

agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in §21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

APPENDIX A TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES

NOTE: Failure to list a type of Federal assistance in appendix A shall not mean, if title VI is otherwise applicable, that a program is not covered.

1. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the U.S. Coast Guard (14 U.S.C. 93 (n) and (o)).
2. Utilization of U.S. Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).
3. Use of U.S. Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and the Commonwealth of Puerto Rico (14 U.S.C. 148).
4. Use of obsolete and other U.S. Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the U.S. Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).
5. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821–832).
6. U.S. Coast Guard Boating Safety Financial Assistance program.
7. U.S. Coast Guard State Access to Oil Spill Liability Trust Fund.
8. U.S. Coast Guard Bridge Alteration.
9. Use of Customs personnel and facilities by any State, territory, possession, or political subdivision thereof.
10. Use of Customs personnel for duty in connection with instruction and training by the States, territories and the Commonwealth of Puerto Rico.

11. Grants to educational institutions, associations, States, or other entities for research, analysis, or programs or strategies relating to trade issues.

APPENDIX B TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

NOTE: Failure to list a type of Federal assistance in appendix B shall not mean, if title VI is otherwise applicable, that a program is not covered.

[Reserved]

PART 25—REGULATIONS TO SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES

Sec.

- 25.1 Purpose.
- 25.2 Definitions.
- 25.3 Delegation.
- 25.4 Designation of qualified anti-terrorism technologies.
- 25.5 Obligations of seller.
- 25.6 Procedures for designation of qualified anti-terrorism technologies.
- 25.7 Litigation management.
- 25.8 Government contractor Defense.
- 25.9 Procedures for certification of approved products for Homeland Security.
- 25.10 Confidentiality and protection of intellectual property.

AUTHORITY: Subtitle G, of Title VIII, Public Law 107–296, 116 Stat. 2238 (6 U.S.C. 441–444).

SOURCE: 71 FR 33159, June 8, 2006, unless otherwise noted.

§ 25.1 Purpose.

This part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, sections 441–444 of title 6, United States Code (the “SAFETY Act” or “the Act”).

§ 25.2 Definitions.

Act of Terrorism—The term “Act of Terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary:

- (1) Is unlawful;
- (2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or

a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Certification—The term “Certification” means (unless the context requires otherwise) the certification issued pursuant to section 25.9 that a Qualified Anti-Terrorism Technology for which a Designation has been issued will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended.

Contractor—The term “contractor” means any person, firm, or other entity with whom or with which a Seller has a contract or contractual arrangement relating to the manufacture, sale, use, or operation of anti-terrorism Technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, or effectiveness of such Technology, or the conformity of such Technology to the Seller’s specifications.

Designation—The term “Designation” means the designation of a Qualified Anti-Terrorism Technology under the SAFETY Act issued by the Under Secretary under authority delegated to the Under Secretary by the Secretary of Homeland Security.

Loss—The term “loss” means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

Noneconomic damages—The term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages,

injury to reputation, and any other nonpecuniary losses.

Office of SAFETY Act Implementation—The term “Office of SAFETY Act Implementation” or “OSAI” means the office within the Department of Homeland Security’s Directorate of Science and Technology that assists with the implementation of the SAFETY Act. The responsibilities of the Office of SAFETY Act Implementation may include, without limitation, preparing the SAFETY Act Application Kit, receiving and facilitating the evaluation of applications, managing the SAFETY Act Web site and otherwise providing the public with information regarding the SAFETY Act and the application process.

Physical harm—The term “physical harm” as used in the Act and this part means any physical injury to the body, including an injury that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

Qualified Anti-Terrorism Technology or QATT—The term “Qualified Anti-Terrorism Technology” or “QATT” means any Technology (including information technology) designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a Designation has been issued pursuant to this part.

SAFETY Act or Act—The term “SAFETY Act” or “Act” means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, sections 441–444 of title 6, United States Code.

SAFETY Act Application Kit —The term “SAFETY Act Application Kit” means the Application Kit containing the instructions and forms necessary to apply for Designation or Certification. The SAFETY Act Application Kit shall be published at <http://www.safetyact.gov> or made available in hard copy upon written request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

SAFETY Act Confidential Information—Any and all information and data voluntarily submitted to the Department under this part (including Applications, Pre-Applications, other forms, supporting documents and other materials relating to any of the foregoing, and responses to requests for additional information), including, but not limited to, inventions, devices, Technology, know-how, designs, copyrighted information, trade secrets, confidential business information, analyses, test and evaluation results, manuals, videotapes, contracts, letters, facsimile transmissions, electronic mail and other correspondence, financial information and projections, actuarial calculations, liability estimates, insurance quotations, and business and marketing plans. Notwithstanding the foregoing, “SAFETY Act Confidential Information” shall not include any information or data that is in the public domain or becomes part of the public domain by any means other than the violation of this section.

Secretary—The term “Secretary” means the Secretary of Homeland Security as established by section 102 of the Homeland Security Act of 2002.

Seller—The term “Seller” means any person, firm, or other entity that sells or otherwise provides Qualified Anti-Terrorism Technology to any customer(s) and to whom or to which (as appropriate) a Designation and/or Certification has been issued under this Part (unless the context requires otherwise).

Technology—The term “Technology” means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a Technology under this part.

Under Secretary—The term “Under Secretary” means the Under Secretary for Science and Technology of the Department of Homeland Security.

§ 25.3 Delegation.

All of the Secretary’s responsibilities, powers, and functions under the SAFETY Act, except the authority to declare that an act is an Act of Terrorism for purposes of section 865(2) of the SAFETY Act, may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security or the Under Secretary’s designees.

§ 25.4 Designation of qualified anti-terrorism technologies.

(a) *General.* The Under Secretary may Designate as a Qualified Anti-Terrorism Technology for purposes of the protections under the system of litigation and risk management set forth in sections 441–444 of Title 6, United States Code, any qualifying Technology designed, developed, modified, provided or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered.* (1) In determining whether to issue the Designation under paragraph (a) of this section, the Under Secretary may exercise discretion and judgment in considering the following criteria and evaluating the Technology:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the Technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism Technology.

(iv) Substantial likelihood that such anti-terrorism Technology will not be deployed unless protections under the system of risk management provided under sections 441–444 of title 6, United States Code, are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism Technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the Technology to substantially reduce risks of harm.