

covered under the Agreement for procurement by the United States.”

1988—Par. (4)(D). Pub. L. 100-449 temporarily added subpar. (D). See Effective and Termination Dates of 1988 Amendment note below.

1985—Par. (4)(C). Pub. L. 99-47 added subpar. (C).

EFFECTIVE AND TERMINATION DATES OF 2011
AMENDMENT

Amendment by Pub. L. 112-43 effective Oct. 21, 2011, applicable with respect to Panama on the date the United States-Panama Trade Promotion Agreement enters into force (Oct. 31, 2012), and to cease to be effective on the date the Agreement terminates, see section 107(b), (c) of Pub. L. 112-43, set out in a note under section 3805 of this title.

Amendment by Pub. L. 112-42 effective Oct. 21, 2011, applicable with respect to Colombia on the date the United States-Colombia Trade Promotion Agreement enters into force (May 15, 2012), and to cease to be effective on the date the Agreement terminates, see section 107(b), (c) of Pub. L. 112-42, set out in a note under section 3805 of this title.

Amendment by Pub. L. 112-41 effective Oct. 21, 2011, applicable with respect to Korea on the date the United States-Korea Free Trade Agreement enters into force (Mar. 15, 2012), and to cease to be effective on the date the Agreement terminates, see section 107(b), (c) of Pub. L. 112-41, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007
AMENDMENT

Amendment by Pub. L. 110-138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110-138, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006
AMENDMENT

Amendment by Pub. L. 109-283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109-169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 109-169, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005
AMENDMENT

Amendment by Pub. L. 109-53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109-53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004
AMENDMENT

Amendment by Pub. L. 108-286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108-286, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement,

referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 381(e) of Pub. L. 103-182, set out as a note under section 2511 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988
AMENDMENT

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—TECHNICAL BARRIERS TO
TRADE (STANDARDS)

PART A—OBLIGATIONS OF THE UNITED STATES

§ 2531. Certain standards-related activities

(a) No bar to engaging in standards activity

Nothing in this subchapter may be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.

(b) Unnecessary obstacles

Nothing in this subchapter may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

(Pub. L. 96-39, title IV, §401, July 26, 1979, 93 Stat. 242; Pub. L. 103-465, title III, §351(b), Dec. 8, 1994, 108 Stat. 4955.)

AMENDMENTS

1994—Pub. L. 103-465 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title III, §352, Dec. 8, 1994, 108 Stat. 4957, provided that: “This subtitle [subtitle F (§§351, 352) of title III of Pub. L. 103-465, amending this section and sections 2532, 2544, 2571, and 2573 of this title and repealing provisions set out below] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].”

EFFECTIVE DATE

Pub. L. 96-39, title IV, §454, July 26, 1979, 93 Stat. 250, which provided that this subchapter was to take effect on Jan. 1, 1980, if the Agreement on Technical Barriers to Trade entered into force with respect to the United States by that date, was repealed by Pub. L. 103-465, title III, §351(g), Dec. 8, 1994, 108 Stat. 4957.

§ 2532. Federal standards-related activities

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) Nondiscriminatory treatment

Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

- (A) the acceptance of the product for testing in comparable situations;
- (B) the administration of the tests in comparable situations;
- (C) the fees charged for tests;
- (D) the release of test results to the exporter, importer, or agents;
- (E) the siting of testing facilities and the selection of samples for testing; and
- (F) the treatment of confidential information pertaining to the product.

(2) Use of international standards**(A) In general**

Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) Application of requirement

For purposes of this paragraph, the following apply:

(i) International standards not appropriate

The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

- (I) National security requirements.
- (II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) Regional standards

In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii)¹ 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 un-

¹ See References in Text note below.