

a program to encourage and assist the operation of other export intermediaries, including existing and newly formed export management companies.

(Pub. L. 97-290, title I, § 104, Oct. 8, 1982, 96 Stat. 1235; Pub. L. 100-418, title II, § 2310, Aug. 23, 1988, 102 Stat. 1346.)

#### AMENDMENTS

1988—Pub. L. 100-418 inserted requirement that the office establish a program to encourage and assist operation of other export intermediaries, including existing and newly formed export management companies.

#### SUBCHAPTER II—EXPORT TRADE CERTIFICATES OF REVIEW

#### § 4011. Export trade promotion duties of Secretary of Commerce

To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

(Pub. L. 97-290, title III, § 301, Oct. 8, 1982, 96 Stat. 1240.)

#### EFFECTIVE DATE

Pub. L. 97-290, title III, § 312, Oct. 8, 1982, 96 Stat. 1245, provided that:

“(a) Except as provided in subsection (b), this title [enacting this subchapter] shall take effect on the date of the enactment of this Act [Oct. 8, 1982].

“(b) Section 302 and section 303 [enacting sections 4012 and 4013 of this title] shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310 [enacting section 4020 of this title].”

#### REPORT ON EXPORT TRADING COMPANIES

Pub. L. 100-418, title II, § 2311, Aug. 23, 1988, 102 Stat. 1346, directed Secretary of Commerce to submit a report, not later than 18 months after Aug. 23, 1988, to Committee on Banking, Housing, and Urban Affairs of Senate, and to Committee on Banking, Finance and Urban Affairs, Committee on Foreign Affairs, and Committee on the Judiciary of House of Representatives, on activities of Department of Commerce to promote and encourage formation of new and operation of existing and new export promotion intermediaries, including export management companies, export trade associations, bank export trading companies, and export trading companies, with report to include a survey of activities of export management companies, export trade associations, and those bank export trading companies and export trading companies established pursuant to amendments made by title II of the Export Trading Company Act of 1982 and pursuant to title III of that Act, but not to contain any information subject to the protections from disclosure provided in that Act.

#### FEDERAL COAL EXPORT COMMISSION

Pub. L. 99-83, title XIII, § 1304, Aug. 8, 1985, 99 Stat. 282, provided for establishment, membership, etc., of Federal Coal Export Commission, required Commission to convene at least four times a year for consultation on activities leading to increased cooperation among entities involved in United States coal exports, with goal of expanding the United States share of international market, specified activities of Commission, including examination of potential for small- and medium-sized companies to enter export coal trade through exporting trading companies, directed Commission to report its finding and recommendations to President and Congress within two years after its first meeting, and terminated Commission upon submission of its report.

#### § 4012. Application for issuance of certificate of review

##### (a) Written form; limitation to export trade; compliance with regulations

To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 4020 of this title.

##### (b) Publication of notice of application; transmittal to Attorney General

(1) Within ten days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

(Pub. L. 97-290, title III, § 302, Oct. 8, 1982, 96 Stat. 1240.)

#### EFFECTIVE DATE

Section effective 90 days after effective date of rules and regulations first promulgated under section 4020 of this title, see section 312(b) of Pub. L. 97-290 set out as a note under section 4011 of this title.

#### § 4013. Issuance of certificate

##### (a) Requirements

A certificate of review shall be issued to any applicant that establishes that its specified 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 goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors 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.

**(b) Time for determination; specification in certificate**

Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

- (1) the export trade, export trade activities, and methods of operation to which the certificate applies,
- (2) the person to whom the certificate of review is issued, and
- (3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

**(c) Expedited action**

If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 4012(b)(1) of this title.

**(d) Notification of denial; request for reconsideration**

(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

**(e) Return of documents upon request after denial**

If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

**(f) Fraudulent procurement of certificate**

A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

(Pub. L. 97-290, title III, §303, Oct. 8, 1982, 96 Stat. 1241.)

## EFFECTIVE DATE

Section effective 90 days after effective date of rules and regulations first promulgated under section 4020 of

this title, see section 312(b) of Pub. L. 97-290 set out as a note under section 4011 of this title.

**§ 4014. Reporting requirement; amendment of certificate; revocation****(a) Report of changes in matters specified; application to amend; treatment as application for issuance**

(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

**(b) Request for compliance information; failure to provide; notice of noncompliance; revocation or modification; antitrust investigation; no civil investigative demand**

(1) 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 holding a certificate of review no longer comply with the standards of section 4013(a) of this title, the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 4013(a) of this title, or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 4013(a) of this title.

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 1312 of this title, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.