

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-34, §5(1), reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: “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.”

Subsec. (b). Pub. L. 106-34, §5(2), substituted “described in subsection (a)” for “and private label distributors described in subsection (a), 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 authenticity. Upon request of a distributor who has purchased a fastener, or a person who has purchased a fastener for use in the production of a commercial product, the manufacturer or importer of the fastener shall make available information in the record of conformance to the requester.

(Pub. L. 101-592, §7, formerly §10, Nov. 16, 1990, 104 Stat. 2951; Pub. L. 104-113, §11(h), Mar. 7, 1996, 110 Stat. 782; renumbered §7 and amended Pub. L. 106-34, §7, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 101-592 was classified to section 5406 of this title, prior to repeal by Pub. L. 106-34.

AMENDMENTS

1999—Pub. L. 106-34 substituted present provisions for former provisions which consisted of subsecs. (a) and (b) relating to retention and availability of records concerning inspections, testing, and certifications of fasteners under section 5404 of this title by laboratories, manufacturers, importers, private label distributors and persons who make significant alterations.

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, §8, formerly §11, Nov. 16, 1990, 104 Stat. 2952; renumbered §8, Pub. L. 106-34, §8, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 101-592 was renumbered section 5 and is classified to section 5407 of this title.

§ 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.

(Pub. L. 101-592, §9, formerly §12, Nov. 16, 1990, 104 Stat. 2952; renumbered §9 and amended Pub. L. 106-34, §9, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 101-592 was renumbered section 6 and is classified to section 5408 of this title.

AMENDMENTS

1999—Pub. L. 106-34 struck out “in effect on November 16, 1990” after “law or authority”.

§ 5411a. Certification and accreditation

(a) Certification

A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director to approve such document for use as described in section 5402(7)(B)(iii)(I) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62.

(b) Accreditation

A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in subsection (a) may petition the Director to approve such document for use as described in section 5402(7)(B)(iii)(I) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61.

(c) Laboratory accreditation

A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director to approve such document for use as described in section 5402(1)(A) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25.

(d) Approval of accreditation bodies

A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director to approve such document for use as described in section 5402(1)(B) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58. In addition to any other voluntary laboratory accreditation programs that may be established by private sector persons, the Director shall establish a National Voluntary Laboratory Accreditation Program, for the accreditation of laboratories as described in section 5402(1)(B) of this title, that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under this subsection), including revisions from time-to-time.

(e) Affirmation

(1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 5402(7)(B)(iii)(I) of this title shall affirm to the Director that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director under subsection (b)), including revisions from time-to-time.

(2) An accreditation body accrediting laboratories as described in section 5402(1)(B) of this title shall affirm to the Director that it meets