

(13) “record of conformance” means a record or records for each lot of fasteners sold or offered for sale that contains—

(A) the name and address of the manufacturer;

(B) a description of the type of fastener;

(C) the lot number;

(D) the nominal dimensions of the fastener (including diameter and length of bolts or screws), thread form, and class of fit;

(E) the consensus standard or specifications to which the lot of fasteners has been manufactured, including the date, number, revision, and other information sufficient to identify the particular consensus standard or specifications being referenced;

(F) the chemistry and grade of material;

(G) the coating material and characteristics and the applicable consensus standard or specifications for such coating; and

(H) the results or a summary of results of any tests performed for the purpose of verifying that a lot of fasteners conforms to its grade identification marking or to the grade identification marking the lot of fasteners is represented to meet;

(14) “represent” means to describe one or more of a fastener’s purported characteristics in a document or statement that is transmitted to a purchaser through any medium;

(15) “Secretary” means the Secretary of Commerce;

(16) “specifications” means the required characteristics identified in the contractual agreement with the manufacturer or to which a fastener is otherwise produced, except that the term does not include proprietary standards; and

(17) “through-harden” means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving 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; Pub. L. 106-34, §3, June 8, 1999, 113 Stat. 118.)

AMENDMENTS

1999—Pub. L. 106-34 amended section catchline and text generally, restating certain definitions, adding new definitions, and striking out definitions of “alter”, “container”, “institute”, “original equipment manufacturer”, “private label distributor”, and “standards and specifications”.

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).

COMPTROLLER GENERAL REPORT

Pub. L. 106-34, §12, June 8, 1999, 113 Stat. 125, provided that not later than 2 years after June 8, 1999, the Comptroller General would transmit to the Congress a report describing any changes in industry practice resulting from or apparently resulting from the enactment of paragraph (6)(B) of this section.

§ 5403. Sale of fasteners

(a) General rule

It shall be unlawful for a manufacturer or distributor, in conjunction with the sale or offer for sale of fasteners from a single lot, to knowingly misrepresent or falsify—

(1) the record of conformance for the lot of fasteners;

(2) the identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) the manufacturer’s insignia.

(b) Representations

A direct or indirect reference to a consensus standard to represent that a fastener conforms to particular requirements of the consensus standard shall not be construed as a representation that the fastener meets all the requirements of the consensus standard.

(c) Specifications

A direct or indirect contractual reference to a consensus standard for the purpose of identifying particular requirements of the consensus standard that serve as specifications shall not be construed to require that the fastener meet all the requirements of the consensus standard.

(d) Use of accredited laboratories

In the case of fasteners manufactured solely to a consensus standard or standards, end-of-line testing required by the consensus standard or standards, if any, for the purpose of verifying that a lot of fasteners conforms with the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured shall be conducted by an accredited laboratory.

(Pub. L. 101-592, §4, as added Pub. L. 106-34, §4(a), June 8, 1999, 113 Stat. 121.)

PRIOR PROVISIONS

A prior section 5403, Pub. L. 101-592, §4, Nov. 16, 1990, 104 Stat. 2945, set out special rule under which Sec-

retary 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, prior to repeal by Pub. L. 104-113, §11(c), Mar. 7, 1996, 110 Stat. 780.

EFFECTIVE DATE

Pub. L. 106-34, §4(b), June 8, 1999, 113 Stat. 122, provided that: "Subsection (d) of section 4 of the Fastener Quality Act [15 U.S.C. §5403(d)], as added by subsection (a) of this section, shall take effect 2 years after the date of the enactment of this Act [June 8, 1999]."

§§ 5404 to 5406. Repealed. Pub. L. 106-34, §4(a), June 8, 1999, 113 Stat. 121

Section 5404, Pub. L. 101-592, §5, Nov. 16, 1990, 104 Stat. 2945; Pub. L. 104-113, §11(d), Mar. 7, 1996, 110 Stat. 780, required testing and certification of fasteners.

Section 5405, Pub. L. 101-592, §6, Nov. 16, 1990, 104 Stat. 2947; Pub. L. 104-113, §11(e), Mar. 7, 1996, 110 Stat. 781, provided for laboratory accreditation.

Section 5406, Pub. L. 101-592, §7, Nov. 16, 1990, 104 Stat. 2948; Pub. L. 104-113, §11(f), Mar. 7, 1996, 110 Stat. 781, related to sale of domestic and imported fasteners subsequent to manufacture.

§ 5407. Manufacturers' insignias

(a) General rule

Unless the specifications provide otherwise, fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer shall not be offered for sale or sold in commerce unless—

(1) the fasteners bear such insignia; and

(2) the manufacturer has complied with the insignia recordation requirements established under subsection (b).

(b) Recordation

The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers described in subsection (a).

(Pub. L. 101-592, §5, formerly §8, Nov. 16, 1990, 104 Stat. 2950; renumbered §5 and amended Pub. L. 106-34, §5, June 8, 1999, 113 Stat. 122.)

PRIOR PROVISIONS

A prior section 5 of Pub. L. 101-592 was classified to section 5404 of this title, prior to repeal by Pub. L. 106-34.

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.