

consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii)<sup>1</sup> of this title.

**(3) Performance criteria**

Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

**(4) Access for foreign suppliers**

Each Federal agency shall, with respect to any conformity assessment procedure used by it, permit access for obtaining an assessment of conformity and the mark of the system, if any, to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

(Pub. L. 96-39, title IV, § 402, July 26, 1979, 93 Stat. 242; Pub. L. 103-465, title III, § 351(c), Dec. 8, 1994, 108 Stat. 4956; Pub. L. 104-295, § 20(c)(14), Oct. 11, 1996, 110 Stat. 3529.)

REFERENCES IN TEXT

Section 2571(6)(A) of this title, referred to in par. (2)(B)(ii), was amended generally by Pub. L. 103-465, title III, § 351(e)(4), Dec. 8, 1994, 108 Stat. 4956, and, as so amended, no longer contains clauses.

AMENDMENTS

1996—Par. (4). Pub. L. 104-295 inserted comma after “system, if any”.

1994—Par. (4). Pub. L. 103-465 substituted “Access” for “Certification access” in heading, and, in text, substituted “conformity assessment procedure” for “certification system” and “an assessment of conformity and the mark of the system, if any” for “certification under that system”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 352 of Pub. L. 103-465, set out as a note under section 2531 of this title.

**§ 2533. State and private standards-related activities**

**(a) In general**

It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

**(b) Presidential action**

The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 2532 of this title, and of procedures that provide for notification,

and participation, and publication with respect to such activities.

(Pub. L. 96-39, title IV, § 403, July 26, 1979, 93 Stat. 243.)

PART B—FUNCTIONS OF FEDERAL AGENCIES

**§ 2541. Functions of Trade Representative**

**(a) In general**

The Trade Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this subchapter.

**(b) Negotiating functions**

The Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Trade Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

**(c) Cross reference**

**For provisions of law regarding general authority of the Trade Representative with respect to trade agreements, see section 2171 of this title.**

(Pub. L. 96-39, title IV, § 411, July 26, 1979, 93 Stat. 243; Pub. L. 103-182, title III, § 351(b)(2), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104-295, § 21(b)(1), (2), Oct. 11, 1996, 110 Stat. 3529, 3530.)

AMENDMENTS

1996—Pub. L. 104-295, § 21(b)(1), amended directory language of Pub. L. 103-182, § 351(b)(2). See 1993 Amendment notes below.

Subsec. (c). Pub. L. 104-295, § 21(b)(2), substituted “Trade Representative” for “Special Representatives”.

1993—Pub. L. 103-182, § 351(b)(2)(B), as amended by Pub. L. 104-295, § 21(b)(1), substituted “Trade Representative” for “Special Representative” in section catchline.

Subsecs. (a), (b). Pub. L. 103-182, § 351(b)(2)(A), as amended by Pub. L. 104-295, § 21(b)(1), substituted “Trade Representative” for “Special Representative” wherever appearing.

**§ 2542. Establishment and operation of technical offices**

**(a) Establishment**

**(1) For nonagricultural products**

The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to nonagricultural products.

**(2) For agricultural products**

The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to agricultural products.

**(b) Functions of offices**

The President shall prescribe for each technical office established under subsection (a) of

<sup>1</sup> See References in Text note below.

this section such functions as the President deems necessary or appropriate to implement this subchapter.

(Pub. L. 96-39, title IV, §412, July 26, 1979, 93 Stat. 244.)

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Commerce regarding technical office established under subsec. (a)(1) of this section, and to Secretary of Agriculture regarding technical office established under subsec. (a)(2) of this section, see section 1-103(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

### § 2543. Representation of United States interests before international standards organizations

#### (a) Oversight and consultation

The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Trade Representative with respect to international standards-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c) of this section.

#### (b) Representation of United States interests by private persons

##### (1) Definitions

For purposes of this subsection—

##### (A) Organization member

The term “organization member” means the private person who holds membership in a private international standards organization.

##### (B) Private international standards organization

The term “private international standards organization” means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose.

##### (2) In general

Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

##### (3) Inadequate representation

If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary con-

cerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 2547 of this title.

#### (4) Action by organization member

If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

#### (5) Action by Secretary concerned

If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

#### (c) Representation of United States interests by Federal agencies

With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

(Pub. L. 96-39, title IV, §413, July 26, 1979, 93 Stat. 244; Pub. L. 103-182, title III, §351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104-295, §21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)