

## §310.4

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Federal recognition pursuant to §310.4, the applicant must have completed the required Environmental Impact Statement (EIS), in a form acceptable to the Department of Commerce.

14. *Exhibit No. 14.* A detailed set of general and special rules and regulations governing the exposition and participation in it, which, if Federal recognition is obtained, can be used by the Federal Government in seeking BIE registration.

15. *Exhibit No. 15.* A statement from the applicant agreeing to accept a U.S. Commissioner General, appointed by the President. He will be recognized as the senior Federal official and titular head of the exposition, final arbiter in disputes with exhibitors, and the official contact with foreign governments. The applicant should also agree to furnish the Commissioner General and his staff with suitable facilities in the host community during the development and operation of the exposition.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

### §310.4 Action on application.

(a) Upon receipt of an application, the Director will analyze the application and all accompanying exhibits to insure compliance with the provisions of §310.3 and report his findings with respect thereto to the Secretary.

(b) If more than one applicant applies for Federal recognition for expositions to be held within three years or less of each other, the applications will be reviewed concurrently by the Director. The following standards will be considered in determining which if any of the competing applicants will be recommended for Federal recognition:

(1) The order of receipt of the applications by the Director, complete with all exhibits required by §310.3.

(2) The financial plans of the applications. Primary consideration will be given to those applications which do not require Federal financing for exposition development. This does not extend to funding for a Federal pavilion, if one is desired.

(3) The relative merit of the applications in terms of their qualifications as tourism destination sites, both with respect to existing facilities and those facilities planned for the proposed exposition. If necessary, to assist in making this determination, the Director will appoint a panel of travel industry experts representing tour developers, the

transportation, entertainment and hotel/motel industries for the purpose of studying the competing applications and reporting to the Director its views as to which proposed site best meets the above criteria. If such a panel is deemed necessary, the provisions of the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I) will be applicable.

(c) In analyzing the applications, the Director may hold public hearings with the objective of clarifying issues that might be raised by the application. If desired, the Director may utilize the services of an examiner.

(d) If the Director, in his discretion, decides to hold a public hearing, notice of such hearing shall be published in the FEDERAL REGISTER, and a copy of the notice shall be furnished to local newspapers. The notice shall state the subject to be considered and when and where the hearing will be held, specifically designating the date, hour, and place.

(e) The following general procedure shall govern the conduct of public hearings: (1) Stenographic minutes of the proceedings shall be made; (2) the names and addresses of all parties present or represented at the hearing shall be recorded; and (3) the Director or Examiner shall read aloud for the record and for the benefit of the public such parts of the Act and of these regulations as bear on the application. He shall also read aloud for the record and for the benefit of the public such other important papers, or extracts therefrom, as may be necessary for a full understanding of the issues which require clarification. The Director or Examiner shall impress upon the parties in attendance at the public hearing, and shall specifically state at the commencement of the hearing, that the hearing is not adversary in nature and that the sole objective thereof is to clarify issues that might have been raised by the application.

(f) Statements of interested parties may be presented orally at the hearing, or submitted in writing for the record.

(g) Within six months after receipt of a fully completed application and/or the adjournment of the public hearing, the Director shall submit his report

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containing his findings on the application to the Secretary.

### § 310.5 Report of the Secretary on Federal recognition.

If the Director's report recommends Federal recognition, the Secretary, within a reasonable time, shall submit a report to the President.

(a) The Secretary's report shall include: (1) An evaluation of the purposes and reasons for the exposition; and (2) a determination as to whether guaranteed financial and other support has been secured by the exposition from affected State and local governments and from business and civic leaders of the region and others in amounts sufficient to assure the successful development and progress of the exposition.

(b) Based on information from, and coordination with the Department of Commerce the Secretary of State shall also file a report with the President that the exposition qualifies for recognition by the BIE.

### § 310.6 Recognition by the President.

If the President concurs in the favorable reports from the Secretaries of State and Commerce, he may grant Federal recognition to the exposition by indicating his concurrence to the two Secretaries and authorizing them to seek BIE registration.

### § 310.7 Statement for Federal participation.

If Federal participation in the exposition, as well as Federal recognition thereof is desired, the applicant shall in a statement to the Director outline the nature of the Federal participation envisioned, including whether construction of a Federal pavilion is contemplated. (It should be noted, however, that before Federal participation can be authorized by the Congress under the Act, the exposition must have (i) met the criteria for Federal recognition and be so recognized, and (ii) been registered by the BIE. Although applicants need not submit such a statement until these prerequisites are satisfied, they are encouraged to do so.) Where the desired Federal participation includes a request for construction of a Federal pavilion,

the statement shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A survey drawing of the proposed Federal pavilion site, showing its areas and boundaries, its grade elevations, and surface and subsoil conditions.

2. *Exhibit No. 2.* Evidence of resolutions, statutes, opinions, etc., as to the applicant's ability to convey by deed the real property comprising the proposed Federal pavilion site in fee-simple and free of liens and encumbrances to the Federal Government. The only consideration on the part of the Government for the conveyance of the property shall be the Government's commitment to participate in the exposition.

3. *Exhibit No. 3.* A certified copy of the building code which would be applicable should a pavilion be constructed.

4. *Exhibit No. 4.* An engineering drawing showing the accessibility of the proposed pavilion site to utilities (e.g., sewerage, water, gas, electricity, etc.).

5. *Exhibit No. 5.* A statement setting forth the security and maintenance and arrangements which the applicant would undertake (and an estimate of their cost) while a pavilion is under construction.

6. *Exhibit No. 6.* A study pursuant to Executive Order 11296 of August 10, 1966, entitled "Evaluation of flood hazard in locating Federally owned or financed buildings, roads and other facilities and in disposing of Federal land and properties."

### § 310.8 Proposed plan for Federal participation.

(a) Upon receipt of the statement, and the exhibits referred to in § 310.7, the Director shall prepare a proposed plan in cooperation with other interested departments and agencies of the Federal Government for Federal participation in the exposition.

(b) In preparing the proposed plan for Federal participation in the exposition, the Director shall conduct a feasibility study of Federal participation including cost estimates by utilizing the services within the Federal Government, professional consultants and private sources as required and in accordance with applicable laws and regulations.

(c) The Director, in the proposed plan for Federal participation in the exposition, shall determine whether or not a Federal pavilion should be constructed and, if so, whether or not the

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Government would have need for a permanent structure in the area of the exposition or whether a temporary structure would be more appropriate.

(d) The Director shall seek the advice of the Administrator of the General Services Administration to the extent necessary in carrying out the proposed plan for Federal participation in the exposition.

(e) Upon completion of the proposed plan for Federal participation in the exposition, the Director shall submit the plan to the Secretary.

### § 310.9 Report of the Secretary on Federal participation.

Upon receipt of the Director's proposed plan for Federal participation, the Secretary, within a reasonable time, shall submit a report to the President including: (a) Evidence that the exposition has met the criteria for Federal recognition and has been so recognized; (b) a statement that the exposition has been registered by the BIE; and (c) a proposed plan for the Federal participation referred to in § 310.8.

## PART 315 [RESERVED]

## PART 325—EXPORT TRADE CERTIFICATES OF REVIEW

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AUTHORITY: Title III of the Export Trading Company Act, Pub. L. 97-290 (96 Stat. 1240-1245, 15 U.S.C. 4011-4021).

SOURCE: 50 FR 1806, Jan. 11, 1985, unless otherwise noted.

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### § 325.1 Scope.

This part contains regulations for issuing export trade certificates of review under title III of the Export Trading Company Act, Pub. L. 97-290. A 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 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.

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(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 applicant'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 re-

view, 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, 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.

#### § 325.4 Calculating time periods.

(a) When these regulations require action to be taken within a fixed time

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period, and the last day of the time period falls on a non-working day, the 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

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possession. The Secretary and the Attorney General shall make available to each other copies of other relevant information that was obtained in connection with the application, unless otherwise prohibited by law.

(2) Not later than thirty days before the day a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than ten days before the day a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(3) If the Attorney General receives the proposed certification by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(d) *Content of certificate.* The certificate shall specify the export conduct and all persons or entities which are protected from liability under the anti-trust laws. The Secretary may certify the proposed export conduct contained in the application, in whole or in part, with such changes, modifications, terms, or conditions as are appropriate. If the Secretary intends to issue a certificate different from a draft certificate submitted by the applicant, the Secretary shall first consult with the applicant.

(e) *Certificate obtained by fraud.* A certificate shall be void *ab initio* with respect to any export conduct for which a certificate was obtained by fraud.

(f) *Minimum thirty-day period.* The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

#### § 325.6 Publishing notices in the Federal Register.

(a) Within ten days after an application is deemed submitted, the Secretary shall deliver to the FEDERAL

REGISTER a notice summarizing the application. The notice shall identify the applicant and each member and shall include a summary of the export conduct for which certification is sought. If the Secretary does not intend to publish the summary proposed by the applicant, he shall notify the applicant. Within twenty days after the date the notice is published in the FEDERAL REGISTER, interested parties may submit written comments to the Secretary on the application. The Secretary shall provide a copy of such comments to the Attorney General.

(b) If a certificate is issued, the Secretary shall publish a summary of the certification in the FEDERAL REGISTER. If an application is denied, the Secretary shall publish a notice of denial. Certificates will be available for inspection and copying in the International Trade Administration Freedom of Information Records Inspection Facility.

(c) If the Secretary initiates proceedings to revoke or modify a certificate, he shall publish a notice of his final determination in the FEDERAL REGISTER.

(d) If the applicant requests reconsideration of a determination to deny an application, in whole or in part, the Secretary shall publish notice of his final determination in the FEDERAL REGISTER.

#### § 325.7 Amending the certificate.

An application for an amendment to a certificate shall be treated in the same manner as an original application. The application for an amendment shall set forth the proposed amendment(s) and the reasons for them. It shall contain any information specified in § 325.3(b) that is relevant to the determination on the application for an amendment. The effective date of an amendment will be the date on which the application for the amendment was deemed submitted.

#### § 325.8 Expediting the certification process.

(a) *Request for expedited action.* (1) An applicant may be granted expedited action on its application in the discretion of the Secretary and the Attorney General. The Secretary and the Attorney

General will consider such requests in light of an applicant's showing that it has a special need for a prompt decision. A request for expedited action should include an explanation of why expedited action is needed, including a statement of all relevant facts and circumstances, such as bidding deadlines or other circumstances beyond the control of the applicant, that require the applicant to act in less than ninety days and that have a significant impact on the applicant's export trade.

(2) The Secretary shall advise the applicant within ten days after the application is deemed submitted whether it will receive expedited action. The Secretary may grant the request in whole or in part and process the remainder of the application through the normal procedures. Expedited action may be granted only if the Attorney General concurs.

(b) *Time period.* The Secretary shall determine whether to issue a certificate to the applicant within forty-five days after the Secretary granted the request for expedited action, or within a longer period if agreed to by the applicant (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

(c) *Concurrence of the Attorney General.* (1) Not later than ten working days before the date on which a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than five working days before the date on which a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(2) If the Attorney General receives the proposed certificate by the date specified in the preceding paragraph and does not respond within the time

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period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

**§ 325.9 Reconsidering an application that has been denied.**

(a) If the Secretary determines to deny an application in whole or in part, he shall notify the applicant in writing of his decision and the reasons for his determination.

(b) Within thirty days after receiving a notice of denial, the applicant may request the Secretary to reconsider his determination.

(1) The request for reconsideration shall include a written statement setting forth the reasons why the applicant believes the decision should be reconsidered, and any additional information that the applicant considers relevant.

(2) Upon the request of the applicant, the Secretary and the Attorney General will meet informally with the applicant and/or his representative to discuss the applicant's reasons why the determination on the application should be changed.

(c) The Secretary shall consult with the Attorney General with regard to reconsidering an application. The Secretary may modify his original determination only if the Attorney General concurs.

(d) The Secretary shall notify the applicant in writing of his final determination after reconsideration and of his reasons for the determination within thirty days after the request for reconsideration has been received.

**§ 325.10 Modifying or revoking a certificate.**

(a) *Action subject to modification or revocation.* The Secretary shall revoke a certificate, in whole or in part, or modify it, as the Secretary or the Attorney General considers necessary, if:

(1) The export conduct of a person or entity protected by the certificate no longer complies with the requirements set forth in § 325.4(b);

(2) A person or entity protected by the certificate fails to comply with a request for information under paragraph (b) of this section; or

(3) The certificate holder fails to file a complete annual report.

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(b) *Request for information.* If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person or entity protected by a certificate no longer comply with the requirements set forth in § 325.4(b), the Secretary shall request any information that he or the Attorney General considers to be necessary to resolve the matter.

(c) *Proceedings for the revocation or modification of a certificate—(1) Notification letter.* If, after reviewing the relevant information in their possession, it appears to the Secretary or the Attorney General that a certificate should be revoked or modified for any of the reasons set forth in paragraph (a) above, the Secretary shall so notify the certificate holder in writing. The notification shall be sent by registered or certified mail to the address specified in the certificate. The notification shall include a detailed statement of the facts, conduct, or circumstances which may warrant the revocation or modification of the certificate.

(2) *Answer.* The certificate holder shall respond to the notification letter within thirty days after receiving it, unless the Secretary, in his discretion, grants a thirty day extension for good cause shown. The certificate holder shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in the notification letter are not true, or if they are true, why they do not warrant the revoking or modifying of the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter.

(3) *Resolution of factual disputes.* Where material facts are in dispute, the Secretary and the Attorney General shall, upon request, meet informally with the certificate holder. The Secretary or the Attorney General may require the certificate holder to provide any documents or information that are necessary to support its contentions. After reviewing the statements of the certificate holder and the documents or information that the certificate holder has submitted, and upon

considering other relevant documents or information in his possession, the Secretary shall make proposed findings of the factual matters in dispute. The Attorney General is not bound by the proposed findings.

(4) *Final determination.* The Secretary and the Attorney General shall review the notification letter and the certificate holder's answer to it, the proposed factual findings made under paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, after review, the Secretary or the Attorney General determines that the export conduct of a person or entity protected by the certificate no longer complies with the standards set forth in §325.4(b), the Secretary shall revoke or modify the certificate as appropriate. If the Secretary or the Attorney General determines that the certificate holder has failed to comply with the request for information under paragraph (b) of this section, or has failed to file a complete annual report, and that the failure to comply or file should result in revocation of modification, the Secretary shall revoke or modify the certificate as appropriate. The determination will be final and will be issued to the certificate holder in writing. The notice to the certificate holder shall include a statement of the circumstances underlying and the reasons in support of the determination. If the Secretary determines to revoke or modify the certificate, the decision shall specify the effective date of the revocation or modification; this date must be at least thirty days but not more than ninety days after the Secretary notifies the certificate holder of his determination. The Secretary shall publish notice in the FEDERAL REGISTER of a revocation or modification or a decision not to revoke or modify.

(d) *Investigative information.* In proceedings under this section, the Attorney General shall make available to the Secretary any information that has been obtained in response to Civil Investigative Demands issued under section 304(b)(3) of the Act. Unless prohibited by law, the Attorney General and the Secretary shall also make available to each other any other informa-

tion which each is relying upon under these proceedings.

#### § 325.11 Judicial review.

(a) *Review of certain determinations.* (1) Any person aggrieved by a final determination of the Secretary under §325.5, §325.7, §325.9, or §325.10 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United States to set aside the determination on the ground that it is erroneous. If a certificate is denied, the applicant may bring suit within thirty days after the notice of denial is published in the FEDERAL REGISTER, or, if the applicant seeks reconsideration, within thirty days after the Secretary publishes in the FEDERAL REGISTER notice of his determination after reconsideration.

(b) For purposes of judicial review, determinations of the Secretary are final when notice is published in the FEDERAL REGISTER.

(c) *Record for judicial review.* For purposes of judicial review, the record shall include all information presented to or obtained by the Secretary which had a bearing on the determination, the determination itself, the supporting statement setting forth the reasons for the determination, and the Attorney General's response to the Secretary indicating concurrence or nonconcurrence.

(d) *Limitation of judicial review.* Except as provided in paragraph (a) of this section, no agency action taken under the Act shall be subject to judicial review.

#### § 325.12 Returning the applicant's documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, the applicant may request the return of all copies of the documents submitted by the applicant in connection with the application to the Department of Commerce or the Department of Justice. The applicant shall submit this request in writing to both the Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return the documents to the applicant within thirty days after they receive the applicant's request.