

insurance proceeds that would be available to satisfy third party claims arising out of, relating to, or resulting from an Act of Terrorism;

(6) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's Qualified Anti-Terrorism Technology deployed in defense against, or response to, or recovery from an Act of Terrorism;

(7) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-terrorism Technologies deployed in defense against, response to, or recovery from an Act of Terrorism; and

(8) Any limitations on such liability insurance.

(g) *Under Secretary's Certification.* For each Qualified Anti-Terrorism Technology, the Under Secretary shall certify the amount of liability insurance the Seller is required to carry pursuant to section 443(a) of title 6, United States Code, and paragraphs (a), (b), and (c) of this section. The Under Secretary shall include the insurance certification under this section as a part of the applicable Designation. The insurance certification may specify a period of time for which such insurance certification will apply. The Seller of a Qualified Anti-Terrorism Technology may at any time petition the Under Secretary for a revision of the insurance certification under this section, and the Under Secretary may revise such insurance certification in response to such a petition. The Under Secretary may at any time request information from the Seller regarding the insurance carried by the Seller or the amount of insurance available to the Seller.

(h) *Seller's Continuing Obligations.* Within 30 days after the Under Secretary's insurance certification required by paragraph (g) of this section, the Seller shall certify to the Under

Secretary in writing that the Seller has obtained the required insurance. Within 30 days of each anniversary of the issuance of a Designation or at any other time as he may determine, the Under Secretary may require, by written notice to the Seller, that the Seller certify to the Under Secretary in writing that the Seller has maintained the required insurance. The Under Secretary may terminate a Designation if the Seller fails to provide any of the insurance certifications required by this paragraph (h) or provides a false certification.

§ 25.6 Procedures for designation of qualified anti-terrorism technologies.

(a) *Application Procedure.* Any person, firm or other entity seeking a Designation shall submit an application to the Under Secretary or such other official as may be named from time to time by the Under Secretary. Such applications shall be submitted according to the procedures set forth in and using the appropriate forms contained in the SAFETY Act Application Kit prescribed by the Under Secretary, which shall be made available at <http://www.safetyact.gov> and by mail upon written request to: Directorate of Science and Technology, SAFETY Act/ room 4320, Department of Homeland Security, Washington, DC 20528. The burden is on the applicant to make timely submission of all relevant data requested in the SAFETY Act Application Kit to substantiate an application for Designation. An applicant may withdraw a submitted application at any time and for any reason by making a written request for withdrawal with the Department. Withdrawal of a SAFETY Act application shall have no prejudicial effect on any other application.

(b) *Initial Notification.* Within 30 days after receipt of an application for a Designation, the Under Secretary his designee shall notify the applicant in writing that:

(1) The application is complete and will be reviewed and evaluated, or

(2) That the application is incomplete, in which case the missing or incomplete parts will be specified.

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(c) *Review Process.* (1) The Under Secretary or his designee will review each complete application and any included supporting materials. In performing this function, the Under Secretary or his designee may but is not required to:

- (i) Request additional information from the Seller;
- (ii) Meet with representatives of the Seller;
- (iii) Consult with, and rely upon the expertise of, any other Federal or non-Federal entity;
- (iv) Perform studies or analyses of the subject Technology or the insurance market for such Technology; and
- (v) Seek information from insurers regarding the availability of insurance for such Technology.

(2) For Technologies with which a Federal, State, or local government agency already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon such prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the Technology that he deems appropriate and that are available or can be feasibly conducted or obtained, including test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, in order to assess the effectiveness of the Technology or the capability of the Technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include, without limitation:

- (i) Public source studies;
- (ii) Classified and otherwise confidential studies;
- (iii) Studies, tests, or other performance records or data provided by or available to the producer of the specific Technology; and
- (iv) Proprietary studies that are available to the Under Secretary.

(3) In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular Technology, the Under Secretary will bring to bear his expertise concerning the protection of the security of the United States and

will consider the urgency of the need for the Technology.

(d) *Action by the Under Secretary.* Within 90 days of notification to the Seller that an application for a Designation is complete in accordance with paragraph (b)(1) of this section, the Under Secretary shall take one of the following actions:

- (1) Approve the application and issue an appropriate Designation to the applicant for the Technology, which shall include the insurance certification required by § 25.5(h) of this Part;
- (2) Notify the applicant in writing that the Technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or
- (3) Deny the application, and notify the applicant in writing of such decision. The Under Secretary may extend the 90-day time period for up to 45 days upon notice to the Seller. The Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(e) *Content of Designation.* (1) A Designation shall:

- (i) Describe the Qualified Anti-Terrorism Technology (in such detail as the Under Secretary deems to be appropriate);
- (ii) Identify the Seller(s) of the Qualified Anti-Terrorism Technology;
- (iii) Specify the earliest date of sale of the Qualified Anti-Terrorism Technology to which the Designation shall apply (which shall be determined by the Under Secretary in his discretion, and may be prior to, but shall not be later than, the effective date of the Designation);
- (iv) Set forth the insurance certification required by § 25.5(g); and
- (v) To the extent practicable, include such standards, specifications, requirements, performance criteria, limitations, or other information as the Department in its sole and unreviewable discretion may deem appropriate.

(2) The Designation may, but need not, specify other entities that are required to be covered by the liability insurance required to be purchased by

the Seller. The failure to specify a covered person, firm, or other entity in a Designation will not preclude the application or applicability of the Act's protections to that person, firm, or other entity.

(f) *Term of Designation; Renewal.* A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary) commencing on the date of issuance, and the protections conferred by the Designation shall continue in full force and effect indefinitely to all sales of Qualified Anti-Terrorism Technologies covered by the Designation. At any time within two years prior to the expiration of the term of the Designation, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewal available at <http://www.safetyact.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(g) *Government Procurements—(1) Overview.* The Under Secretary may coordinate the review of a Technology for SAFETY Act purposes in connection with a Federal, State, or local government agency procurement of an anti-terrorism Technology in any manner he deems appropriate consistent with the Act and other applicable law. A determination by the Under Secretary to issue a Designation, or not to issue a Designation for a particular Technology as a QATT is not a determination that the Technology meets, or fails to meet, the requirements of any solicitation issued by any Federal government customer or non-Federal government customer. Determinations by the Under Secretary with respect to whether to issue a Designation for Technologies submitted for his review shall be based on the factors identified in § 25.4(b).

(2) *Procedure.* Any Federal, State, or local government agency that engages in or is planning to engage in the procurement of a Technology that potentially qualifies as a Qualified Anti-terrorism Technology, through the use of a solicitation of proposals or otherwise, may request that the Under Secretary issue a notice stating that the Tech-

nology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a Qualified Anti-Terrorism Technology (a "Pre-Qualification Designation Notice"). The Pre-Qualification Designation Notice will provide that the vendor(s) chosen to provide the Technology (the "Selected Vendor(s)"), upon submitting an application for SAFETY Act Designation will: Receive expedited review of their application for Designation; either affirmatively or presumptively (as the case may be) be deemed to have satisfied the technical criteria for SAFETY Act Designation with respect to the Technology identified in the Pre-Qualification Designation Notice; and be authorized to submit a streamlined application as set forth in the Pre-Qualification Designation Notice. In instances in which the subject procurement involves Technology with respect to which a Block Designation or Block Certification has been issued, the Department may determine that the vendor providing such Technology will affirmatively receive Designation or Certification with respect to such Technology, provided the vendor satisfy each other applicable requirement for Designation or Certification. Government agencies seeking a Pre-Qualification Designation Notice shall submit a written request using the "Procurement Pre-Qualification Request" form prescribed by the Under Secretary and made available at <http://www.safetyact.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(3) *Actions.* Within 60 days after the receipt of a complete Procurement Pre-Qualification Request, the Under Secretary shall take one of the following actions:

(i) Approve the Procurement Pre-Qualification Request and issue an appropriate Pre-Qualification Designation Notice to the requesting agency that it may include in the government contract or in the solicitation materials, as appropriate; or

(ii) Notify the requesting agency in writing that the relevant procurement

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is potentially eligible for a Pre-Qualification Designation Notice, but that additional information is needed before a decision may be reached; or

(iii) Deny the Procurement Pre-Qualification Request and notify the requesting agency in writing of such decision, including the reasons for such denial.

(4) *Contents of Notice.* A Pre-Qualification Designation Notice shall contain, at a minimum, the following:

(i) A detailed description of and detailed specifications for the Technology to which the Pre-Qualification Designation Notice applies, which may incorporate by reference all or part of the procurement solicitation documents issued or to be issued by the requesting agency;

(ii) A statement that the Technology to which the Pre-Qualification Designation Notice applies satisfies the technical criteria to be deemed a Qualified Anti-Terrorism Technology and that the Selected Vendor(s) may presumptively or will qualify for the issuance of a Designation for such Technology upon compliance with the terms and conditions set forth in such Pre-Qualification Designation Notice and the approval of the streamlined application;

(iii) A list of the portions of the application referenced in § 25.6(a) that the Selected Vendor(s) must complete and submit to the Department in order to obtain Designation and the appropriate period of time for such submission;

(iv) The period of time within which the Under Secretary will take action upon such submission;

(v) The date of expiration of such Pre-Qualification Designation Notice; and

(vi) Any other terms or conditions that the Under Secretary deems to be appropriate in his discretion.

(5) *Review of Completed Applications.* The application for Designation from the Selected Vendor(s) shall be considered, processed, and acted upon in accordance with the procedures set forth in § 25.6 (which shall be deemed to be modified by the terms and conditions set forth in the applicable Pre-Qualification Designation Notice). However, the review and evaluation of the Technology to be procured from the Se-

lected Vendor(s), in relation to the criteria set forth in § 25.4(b), shall ordinarily consist of a validation that that the Technology complies with the detailed description of and detailed specifications for the Technology set forth in the applicable Pre-Qualification Designation Notice.

(h) *Block Designations.* (1) From time to time, the Under Secretary, in response to an application submitted pursuant to § 25.6(a) or upon his own initiative, may issue a Designation that is applicable to any person, firm, or other entity that is a qualified Seller of the QATT described in such Designation (a “Block Designation”). A Block Designation will be issued only for Technology that relies on established performance standards or defined technical characteristics. All Block Designations shall be published by the Department within ten days after the issuance thereof at <http://www.safetyact.gov>, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Any person, firm, or other entity that desires to qualify as a Seller of a QATT that has received a Block Designation shall complete only such portions of the application referenced in § 25.6(a) as are specified in such Block Designation and shall submit an application to the Department in accordance with § 25.6(a) and the terms of the Block Designation. Applicants seeking to be qualified Sellers of a QATT pursuant to a Block Designation will receive expedited review of their applications and shall not be required to provide information with respect to the technical merits of the QATT that has received Block Designation. Within 60 days (or such other period of time as may be specified in the applicable Block Designation) after the receipt by the Department of a complete application, the Under Secretary shall take one of the following actions:

(i) Approve the application and notify the applicant in writing of such approval, which notification shall include the certification required by § 25.5(g); or

(ii) Deny the application, and notify the applicant in writing of such decision, including the reasons for such denial.

(2) If the application is approved, commencing on the date of such approval the applicant shall be deemed to be a Seller under the applicable Block Designation for all purposes under the SAFETY Act, this part, and such Block Designation. A Block Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary in his discretion) commencing on the date of issuance, and may be renewed or extended by the Under Secretary at his own initiative or in response to an application for renewal submitted by a qualified Seller under such Block Designation in accordance with § 25.6(h). Except as otherwise specifically provided in this paragraph, a Block Designation shall be deemed to be a Designation for all purposes under the SAFETY Act and this part.

(i) *Other Bases for Expedited Review of Applications.* The Under Secretary may identify other categories or types of Technologies for which expedited processing may be granted. For example, the Under Secretary may conduct expedited processing for applications addressing a particular threat or for particular types of anti-terrorism Technologies. The Under Secretary shall notify the public of any such opportunities for expedited processing by publishing such notice in the FEDERAL REGISTER.

(j) *Transfer of Designation.* Except as may be restricted by the terms and conditions of a Designation, any Designation may be transferred and assigned to any other person, firm, or other entity to which the Seller transfers and assigns all right, title, and interest in and to the Technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the Technology, to any person, firm, or other entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until the Under Secretary is notified in writing of the transfer using

the “Application for Transfer of Designation” form issued by the Under Secretary (the Under Secretary shall make this application form available at <http://www.safetyact.gov> and by mail by written request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528). Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable Technology for all purposes under the SAFETY Act, this part, and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(k) *Application of Designation to Licensees.* Except as may be restricted by the terms and conditions of a Designation, any Designation shall apply to any other person, firm, or other entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture, use, or sell the Technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Qualified Anti-terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at <http://www.safetyact.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(l) *Significant Modification of Qualified Anti-terrorism Technologies.* (1) The Department recognizes that Qualified

Anti-Terrorism Technologies may routinely undergo changes or modifications in their manufacturing, materials, installation, implementation, operating processes, component assembly, or in other respects from time to time. When a Seller makes routine changes or modifications to a Qualified Anti-Terrorism Technology, such that the QATT remains within the scope of the description set forth in the applicable Designation or Certification, the Seller shall not be required to provide notice under this subsection, and the changes or modifications shall not adversely affect the force or effect of the Seller's QATT Designation or Certification.

(2) A Seller shall promptly notify the Department and provide details of any change or modification to a QATT that causes the QATT no longer to be within the scope of the Designation or Certification by submitting to the Department a completed "Notice of Modification to Qualified Anti-Terrorism Technology" form issued by the Under Secretary (a "Modification Notice"). A Seller is not required to notify the Department of any change or modification of a particular Qualified Anti-Terrorism Technology that is made post-sale by a purchaser unless the Seller has consented expressly to the modification. The Under Secretary shall make an appropriate form available at <http://www.safetyact.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. The Department will promptly acknowledge receipt of a Modification Notice by providing the relevant Seller with written notice to that effect. Within 60 days of the receipt of a Modification Notice, the Under Secretary may, in his sole and unreviewable discretion:

(i) Inform the submitting Seller that the QATT as changed or modified is consistent with, and is not outside the scope of, the Seller's Designation or Certification;

(ii) Issue to the Seller a modified Designation or Certification incorporating some or all of the notified changes or modifications;

(iii) Seek further information regarding the changes or modifications and

temporarily suspend the 60-day period of review;

(iv) Inform the submitting Seller that the changes or modifications might cause the QATT as changed or modified to be outside the scope of the Seller's Designation or Certification, and require further review and consideration by the Department;

(v) Inform the submitting Seller that the QATT as changed or modified is outside the scope of the subject Seller's Designation or Certification, and require that the QATT be brought back into conformance with the Seller's Designation or Certification; or

(vi) If the Seller fails to bring the subject QATT into conformance in accordance with the Under Secretary's direction pursuant to paragraph (1)(2)(v) of this section, issue a public notice stating that the QATT as changed or modified is outside the scope of the submitting Seller's Designation or Certification and, consequentially, that such Designation or Certification is not applicable to the QATT as changed or modified. If the Under Secretary does not take one or more of such actions within the 60-day period following the Department's receipt of a Seller's Modification Notice, the changes or modifications identified in the Modification Notice will be deemed to be approved by the Under Secretary and the QATT, as changed or modified, will be conclusively established to be within the scope of the description of the QATT in the Seller's Designation or Certification.

(3) Notwithstanding anything to the contrary herein, a Seller's original QATT Designation or Certification will continue in full force and effect in accordance with its terms unless modified, suspended, or terminated by the Under Secretary in his discretion, including during the pendency of the review of the Seller's Modification Notice. In no event will any SAFETY Act Designation or Certification terminate automatically or retroactively under this section. A Seller is not required to notify the Under Secretary of any change or modification that is made post-sale by a purchaser or end-user of the QATT without the Seller's consent, but the Under Secretary may, in appropriate circumstances, require an end-

user to provide periodic reports on modifications or permit inspections or audits.

§ 25.7 Litigation management.

(a) Liability for all claims against a Seller arising out of, relating to, or resulting from an Act of Terrorism when such Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act and such claims result or may result in loss to the Seller shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section or as specified in the applicable Designation.

(b) In addition, in any action for damages brought under section 442 of Title 6, United States Code:

(1) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment;

(2) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm; and

(3) Any recovery by a plaintiff shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such Acts of Terrorism that result or may result in loss to the Seller.

(c) Without prejudice to the authority of the Under Secretary to terminate a Designation pursuant to paragraph (h) of § 25.6, the liability limitations and reductions set forth in this section shall apply in perpetuity to all sales or deployments of a Qualified Anti-Terrorism Technology in defense against, response to, or recovery from any Act of Terrorism that occurs on or after the effective date of the Designation applicable to such Qualified Anti-Terrorism Technology, regardless of whether any liability insurance coverage required to be obtained by the Seller is actually obtained or main-

tained or not, provided that the sale of such Qualified Anti-Terrorism Technology was consummated by the Seller on or after the earliest date of sale of such Qualified Anti-Terrorism Technology specified in such Designation and prior to the earlier of the expiration or termination of such Designation.

(d) There shall exist only one cause of action for loss of property, personal injury, or death for performance or non-performance of the Seller's Qualified Anti-Terrorism Technology in relation to an Act of Terrorism. Such cause of action may be brought only against the Seller of the Qualified Anti-Terrorism Technology and may not be brought against the buyers, the buyers' contractors, or downstream users of the Technology, the Seller's suppliers or contractors, or any other person or entity. In addition, such cause of action must be brought in the appropriate district court of the United States.

§ 25.8 Government contractor Defense.

(a) *Criteria for Certification.* The Under Secretary may issue a Certification for a Qualified Anti-Terrorism Technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to issue such Certification, the Under Secretary or his designee shall conduct a comprehensive review of the design of such Technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such Qualified Anti-Terrorism Technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person, firm, or entity, and may consider test results produced by an independent laboratory or other person,