

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.”

Subsec. (b). Pub. L. 106-34, §5(2), substituted “described in subsection (a) of this section” for “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”.

§ 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 subsection may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5.

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

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

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of

contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Criminal penalties

(1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this 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

(1) 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.

(2) The Secretary shall establish and maintain a hotline system to facilitate the reporting of alleged violations of this chapter, and the Secretary shall evaluate allegations reported through that system and report any credible allegations to the Attorney General.

(Pub. L. 101-592, §6, formerly §9, Nov. 16, 1990, 104 Stat. 2950; Pub. L. 104-113, §11(g), Mar. 7, 1996, 110 Stat. 782; renumbered §6 and amended Pub. L. 106-34, §6, June 8, 1999, 113 Stat. 122.)

PRIOR PROVISIONS

A prior section 6 of Pub. L. 101-592 was classified to section 5405 of this title, prior to repeal by Pub. L. 106-34.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106-34, §6(1), substituted “of this subsection” for “of this section”.

Subsec. (b)(4). Pub. L. 106-34, §6(2), inserted “arbitrate,” after “Secretary may”.

Subsec. (d). Pub. L. 106-34, §6(3), designated existing provisions as par. (1) and added par. (2).

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

§ 5409. Recordkeeping requirements

Manufacturers and importers shall retain the record of conformance for fasteners for 5 years, on paper or in photographic or electronic format in a manner that allows for verification of au-