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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

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

SOURCE: 68 FR 59698, Oct. 16, 2003, unless otherwise noted.

§ 25.1 Purpose.

This part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107–296 (''the SAFETY Act'' or ''the Act'').

§ 25.2 Delegation.

All of the Secretary's responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security (''the Under Secretary'') or the Under Secretary's designees.

§ 25.3 Designation of qualified anti-terrorism technologies.

(a) *General.* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107–296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, 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.* In determining whether to grant the designation under paragraph (a) (a ''Designation''), the Under Secretary may exercise discretion and judgment in interpreting and weighting the following criteria in each case:

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

(2) Availability of the technology for immediate deployment in public and private settings.

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

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under 6 U.S.C. 441–444 are extended.

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

(6) 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.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(8) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland security of the United States.

(c) *Use of standards.* From time to time the Under Secretary may develop, issue, revise, and adopt technical standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at *http://www.dhs.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. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a) of this section; in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of substantial equivalence.* In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies (''predicate technologies'') that have been previously designated as ''qualified anti-terrorism technologies'' under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if:

(1) It has the same intended use as the predicate technology; and

(2) It has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and depth of review.* Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. 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 that 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 in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

(1) Public source studies;

(2) Classified and otherwise confidential studies;

(3) Studies, tests, or other performance records or data provided by or available to the producer of the specific technology; and

(4) Proprietary studies that are available to the Under Secretary.

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 or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation.* A Designation shall specify the technology, the Seller(s) of the technology, and the earliest date of sale of the technology to which the Designation shall apply (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, the effective date of the Designation). The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the Under Secretary's certification required by §25.4(h). The Designation may also include such other

specifications as the Under Secretary may deem to be appropriate, including, but not limited to, specific applications of the technology, materials or processes required to be used in producing or using the technology, restrictions on transfer or licensing, and training and instructions required to be provided to persons involved in the deployment of the technology. Failure to specify a covered person or entity in a Designation will not preclude application of the Act's protections to that person or entity.

(g) *Government procurements.* The Under Secretary may coordinate a SAFETY Act review in connection with a Federal, state, or local government agency procurement of an anti-terrorism technology in any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-application consultations.* To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. Such potential applicants may request such consultations through the Pre-Application process set forth in the SAFETY Act Application Kit. The confidentiality provisions in § 25.8 shall be applicable to such consultations.

§ 25.4 Obligations of seller.

(a) *Liability insurance required.* The Seller shall obtain liability insurance of such types and in such amounts as shall be required in the applicable Designation, which shall be the amounts and types certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. Notwithstanding the foregoing, if the Under Secretary determines that insurance in appropriate amounts or of appropriate types is not available for a particular technology, the Under Secretary may authorize a Seller to self-insure and prescribe the amount and terms of the Seller's liability in the applicable Designation, which amount and terms shall be such as will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary may request at any time (before or after the insurance certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would:

(1) Assist in determining the amount of liability insurance required, or

(2) Show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount.* For the total claims related to one act of terrorism, in determining the required amounts and types of liability insurance that the Seller will be required to obtain, the Under Secretary shall not require the Seller to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that—notwithstanding the level of risk exposure for a particular technology, or group of technologies—the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

(1) The particular technology at issue;

(2) The amount of liability insurance the Seller maintained prior to application;

(3) The amount of liability insurance maintained by the Seller for other