

holder of a certificate of review and the members named in the certificate will have specific protections from private treble damage actions and government criminal and civil suits under U.S. Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

§ 325.2 Definitions.

As used in this part:

(a) *Act* means title III of Pub. L. 97-290, Export Trade Certificates of Review.

(b) *Antitrust laws* means the antitrust laws, as the term is defined in the first section of the Clayton Act (15 U.S.C. 12), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law.

(c) *Applicant* means the person or persons who submit an application for a certificate.

(d) *Application* means an application for a certificate to be issued under the Act.

(e) *Attorney General* means the Attorney General of the United States or his designee.

(f) *Certificate* means a certificate of review issued pursuant to the Act.

(g) *Control* means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of an unincorporated entity, a majority of the individuals who exercise similar functions.

(h) *Controlling entity* means an entity which directly or indirectly controls a member or applicant, and is not controlled by any other entity.

(i) *Export conduct* means specified export trade activities and methods of operation carried out in specified export trade and export markets.

(j) *Export trade* means trade or commerce in goods, wares, merchandise, or services that are exported, or are in the course of being exported, from the United States or any territory of the United States to any foreign nation.

(k) *Export trade activities* means activities or agreements in the course of export trade.

(l) *Member* means an entity (U.S. or foreign) or a person which is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or non-profit organization or relationship, by contract or other arrangement.

(m) *Method of operation* means any method by which an applicant or member conducts or proposes to conduct export trade.

(n) *Person* means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether it is organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons.

(o) *Secretary* means the Secretary of Commerce or his designee.

(p) *Services* means intangible economic output, including, but not limited to—

(1) business, repair, and amusement services,

(2) management, legal, engineering, architectural, and other professional services, and

(3) financial, insurance, transportation, informational and any other data-based services, and communication services.

(q) *United States* means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 325.3 Applying for a certificate of review.

(a) *Place of filing.* The applicant shall submit an original and two copies of a completed application form (ITA 4093-P, OMB control number 0625-0125) by

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personal delivery during normal business hours or by first class mail to the Office of Export Trading Company Affairs, Room 5618, International Trade Administration, Department of Commerce, Washington, DC 20230. Although not required, the applicant should consider using registered mail or some other delivery method that provides evidence of receipt.

(b) *Contents of application.* Any person may submit an application for certification. The application shall contain, where applicable, the information listed below. Some information, in particular the identification of goods or services that the applicant exports or proposes to export, is requested in a certain form (Standard Industrial Classification [SIC] numbers) if reasonably available. Where information does not exist in this form, the applicant may satisfy the request for information by providing it in some other convenient form. If the applicant is unable to provide any of the information requested or if the applicant believes that any of the information requested would be both burdensome to obtain and unnecessary for a determination on the application, the applicant should state that the information is not being provided or is being provided in lesser detail, and explain why.

(1) Name and principal address of the applicant and of its controlling entity, if any. Include the name, title, address, telephone number, and relationship to the applicant of each individual to whom the Secretary should address correspondence.

(2) The name and principal address of each member, and of each member's controlling entity, if any.

(3) A copy of any legal instrument under which the applicant is organized or will operate. Include copies, as applicable, of its corporate charter, by-laws, partnership, joint venture, membership or other agreements or contracts under which the applicant is organized.

(4) A copy of the applicant's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of the ap-

plicant's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(5) A copy of each member's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of each member's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(6) The names, titles, and responsibilities of the applicant's directors, officers, partners and managing officials, and their business affiliations with other members or other businesses that produce or sell any of the types of goods or services described in paragraph (b)(7) of this section.

(7)(i) A description of the goods or services which the applicant exports or proposes to export under the certificate of review. This description should reflect the industry's customary definitions of the products and services.

(ii) If it is reasonably available, an identification of the goods or services according to the Standard Industrial Classification (SIC) number. Goods should normally be identified according to the 7-digit level. Services should normally be identified at the most detailed SIC level available.

(iii) The foreign geographic areas to which the applicant and each member export or intend to export their goods and services.

(8) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section:

(i) The principal geographic area or areas in the United States in which the applicant and each member sell their goods and services.

(ii) For their previous two fiscal years, the dollar value of the applicant's and each member's (A) total domestic sales, if any; and (B) total export sales, if any. Include the value of

the sales of any controlling entities and all entities under their control.

(9) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section, the best information or estimate accessible to the applicant of the total value of sales in the United States by all companies for the last two years. Identify the source of the information or the basis of the estimate.

(10) A description of the specific export conduct which the applicant seeks to have certified. Only the specific export conduct described in the application will be eligible for certification. For each item, the applicant should state the antitrust concern, if any, raised by that export conduct. (Examples of export conduct which applicants may seek to have certified include the manner in which goods and services will be obtained or provided; the manner in which prices or quantities will be set; exclusive agreements with U.S. suppliers or export intermediaries; territorial, quantity, or price agreements with U.S. suppliers or export intermediaries; and restrictions on membership or membership withdrawal. These examples are given only to illustrate the type of export conduct which might be of concern. The specific activities which the applicant may wish to have certified will depend on its particular circumstances or business plans.)

(11) If the export trade, export trade activities, or methods of operation for which certification is sought will involve any agreement or any exchange of information among suppliers of the same or similar products or services with respect to domestic prices, production, sales, or other competitively sensitive business information, specify the nature of the agreement or exchange of information. Such information exchanges are not necessarily impermissible and may be eligible for certification. Whether or not certification is sought for such exchanges, this information is necessary to evaluate whether the conduct for which certification is sought meets the standards of the Act.

(12) A statement of whether the applicant intends or reasonably expects that any exported goods or services covered by the proposed certificate will

re-enter the United States, either in their original or modified form. If so, identify the goods or services and the manner in which they may re-enter the U.S.

(13) The names and addresses of the suppliers of the goods and services to be exported (and the goods and services to be supplied by each) unless the goods and services to be exported are to be supplied by the applicant and/or its members.

(14) A proposed non-confidential summary of the export conduct for which certification is sought. This summary may be used as the basis for publication in the FEDERAL REGISTER.

(15) Any other information that the applicant believes will be necessary or helpful to a determination of whether to issue a certificate under the standards of the Act.

(16) (Optional) A draft proposed certificate.

(c) The applicant must sign the application and certify that (1) each member has authorized the applicant to submit the application, and (2) to the best of its belief the information in the application is true, correct, and fully responsive.

(d) *Conformity with regulations.* No application shall be deemed submitted unless it complies with these regulations. Applicants are encouraged to seek guidance and assistance from the Department of Commerce in preparing and documenting their applications.

(e) *Review and acceptance.* The Secretary will stamp the application on the day that it is received in the Office of Export Trading Company Affairs. From that date, the Secretary will have five working days to decide whether the application is complete and can be deemed submitted under the Act. On the date on which the application is deemed submitted, the Secretary will stamp it with that date and notify the applicant that the application has been accepted for review. If the application is not accepted for review, the Secretary shall advise the applicant that it may file the application again after correcting the deficiencies that the Secretary has specified. If the Secretary does not take action on the application within the five-day period,

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the application shall be deemed submitted as of the sixth day.

(f) *Withdrawal of application.* The applicant may withdraw an application by written request at any time before the Secretary has determined whether to issue a certificate. An applicant who withdraws an application may submit a new application at any time.

(g) *Supplemental information.* After an application has been deemed submitted, if the Secretary or the Attorney General finds that additional information is necessary to make a determination on the application, the Secretary will ask the applicant in writing to supply the supplemental information. The running of the time period for a determination on the application will be suspended from the date on which the request is sent until the supplemental information is received and is considered complete. The Secretary shall promptly decide whether the supplemental information is complete, and shall notify the applicant of his decision. If the information is being sought by the Attorney General, the supplemental information may be deemed complete only if the Attorney General concurs. If the applicant does not agree to provide the additional information, or supplies information which the Secretary or the Attorney General considers incomplete, the Secretary and the Attorney General will decide whether the information in their possession is sufficient to make a determination on the application. If either the Secretary or the Attorney General considers the information in their possession insufficient, the Secretary may make an additional request or shall deny the application. If they consider the information in their possession sufficient to make a determination on the application, the Secretary shall notify the applicant that the time period for a determination has resumed running.

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 0625-0125)

§ 325.4 Calculating time periods.

(a) When these regulations require action to be taken within a fixed time period, and the last day of the time period falls on a non-working day, the

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time period shall be extended to the next working day.

(b) The day after an application is deemed submitted shall be deemed the first of the days within which the Secretary must make a determination on the application.

§ 325.5 Issuing the certificate.

(a) *Time period.* The Secretary shall determine whether to issue a certificate within ninety days after the application is deemed submitted (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). If the Secretary or the Attorney General considers it necessary, and the applicant agrees, the Secretary may take up to an additional thirty days to determine whether to issue a certificate.

(b) *Determination.* The Secretary shall issue a certificate to the applicant if he determines, and the Attorney General concurs, that the proposed export trade, export trade activities and methods of operation will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the class of the goods, wares, merchandise or services exported by the applicant;

(3) Not constitute unfair methods of competition against competitors who are engaged in the export of goods, wares, merchandise or services of the class exported by the applicant; and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(c) *Concurrence of the Attorney General.* (1) Not later than seven days after an application is deemed submitted, the Secretary shall deliver to the Attorney General a copy of the application, any information submitted in connection with the application, and any other relevant information in his possession. The Secretary and the Attorney General shall make available to