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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No: 980623159-0166-04]

RIN 0693-AB47

Procedures for Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology and the Bureau of Export Administration and the United States Patent and Trademark Office, United States Department of Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, and the Under Secretary of the Bureau of Export Administration, United States Department of Commerce, and the Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office, United States Department of Commerce (collectively referred to as the Department) are today issuing a final rule amending regulations found at 15 CFR part 280 implementing the Fastener Quality Act (FQA). A notice of proposed rulemaking on this topic was published in the **Federal Register** on December 15, 1999. This final rule responds to comments received on the December 15, 1999 notice of proposed rulemaking and incorporates into the regulations amendments to the Fastener Quality Act contained in the Fastener Quality Act Amendments of 1999. The changes include the elimination of testing and paperwork requirements and of NIST's role in evaluating and approving bodies that accredit laboratories and registrars.

The final rule amends the regulations to set forth the procedures under which NIST will accept petitions for approval of certain documents and self-declarations for accreditation bodies. The final rule also amends the enforcement provisions of the regulations to set forth violations as they are contained in the amended FQA. The final rule amends the recordal of insignia provisions of the regulations to remove all references to private label distributors and to provide that fasteners whose insignia must be recorded are those fasteners that are required by the applicable consensus standards to bear "an insignia" rather

than a "raised or depressed insignia," and that these fasteners are not subject to the recordal requirements if the specifications provide otherwise.

DATES: This rule is effective July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Subhas Malghan, Director's Office, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899-2000, telephone number (301) 975-4510.

SUPPLEMENTARY INFORMATION:

Background

The Fastener Quality Act (FQA) was originally enacted in 1990 to protect the public safety by: (1) Requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, (2) providing for accreditation of laboratories engaged in fastener testing; and (3) requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act. Since its enactment, the FQA has been amended three times (Pub. L. 104-113, Pub. L. 105-234, and Pub. L. 106-34). The Department of Commerce published final implementing regulations for the original FQA on September 26, 1996 and for the FQA as amended by Pub. L. 104-113 on September 8, 1998.

On June 8, 1999, the Fastener Quality Act Amendments of 1999 (the Act) (Pub. L. 106-34, 113 Stat. 118) were enacted "to amend the Fastener Quality Act to strengthen the protection against the sale of mismarked, misrepresented, and counterfeit fasteners and eliminate unnecessary requirements, and for other purposes." The Act made significant changes to the FQA. Under the Act, the Secretary retains his enforcement functions and the responsibility for establishing and maintaining an insignia recordation program, and the National Institute of Standards and Technology (NIST) must continue its fastener laboratory accreditation program established under the National Voluntary Laboratory Accreditation Program (15 CFR part 285). In addition, the Act creates new responsibilities for NIST, including: acting upon petitions requesting approval of documents setting forth guidance/requirements for certification of manufacturing systems as fastener quality assurance systems by accredited third parties; acting upon petitions requesting approval of documents setting forth guidance/requirements for accreditation of laboratories; and acting upon petitions requesting approval of documents setting forth guidance/requirements for

approval of accreditation bodies to accredit laboratories. NIST also must accept affirmations, in the form of self-declarations that the accreditation bodies meet the requirements of the applicable Guide, from accreditation bodies accrediting third parties who certify manufacturing systems as fastener quality assurance systems and from accreditation bodies accrediting laboratories.

The Act eliminates many of the responsibilities delegated by the Secretary of Commerce to NIST under the FQA, including: establishing procedures for private entities (domestic and foreign) to accredit laboratories; establishing conditions for recognizing foreign laboratories accredited by their governments or organizations; establishing the size, selection, and integrity of samples of fasteners to be inspected if not provided in the standards and specifications to which the fasteners are manufactured; establishing a required form for written inspection and testing reports; establishing which entities must retain custody of laboratory testing reports and certificates of conformance and for what period of time.

The Department published a notice of proposed rule making in the **Federal Register** on December 15, 1999 (64 FR 69969), seeking public comment on proposed amendments to the regulations to implement the FQA as amended by the Fastener Quality Act Amendments of 1999. The comment period was to close on January 14, 2000. During the comment period, the Department received five responses requesting an extension of the comment period. On January 11, 2000, the Department published a notice in the **Federal Register** ((65 FR 1572)(2000)) extending the comment period to January 28, 2000.

Summary of Public Comments Received by the Department in Response to the December 15, 1999 Notice of Proposed Rulemaking, and the Department's Response to Those Comments

In addition to the five responses requesting an extension of the comment period, the Department received thirteen responses to the request for comments. Five responses were received from domestic associations; two were from accreditation bodies, one domestic and one foreign; one was from a domestic fastener manufacturer; one was from a foreign steel manufacturer; one was from a domestic fastener importer; one was from a domestic fastener distributor; and one was a domestic quality consultant. A detailed analysis of the comments follows.

Comments on the Fastener Quality Act Amendments of 1999

Comment: Five commenters raised concerns with the Fastener Quality Act Amendments of 1999, not the implementing regulations.

Response: The Department is implementing the legislation enacted by Congress. Comments raising concerns with the Act, itself, are outside the scope of this rulemaking.

Comments on the Establishment of a Hotline System To Facilitate the Reporting of Alleged Violations of the FQA

Comment: Four comments related to the fastener hotline system to facilitate the reporting of alleged violations of the FQA that the Secretary is required to establish and maintain under section 6(d)(2) of the FQA, as amended. All favored the speedy establishment of the hotline. The three associations that commented on this subject said that the hotline should be operated by the Bureau of Export Administration (BXA) since "BXA is an experienced enforcement agency and has responsibility under sections 280.203 through 280.222 of the proposed regulations for administrative enforcement proceedings." The fourth commenter, a domestic manufacturer of products that incorporate fasteners, said that the National Institute of Standards and Technology (NIST) should implement the mandate to establish and maintain the hotline system.

Response: Since the hotline system is to facilitate the reporting of alleged violations of the hotline, and is not a general line for information regarding the FQA, and based on the comments received, the hotline will be operated by BXA, with NIST providing technical support. The telephone number for the hotline is: 1-800-424-2980, and it will be available beginning immediately. This hotline is only for reporting alleged violations, not for obtaining general FQA information.

Comments on Laboratory Accreditations, Laboratory Accreditation Bodies, and Use of Accredited Laboratories

Comment: Three commenters (all domestic associations) noted that the proposed rule was inconsistent with the amended FQA on the issue of what entities may accredit laboratories. All three commenters noted that, while section 3(1)(B) of the amended FQA (15 U.S.C. 5402(1)(B)) allows for laboratories to be accredited by any "laboratory accreditation body that meets the requirements of ISO/IEC

Guide 58 (or another document approved by the Director under section 10(d), including revisions from time to time," section 280.103 of the proposed rule limited laboratory accreditation bodies to "any voluntary laboratory accreditation program that may be established by private sector person(s) or by the National Voluntary Laboratory Accreditation Program (NVLAP) for fasteners, established by the Director under Part 285 of this Title."

Response: The Department agrees. Based on these comments, and to eliminate the discrepancy between the proposed rule and the amended FQA, the Department has revised section 280.103 of the final rule. The regulation now makes clear that both public and private sector accreditation bodies that meet the requirements of ISO/IEC Guide 58, in addition to NVLAP, may be authorized to accredit fastener laboratories.

Comment: One commenter suggested that NIST maintain a list of laboratory accreditation bodies that have self-affirmed to NIST and that NIST make the list publicly available on its website.

Response: Since NIST no longer has authority to accept and verify documentation regarding the conformance of laboratory accreditation bodies to the requirements of ISO/IEC Guide 58 or another document approved by the Director under section 10(d) of the Act, NIST cannot list laboratory accreditation bodies as meeting these requirements. However, NIST will maintain and make publicly available on its website a list of laboratory accreditation bodies that have self-declared to NIST. That website is: <http://www.nist.gov/fqa/>.

Comment: One commenter pointed out that ISO/IEC Guide 25 is being replaced by ISO/IEC 17025 and asked if the Department could incorporate the new international standard into the final rule.

Response: The FQA as amended references "ISO/IEC Guide 25 . . . , including revisions from time to time." (15 U.S.C. 5403(3)(1)(A).) Section 280.100 of the final rule states: "For purposes of this subpart, the term "revisions" includes changes made to existing ISO/IEC Guides or other documents, and redesignations of those Guides or documents." As a change to and the redesignation of ISO/IEC Guide 25, ISO/IEC 17025 is acceptable under the amended FQA and the final rule.

Comment: Two commenters had questions about the use of accredited laboratories for testing the chemistry of fasteners and whether "mill test reports" would be permitted as the record of conformance on chemistry.

One of the two commenters asked: (1) Until June 2001, would the "mill test report issued by steel melter be permitted as the record of conformance on chemistry retained by manufacturers? (2) What if the "mill test report" above contains the statement that the chemistry was tested and certified by its entrusted subsidiary-lab? (3) After June 2001, would the "mill test report" issued by steel melter be permitted as the record of conformance on chemistry, if it contains the statement that the chemistry was tested and certified by its entrusted subsidiary-lab which is accredited? The other commenter stated: "The Department proposed the repeal of the regulations implementing the section 280.15, found at 15 CFR part 280. Therefore I understand that '(F) the chemistry and grade of material' of section 3(13) of the Fastener Quality Act Amendments of 1999 don't require the results tested by the accredited laboratory."

Response: The answers to these questions require a legal opinion applying the statute to specific facts. The Department is not authorized to issue such opinions. Therefore, the Department suggests that these commenters seek counsel from their attorneys.

Comments on Redesignated Subpart C: Enforcement

Comment: One commenter suggested that, since (at least in his view) almost all fasteners are exempt from the law, it is useless to make it a violation of the FQA to knowingly falsify or misrepresent fasteners, or to sell fasteners without the manufacturers' insignia. Another commenter stated that the language of the proposed new section 280.201(b) and (c) exceeded the Department's authority under the FQA as it expanded the scope of the FQA.

Response: It was the Department's intent in the proposed new section 280.201(b) and (c) to follow the prohibitions established by the Congress in the FQA. In response to the comment that this regulation is "useless," the Department notes that it is reciting the prohibitions from the statute in the regulations. The FQA makes it a violation to knowingly falsify or misrepresent certain fasteners, or to sell some fasteners without the manufacturers' insignia. In response to the second comment, the Department was in no way attempting to expand the authority provided to it under the FQA. In order to make clear that the Department is not seeking to expand either the scope of the FQA or the authority provided to the Department under the FQA, it has revised these two

provisions to track verbatim the language of the FQA.

Comments on Redesignated Subpart D: Recordal of Insignia

Comment: Three commenters suggested that the rules provide that private label distributors of certain fasteners be allowed to record their insignia at the USPTO on a voluntary basis, and to obtain certificates of recordal. Two of these three commenters further suggested that original equipment manufacturers likewise be allowed to record insignia at the USPTO on a voluntary basis, and one of these three commenters suggested that any party that contracts for the production of fasteners bearing its insignia be allowed to record its insignia at the USPTO on a voluntary basis.

Response: This suggestion has not been adopted. The FQA as amended does not give the USPTO the authority to issue recordals to entities that are not fastener manufacturers. Although the previous version of the FQA required that both various manufacturers and various private label distributors record their insignias, the Fastener Quality Act Amendments of 1999 explicitly limited this requirement to manufacturers: Congress specifically chose to exclude private label distributors by deleting the authority to register insignias of private label distributors. Congress left in the FQA authority to register insignias of manufacturers only, and required that covered fasteners bear the manufacturer's insignia. Hence, it would be contrary to the Congressional intent to record the insignia of any non-manufacturer.

Comment: Four commenters suggested that the wording "unless the specifications provide otherwise" be moved from section 280.300(a) to section 280.300.

Response: This suggestion has been adopted.

Comment: One commenter suggested that the requirement that the insignia be applied through a raised or depressed impression be retained. Three commenters suggested that this requirement be eliminated. These commenters noted that references to raised or depressed insignias had been removed from the FQA as amended, and suggested that it was therefore impermissible for the proposed rules to require that the insignia be raised or depressed. One of these three commenters further suggested that the proposed rule did not give consideration to marking or identification techniques that manufacturers might develop either

through the consensus standards process or independently of this process. Another of these three commenters suggested that the requirement that the insignia be applied through a raised or depressed impression be replaced with a requirement that the insignia be applied so that it is permanent.

Response: The suggestion that the rule take account of insignia marking techniques developed through the consensus standards, and that the requirement that insignia be applied through a raised or depressed impression be eliminated has been accepted. The Department has revised Section 280.300(b) of the final rule to provide that the insignia must be applied to the fastener using the method for applying a permanent insignia that is provided for in the applicable consensus standard(s), or, if the applicable consensus standards do not specify a method for applying a permanent insignia, through any means of applying a permanent insignia.

Comment: One commenter suggested that the requirements that the insignia appear on the head of the fastener and that the insignia be readable with no greater than 10x magnification are not supported by the FQA as amended, and that these requirements should therefore be eliminated.

Response: This suggestion has been adopted. The Department agrees that it is unnecessary to specify the size and location of the insignia. However, the Department does believe that it is necessary that the insignia be readable. Accordingly, the Department has revised Section 280.300(b) of the final rule to remove the requirements that the insignia be readable with no greater than 10x magnification and that the insignia be placed on the head of the fastener, and the Department has further revised Section 280.300(b) to provide that the insignia must be readable.

Comment: One commenter suggested that Sec. 280.320(c)(6) be amended to allow private label distributors of fasteners and original equipment manufacturers of fasteners to renew their existing certificates of recordal.

Response: This suggestion has not been adopted. The FQA as amended does not give the USPTO the authority to issue recordals to entities that are not fastener manufacturers. Although the previous version of the FQA required that both various manufacturers and various private label distributors record their insignia, the amended FQA limits this requirement to manufacturers: Congress specifically chose to exclude private label distributors and others who are not manufacturers. Hence, it

would be contrary to the Congressional intent to renew the insignia of any non-manufacturer.

As explained in detail above, the Department is adopting the proposed rule with certain changes suggested by commenters, revisions to several sections, and some editorial corrections and clarifications, in issuing this final rule.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification was published in the notice of proposed rulemaking. No comments were received regarding this certification. Therefore, the Department reaffirms the basis of the certification. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act that have been cleared under OMB Control Nos. 0693-0015 and 0651-0028. The public reporting burden for these collections of information are estimated to average 1.5 hours per response for affirmations, 20 hours per response for petitions, and .17 hours per response for the PTO recordal, renewal forms. The estimated response time shown includes the time for reviewing instructions, gathering information, and completing and reviewing the collections of information.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: June 14, 2000.

Karen H. Brown,

Deputy Director, National Institute of Standards and Technology.

Dated: June 20, 2000.

William Reinsch,

Under Secretary, Bureau of Export Administration.

Dated: June 21, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

For reasons set forth in the preamble, Title 15 of the Code of Federal Regulations is amended as follows:

PART 280—FASTENER QUALITY

1. The authority citation for Part 280 is revised to read as follows:

Authority: 15 U.S.C. 5401 *et seq.*; Pub. L. 101–592, 104 Stat. 2943, as amended by Pub. L. 104–113, 110 Stat. 775; Pub. L. 105–234, 112 Stat. 1536; and Pub. L. 106–34, 113 Stat. 118.

2. Section 280.1 is revised to read as follows:

§ 280.1 Description of rule/Delegation of authority.

(a) Description of rule. The Fastener Quality Act (the Act) (15 U.S.C. 5401 *et seq.*, as amended by Public Law 104–113, Public Law 105–234, and Public Law 106–34):

(1) Protects against the sale of mismarked, misrepresented, and counterfeit fasteners; and

(2) Eliminates unnecessary requirements.

(b) Delegations of authority. The Director, National Institute of Standards and Technology has authority to promulgate regulations in this part regarding certification and accreditation. The Secretary of Commerce has delegated concurrent authority to amend the regulations regarding enforcement of the Act, as contained in subpart C of this part, to the Under Secretary for Export Administration. The Secretary of Commerce has also delegated concurrent authority to amend the

regulations regarding record of insignia, as contained in subpart D of this part, to the Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office.

§ 280.2 [Removed]**§ 280.601 [Redesignated as § 280.2]**

3. Section 280.2 is removed, and § 280.601 is redesignated as § 280.2 and amended by revising the introductory text and adding the following definitions in alphabetical order to read as follows:

§ 280.2 Definitions.

In addition to the definitions provided in 15 U.S.C. 5402, the following definitions are applicable to this part:

Abandonment of the Application. The application for registration of a trademark on the Principal Register is no longer pending at the United States Patent and Trademark Office.

Act. The Fastener Quality Act (15 U.S.C. 5401 *et seq.*, as amended by Pub. L. 104–113, Pub. L. 105–234, and Public Law 106–34).

* * * * *

Director, NIST. The Director of the National Institute of Standards and Technology.

Director, USPTO. The Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office.

Fastener Insignia Register. The register of recorded fastener insignias maintained by the Director.

* * * * *

Principal Register. The register of trademarks established under 15 U.S.C. 1051.

* * * * *

Revisions includes changes made to existing ISO/IEC Guides or other documents, and redesignations of those Guides or documents.

* * * * *

4. Sections 280.3 through 280.16 and Subparts C through F (§§ 280.200 through 280.504) and I through L (§§ 280.800 through 280.1127) are removed, and Subpart B is revised to read as follows:

Subpart B—Petitions, Affirmations, and Laboratory Accreditation

Sec.

280.101 Petitions for Approval of Documents.

280.102 Affirmations.

280.103 Laboratory Accreditation.

Subpart B—Petitions, Affirmations, and Laboratory Accreditation**§ 280.101 Petitions for Approval of Documents.**

(a) Certification. (1) 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, NIST, to approve such document for use as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)).

(2) Petitions should be submitted to: FQA Document Certification, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(b) Accreditation. (1) A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in paragraph (a) of this section may petition the Director, NIST, to approve such document for use as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)).

(2) Petitions should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(c) Laboratory Accreditation. (1) A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director, NIST, to approve such document for use as described in section 3(1)(A) of the Act (15 U.S.C. 5402(1)(A)).

(2) Petitions should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(d) Approval of Accreditation Bodies.
(1) A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director, NIST, to approve such document for use as described in section 3(1)(B) of the Act (15 U.S.C. 5402(1)(B)).

(2) Petitions should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(e) Electronic copies of ISO/IEC Guides may be purchased through the American National Standards Institute (ANSI), Internet: <http://www.ansi.org>. Copies of the relevant ISO/IEC Guides are available for inspection in the U.S. Department of Commerce Reading Room, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Room B-399.

§ 280.102 Affirmations.

(a)(1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)) shall affirm to the Director, NIST, that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director, NIST, under section 10(b) of the Act (15 U.S.C. 5411a(b)) and § 280.101(a) of this part), including revisions from time to time.

(2) An accreditation body accrediting laboratories as described in section 3(1)(B) of the Act (15 U.S.C. 5402(1)(B)) shall affirm to the Director, NIST, that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director, NIST, under section 10(d) of the Act (15 U.S.C. 5411a(d)) and § 280.101(d) of this part), including revisions from time to time.

(b) An affirmation required under paragraph (a)(1) or (a)(2) of this section shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body. No supporting documentation is required.

(c) Affirmations should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(d) Any affirmation submitted in accordance with this section shall be considered to be a continuous affirmation that the accreditation body meets the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

§ 280.103 Laboratory accreditation.

A laboratory may be accredited by any laboratory accreditation program that may be established by any entity or entities, which have affirmed to the Director, NIST, under § 280.102 of this subpart, or by the National Voluntary Laboratory Accreditation Program for fasteners, established by the Director, NIST, under part 285 of this chapter.

Subpart G [Redesignated as Subpart C]

5. Subpart G (§§ 280.600, 280.602 through 280.623) is redesignated as Subpart C, consisting of §§ 280.200 through 280.222.

6. Redesignated § 280.200 is revised to read as follows:

§ 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.

7. Redesignated § 280.201 is amended by revising paragraphs (b) and (c), and removing paragraphs (d) through (o) to read as follows:

§ 280.201 Violations.

* * * * *

(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).

8. Redesignated § 280.203 is revised to read as follows:

§ 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.

9. Redesignated § 280.210 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 280.210 Discovery.

* * * * *

(d) * * * In addition, enforcement by a district court of the United States may be sought under 15 U.S.C. 5408(b)(6).

§§ 280.11 and 280.218 [Amended]

10. The reference to “§ 280.607” is revised to read “§ 280.206” in the following sections:

Redesignated § 280.211(b);
Redesignated § 280.218(c).

§§ 280.204 and 280.208 [Amended]

11. The reference to “§ 280.608” is revised to read “§ 280.207” in the following sections:

Redesignated § 280.204(a);
redesignated § 280.208(b)(1).

§§ 280.204 and 280.218 [Amended]

12. The reference to “§ 280.609” is revised to read “§ 280.208” in the following sections:

Redesignated § 280.204(a);
redesignated § 280.218(a).

§ 280.214 [Amended]

13. In redesignated § 280.214(b), the reference to “§ 280.613” is revised to read “§ 280.212”.

§ 280.207 [Amended]

14. In redesignated § 280.207(c), the reference to “§ 280.617” is revised to read “§ 280.216”.

15. In redesignated § 280.207(a), the reference to “§ 280.618” is revised to read “§ 280.217”.

§ 280.219 [Amended]

16. In redesignated § 280.219(c), the reference to “§ 280.619(c)” is revised to read “§ 280.218(c)”.

§§ 280.221 and 280.222 [Amended]

17. The reference to “§ 280.622” is revised to read “§ 280.221” in the following sections:

Redesignated § 280.221(b);
redesignated § 280.222(f).

§§ 280.208, 280.218, 280.219, 280.220 and 280.221 [Amended]

18. The reference to “§ 280.623” is revised to read “§ 280.222” in the following sections:

Redesignated § 280.208(a); redesignated § 280.218(b); redesignated § 280.219(b)(2); redesignated § 280.220; redesignated § 280.221(a).

18a. Redesignated § 280.221 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 280.221 Record for decision and availability of documents.

* * * * *

(b) * * * A party seeking to restrict access to any portion of the record is responsible for submitting, at the time specified in paragraph (c)(2) of this section, a version of the document proposed for public availability that reflects the requested deletion. * * *

* * * * *

Subpart H [Redesignated as Subpart D]

19. Subpart H (§§ 280.700, 280.710 through 280.713, and 280.720 through 280.726) is redesignated as Subpart D, consisting of §§ 280.300, 280.310 through 280.313, and 280.320 through 280.326.

20. Redesignated § 280.300 is revised to read as follows:

§ 280.300 Recorded insignia required prior to offer for sale.

Unless the specifications provide otherwise, if a fastener is required by the applicable consensus standard(s) to bear an insignia identifying its manufacturer, the manufacturer must:

(a) Record the insignia with the U.S. Patent and Trademark Office prior to any sale or offer for sale of the fastener; and

(b) Apply the insignia to any fastener that is sold or offered for sale. The insignia must be readable, and must be applied using the method for applying a permanent insignia that is provided for in the applicable consensus standard(s), or, if the applicable consensus standard(s) do(es) not specify a method for applying a permanent insignia, through any means of imprinting a permanent impression.

21. Redesignated § 280.310 is amended by revising the heading, paragraph (a), paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5); redesignating existing paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9), respectively; adding new paragraph (b)(6); revising redesignated paragraph (b)(7); and revising paragraphs (c) and (d) to read as follows:

§ 280.310 Application for insignia.

(a) Each manufacturer must submit a written application for recordal of an insignia on the Fastener Insignia Register along with the prescribed fee. The application must be in a form prescribed by the Director, USPTO.

(b) * * *

(1) The name of the manufacturer;

(2) The address of the manufacturer;

(3) The entity, domicile, and state of incorporation, if applicable, of the manufacturer;

(4) Either:

(i) A request for recordal and issuance of a unique alphanumeric designation by the Director, USPTO, or

(ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the manufacturer in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing that was included with the application for trademark registration, or a copy of the registration;

(5) A statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the applicant for recordal is a “manufacturer” as that term is defined in 15 U.S.C. 5402;

(7) A statement that the person signing the application on behalf of the manufacturer has personal knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

* * * * *

(c) A manufacturer may designate only one trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration that forms the basis for the fastener recordal must be in active status, that is, a pending application or a registration which is not expired, or canceled, at the time of the application for recordal.

(d) Applications and other documents should be addressed to: Box Fastener, Director, United States Patent and Trademark Office, Washington, DC 20231.

22. Redesignated § 280.311 is revised to read as follows:

§ 280.311 Review of the application.

The Director, USPTO, will review the application for compliance with § 280.310. If the application does not contain one or more of the elements required by § 280.310, the Director, USPTO, will not issue a certificate of recordal, and will return the papers and fees. The Director, USPTO, will notify

the applicant for recordal of any defect in the application. Applications for recordal of an insignia may be re-submitted to the Director, USPTO, at any time.

23. Redesignated § 280.312 is revised to read as follows:

§ 280.312 Certificate of recordal.

(a) If the application complies with the requirements of § 280.310, the Director, USPTO, shall accept the application and issue a certificate of recordal. Such certificate shall be issued in the name of the United States of America, under the seal of the United States Patent and Trademark Office, and a record shall be kept in the United States Patent and Trademark Office. The certificate of recordal shall display the recorded insignia of the manufacturer, and state the name, address, legal entity and domicile of the manufacturer, as well as the date of issuance of such certificate.

(b) Certificates that were issued prior to June 8, 1999, shall remain in active status and may be maintained in accordance with the provisions of § 280.320 of this subpart, but only if:

(1) The certificate is held by a manufacturer, and

(2) The fasteners associated with the certificate are fasteners that must bear an insignia pursuant to 15 U.S.C. 5407.

24. Redesignated § 280.313 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 280.313 Recordal of additional insignia.

(a) A manufacturer to whom the Director, USPTO, has issued an alphanumeric designation may apply for recordal of its trademark for fasteners if the trademark is the subject of a duly filed application or is registered in the United States Patent and Trademark Office on the Principal Register. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

(b) A manufacturer for whom the Director, USPTO, has recorded a trademark as its fastener insignia may apply for issuance and recordal of an alphanumeric designation as a fastener insignia. * * *

25. Redesignated § 280.320 is amended by revising paragraphs (a) and (b) and paragraphs (c)(1) through (c)(5); redesignating existing paragraphs (c)(6) through (c)(8) as paragraphs (c)(7) through (c)(9), respectively; adding a new paragraph (c)(6); and revising redesignated paragraph (c)(7) to read as follows:

§ 280.320 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for subsequent five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of paragraph (c) of this section.

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer at the time the maintenance application is required.

(c) * * *

- (1) The name of the manufacturer;
- (2) The address of the manufacturer;
- (3) the entity, domicile, and state of incorporation, if applicable, of the manufacturer;
- (4) a copy of manufacturer's certificate of recordal;

(5) a statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) a statement that the applicant for recordal is a "manufacturer" as that term is defined in 15 U.S.C. 5402;

(7) a statement that the person signing the application on behalf of the manufacturer has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

* * * * *

26. Redesignated § 280.321 is amended by revising the first sentence to read as follows:

§ 280.321 Notification of changes of address.

The applicant for recordal or the holder of a certificate of recordal shall notify the Director, USPTO, of any change of address or change of name no later than six months after the change.

* * *

27. Redesignated § 280.323 is amended by revising the second and third sentences of paragraph (a), revising the first sentence of paragraph (b), revising paragraph (d), revising the first sentence of paragraph (e), and adding new paragraph (f) to read as follows:

§ 280.323 Transfer or assignment of the trademark registration or recorded insignia.

(a) * * * Any transfer or assignment of such an application or registration must be recorded in the United States Patent and Trademark Office within three months of the transfer or assignment. A copy of such transfer or assignment must also be sent to: Box Fastener, Director, United States Patent and Trademark Office, Washington, DC 20231.

(b) Upon transfer or assignment of a trademark application or registration which forms the basis of a certificate of recordal, the Director, USPTO, shall designate the certificate of recordal as inactive. * * *

* * * * *

(d) A fastener insignia consisting of an alphanumeric designation issued by the Director, USPTO, can be transferred or assigned.

(e) Upon transfer or assignment of an alphanumeric designation, the Director, USPTO, shall designate such alphanumeric designation as inactive.

(f) An alphanumeric designation that is reactivated after it has been transferred or assigned shall remain in active status until the expiration of the five year period that began upon the issuance of the alphanumeric designation to its original owner.

28. Redesignated § 280.324 is amended by revising the introductory sentence of paragraph (a), revising paragraphs (a)(1) through (a)(3); redesignating existing paragraph (b) as paragraph (a)(4); revising the first two sentences of redesignated paragraph (a)(4); redesignating paragraph (c) as paragraph (b); and revising redesignated paragraph (b) to read as follows:

§ 280.324 Change in status of trademark registration or amendment of the trademark.

(a) The Director, USPTO, shall designate the certificate of recordal as inactive, upon:

- (1) issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal;
- (2) abandonment of the application which formed the basis for the certificate of recordal;
- (3) cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal; or
- (4) an amendment of the mark in a trademark application or registration that forms the basis for a certificate of recordal. The certificate of recordal shall become inactive as of the date the amendment is filed. * * *

(b) Certificates of recordal designated inactive due to cancellation, expiration, or amendment of the trademark registration, or abandonment or amendment of the trademark application, cannot be reactivated.

29. Redesignated § 280.325 is revised to read as follows:

§ 280.325 Cumulative listing of recordal information.

The Director, USPTO, shall maintain a record of the names, current

addresses, and legal entities of all recorded manufacturers and their recorded insignia.

30. Redesignated § 280.326 is amended by revising the heading and the second sentence to read as follows:

§ 280.326 Records and files of the United States Patent and Trademark Office

* * * Copies of any such records may be obtained upon request and payment of the fee set by the Director, USPTO.

§§ 280.311, 280.312 and 280.323 [Amended]

31. The reference to "§ 280.710" is revised to read "§ 280.310" in the following sections:

Redesignated § 280.311; redesignated § 280.312; redesignated § 280.323(e).

[FR Doc. 00-16212 Filed 6-27-00; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Prime Enrollment

AGENCY: Office of the Secretary, DOD.

ACTION: Interim final rule.

SUMMARY: This interim final rule provides for automatic enrollment of certain family members of E-4 and below in TRICARE Prime. When affected family members reside in a catchment area of a military medical treatment facility offering TRICARE Prime, the family members will be automatically enrolled in TRICARE Prime and will choose or be assigned a Primary Care Manager located in the military medical treatment facility. Such automatic enrollment may be terminated at any time.

DATES: This rule is effective July 28, 2000. Public comments must be received by August 28, 2000.

ADDRESSES: TRICARE Management Activity (TMA), Program Development Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Lt Col Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity, telephone (703) 681-3628.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: