

§ 280.200

§ 280.200 Scope.

Section 280.201 of this part specifies that failure to take any action required by or taking any action prohibited by this part constitutes a violation of this part. Section 280.202 describes the penalties that may be imposed for violations of this part. Sections 280.204 through 280.222 establish the procedures for imposing administrative penalties for violations of this part.

[65 FR 39802, June 28, 2000]

§ 280.201 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any action required by the Act, this part, or any order issued thereunder.

(b) *Sale of fasteners.* 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 manufacturers' insignia.

(c) *Manufacturers' insignia.* 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 15 U.S.C. 5407(b).

[61 FR 50558, Sept. 26, 1996, as amended at 63 FR 18275, Apr. 14, 1998; 63 FR 34965, June 26, 1998; 63 FR 51526, Sept. 28, 1998. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.202 Penalties, remedies, and sanctions.

(a) *Civil remedies.* The Attorney General may bring an action in an appropriate United States district court for declaratory and injunctive relief

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against any person who violates the Act or any regulation issued thereunder. Such action may not be brought more than 10 years after the cause of action accrues.

(b) *Civil penalties.* Any person who is determined, after notice and opportunity for a hearing, to have violated the Act or any regulation issued thereunder shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

(c) *Criminal penalties.* (1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of the Act or a regulation issued thereunder 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 the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than five years or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than two years or both.

§ 280.203 Administrative enforcement proceedings.

Sections 280.204 through 280.222 set forth the procedures for imposing administrative penalties for violations of the Act and this part.

[65 FR 39802, June 28, 2000]

§ 280.204 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) may begin administrative enforcement proceedings under this part by issuing a charging letter. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of this part has occurred. It will set forth the essential facts about each alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under the Act and this part. The charging letter will inform the respondent that failure to answer the charges as provided in § 280.207 of this

part will be treated as a default under § 280.208 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. The Department may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

(b) *Notice of issuance of charging letter instituting administrative enforcement proceeding.* A respondent shall be notified of the issuance of a charging letter, or any amendment or supplement thereto:

(1) By mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process for the respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling.

(4) Delivery of a copy of the charging letter, if made in the manner described in paragraph (b)(2) or (3) of this section, shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left. The certificate of service shall be filed with the administrative law judge.

(c) *Date.* The date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or service of notice of the issuance of a supplement or amendment to a charging letter, is the date

of its delivery, or of its attempted delivery if delivery is refused.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.205 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides if not the United States. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the administrative law judge. The Department will be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

§ 280.206 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be addressed to "FQA Administrative Enforcement Proceedings," at the address set forth in the charging letter, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, by express or equivalent parcel delivery service, or by hand delivery, is acceptable. Filing by mail from a foreign country shall be by airmail. In addition, the administrative law judge may authorize filing of papers by facsimile or other electronic means, provided that a hard copy of any such paper is subsequently filed. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service or facsimile, in the manner set forth in paragraph (a) of this section, is acceptable. Service on the Department shall be addressed to the Chief Counsel for Export Administration, Room H-3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,