

## International Trade Admin., Commerce

## § 325.2

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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.

### § 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—