.

Par. (13). Pub. L. 104–113, §11(b)(7), substituted ''or a government agency'' for '', 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''.

Pub. L. 104–113, §11(b)(6), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Par. (14). Pub. L. 104–113, §11(b)(8), inserted ''for the purpose of achieving a uniform hardness'' after ''quenching and tempering''.

Pub. L. 104–113, §11(b)(6), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Par. (15). Pub. L. 104–113, §11(b)(6), redesignated par. (15) as (14).

§ 5403. Repealed. Pub. L. 104–113, § 11(c), Mar. 7, 1996, 110 Stat. 780

Section, Pub. L. 101–592, § 4, Nov. 16, 1990, 104 Stat. 2945, set out special rule under which Secretary could waive requirements of this chapter on determination that category of fasteners was not used in critical applications, but that Secretary could also determine in given case that fastener was used in critical applications and was governed accordingly.

§ 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), (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), (c), and (d) of this section 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 chapter.

(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 5405 of this title. 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 5405 of this title; 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) of this section 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) of this section;

(3) list the markings and characteristics selected under the Secretary's procedures for testing 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) of this section;

(4) except as provided in subsection (d) of this section, 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) of this section, a manufacturer shall be deemed to have demonstrated, for purposes of subsection (a)(1) of this section, 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 5405 of this title.

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

(Pub. L. 101–592, § 5, Nov. 16, 1990, 104 Stat. 2945; Pub. L. 104–113, § 11(d), Mar. 7, 1996, 110 Stat. 780.)

AMENDMENTS

1996—Subsec. (a)(1)(B), (2)(A)(i). Pub. L. 104–113, § 11(d)(1), substituted ''subsections (b), (c), and (d) of this section'' for ''subsections (b) and (c) of this section''.

Subsec. (c)(2). Pub. L. 104–113, § 11(d)(2), struck out ''or, where applicable, certified by the manufacturer under section 5406(c)(1) of this title'' after ''subsection (b)(1) of this section''.

Subsec. (c)(3). Pub. L. 104–113, § 11(d)(3), struck out '', such as the chemical, dimensional, physical, mechanical, and any other'' after ''procedures for testing''.

Subsec. (c)(4). Pub. L. 104–113, § 11(d)(4), inserted ''except as provided in subsection (d) of this section,'' before ''state whether''.

Subsec. (d). Pub. L. 104–113, § 11(d)(5), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5405, 5406, 5409, 5414 of this title.

§ 5405. Laboratory accreditation

(a) Establishment of accreditation program

(1) The Secretary, acting through the Director, shall issue regulations which shall include—

(A) procedures and conditions, including sampling procedures referred to in section 5404 of this title, for the accreditation by the Institute of laboratories engaged in the inspection and testing of fasteners under section 5404 of this title;

(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 chapter; 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 November 16, 1990, supplemented as the Secretary considers necessary, shall be used to accredit laboratories under the accreditation program established under subsection (a) of this section.

(c) Ensuring compliance

(1) The Secretary shall ensure that—

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

(B) laboratories accredited by such private entities, or by foreign governments pursuant to subsection (a)(1)(C) of this section, 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) of this section.

(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.

(Pub. L. 101–592, § 6, Nov. 16, 1990, 104 Stat. 2947; Pub. L. 104–113, § 11(e), Mar. 7, 1996, 110 Stat. 781.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–113 substituted ''The Secretary'' for ''Within 180 days after November 16, 1990, the Secretary''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5404, 5406, 5414 of this title.

§ 5406. Sale of fasteners subsequent to manufacture

(a) Domestically produced fasteners

It shall be unlawful for a manufacturer to sell any shipment of fasteners covered by this chapter 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 5405 of this title; and

(2) an original laboratory testing report described in section 5404(c) of this title 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) of this section, an original laboratory testing report described in section 5404(c) of this title, 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 5404(a) of this title 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 without 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 5405 of this title.

(2) If the importer or private distributor assumes the responsibility in writing for the inspection and testing of such lot or portion, the provisions of section 5404(a) of this title 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 test report issued under section 5404(c) of this title, and who thereafter offers for sale or sells such altered fastener, shall be treated as a manufacturer for purposes of this chapter and shall cause such altered fastener to be inspected and tested under section 5404 of this title 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

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. Any container which contains fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

(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.

(Pub. L. 101–592, § 7, Nov. 16, 1990, 104 Stat. 2948; Pub. L. 104–113, § 11(f), Mar. 7, 1996, 110 Stat. 781.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–113, § 11(f)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''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 chapter pursuant to section 5403 of this title) 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 5405 of this title; and

''(2) an original laboratory testing report described in section 5404(c) of this title is on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.''

Subsec. (c)(2). Pub. L. 104–113, § 11(f)(2), inserted ''to the same'' after ''in the same manner and''.

Subsec. (d)(1). Pub. L. 104–113, § 11(f)(3), substituted ''test report'' for ''certificate''.

Subsecs. (e) to (g). Pub. L. 104–113, § 11(f)(4), added subsecs. (e) and (f) and struck out former subsecs. (e), (f), and (g), which related to commingling, subsequent purchasers, and regulations, respectively.

§ 5407. Manufacturers' insignias

(a) General rule

No fastener which is required by the standards and specifications to which it was manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor shall be offered for sale or sold in commerce unless the manufacturer or private label distributor of such fastener has complied with the requirements prescribed by the Secretary in connection with the program established under subsection (b) of this section.

(b) Recordation

The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers and private label distributors described in subsection (a) of this section, to ensure the traceability of a fastener to its manufacturer or private label distributor.

(Pub. L. 101–592, § 8, Nov. 16, 1990, 104 Stat. 2950.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5414 of this title.

§ 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 chapter or any regulation under this chapter.

(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 chapter or any regulation under this chapter 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 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.

(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 chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this

chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, 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 chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, 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.

(Pub. L. 101–592, § 9, Nov. 16, 1990, 104 Stat. 2950; Pub. L. 104–113, § 11(g), Mar. 7, 1996, 110 Stat. 782.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–113 added subsec. (d).

§ 5409. Recordkeeping requirements

(a) Laboratories

Laboratories which perform inspections and testing under section 5404(b) of this title shall retain for 5 years all records concerning the inspection and testing, and certification, of fasteners under section 5404 of this title.

(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 5 years all records concerning the inspection and testing, and certification, of fasteners under section 5404 of this title, and shall provide copies of any applicable laboratory testing report or manufacturer's certificate upon request to the subsequent purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

(Pub. L. 101–592, § 10, Nov. 16, 1990, 104 Stat. 2951; Pub. L. 104–113, § 11(h), Mar. 7, 1996, 110 Stat. 782.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–113, § 11(h)(1), substituted ''5 years'' for ''10 years''.

Subsec. (b). Pub. L. 104–113, § 11(h), substituted ''5 years'' for ''10 years'' and ''the subsequent purchaser'' for ''any subsequent purchaser''.

§ 5410. Relationship to State laws

Nothing in this chapter 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 chapter are in conflict with such State law.

(Pub. L. 101–592, § 11, Nov. 16, 1990, 104 Stat. 2952.)

§ 5411. Construction

Nothing in this chapter 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 in effect on November 16, 1990.

(Pub. L. 101–592, § 12, Nov. 16, 1990, 104 Stat. 2952.)

§ 5412. Regulations

The Secretary shall issue such regulations as may be necessary to implement this chapter.

(Pub. L. 101–592, § 13, Nov. 16, 1990, 104 Stat. 2952; Pub. L. 104–113, § 11(i), Mar. 7, 1996, 110 Stat. 782.)

AMENDMENTS

1996—Pub. L. 104–113 struck out ''within 180 days after November 16, 1990,'' after ''Secretary shall''.

§ 5413. Repealed. Pub. L. 104–113, § 11(j), Mar. 7, 1996, 110 Stat. 782

Section, Pub. L. 101–592, § 14, Nov. 16, 1990, 104 Stat. 2952, related to appointment of an advisory committee to be available for consultation with Secretary on matters related to fasteners.

§ 5414. Applicability

The requirements of this chapter shall be applicable only to fasteners fabricated 180 days or more after the Secretary issues final regulations required under sections 5404, 5405, and 5407 of this title, except that the Secretary may extend such time period if the Secretary determines that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required. Upon any such extension, and every 6 months thereafter during such extension, the Secretary shall submit a report to the Congress explaining the reasons for such extension and the steps being taken to ensure the accreditation of a sufficient number of laboratories.

(Pub. L. 101–592, § 15, Nov. 16, 1990, 104 Stat. 2952.)

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