

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 Delegation.

25.3 Designation of qualified anti-terrorism technologies.

25.4 Obligations of seller.

25.5 Procedures for designation of qualified anti-terrorism technologies.

25.6 Government contractor defense.

25.7 Procedures for certification of approved products for homeland security.

25.8 Confidentiality and protection of intellectual property.

25.9 Definitions.

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

§ 25.4

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

6 CFR Ch. I (1–1–05 Edition)

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

technologies or for the Seller's business as a whole;

(4) The amount of liability insurance typically maintained by sellers of comparable technologies;

(5) Information regarding the amount of liability insurance offered on the world market;

(6) Data and history regarding mass casualty losses;

(7) The intended use of the technology;

(8) The possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(9) In the case of a Seller seeking approval to self-insure, the factors described in 48 CFR 28.308(d).

(c) *Scope of coverage.* Liability insurance required to be obtained (or self-insurance required) pursuant to this section shall, in addition to the Seller, protect the following, 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:

(1) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(2) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third party claims.* Any liability insurance required to be obtained (or self-insurance required) pursuant to this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal waiver of claims.* The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use, or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees result-

ing from an activity 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 Seller has used diligent efforts in good faith to obtain all required reciprocal waivers, then obtaining such waivers shall not be a condition precedent or subsequent for, nor shall the failure to obtain one or more of such waivers adversely affect, the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification. Nothing in this paragraph (e) shall be interpreted to render the failure to obtain one or more of such waivers a condition precedent or subsequent for the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification.

(f) *Extent of liability.* 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 in accordance with the applicable Designation and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, 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, in the case of a Seller authorized by the Under Secretary to self-insure pursuant to this Section, shall not be in an amount greater than the liability limit prescribed by the Under Secretary in the applicable Designation.

(1) In addition, in any action brought under Section 863 of the Act for damages:

(i) 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,

(ii) 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,

§ 25.4

6 CFR Ch. I (1–1–05 Edition)

and no plaintiff may recover non-economic damages unless the plaintiff suffered physical harm, and

(iii) 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.

(2) Without prejudice to the authority of the Under Secretary to terminate a Designation pursuant to paragraph (h) of this Section, such liability limitations and reductions shall apply in perpetuity to all deployments of a qualified anti-terrorism technology that occur on or after the effective date of the Designation applicable to such technology in defense against, response to, or recovery from any act of terrorism, regardless of whether any liability insurance coverage required to be obtained by the Seller is actually maintained or not, provided that the sale of such technology was consummated by the Seller on or after the earliest date of sale of such technology specified in such Designation (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Designation.

(g) *Information to be submitted by the Seller.* As part of any application for a Designation, the Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's qualified anti-terrorism technology has been deployed in defense against, response to, or recovery from such act, including:

(1) Names of insurance companies, policy numbers, and expiration dates;

(2) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);

(3) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;

(4) Deductibles or self-insured retentions, if any, that are applicable;

(5) Any relevant exclusions from coverage under such policies;

(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 terror;

(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;

(8) Any limitations on such liability insurance; and

(9) In the case of a Seller seeking approval to self-insure, all of the information described in 48 CFR 28.308(a)(1) through (10).

(h) *Under Secretary's certification.* For each qualified anti-terrorism technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a qualified anti-terrorism technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

(i) *Seller's continuing obligations.* Within 30 days after the Under Secretary's certification required by paragraph (h), and within 30 days after each subsequent anniversary of the issuance of a Designation, the Seller shall certify to the Under Secretary that the Seller has maintained the insurance required by such certification. The Under

Secretary may terminate a Designation if the Seller fails to provide the certification required by this paragraph or provides a false certification. The Under Secretary may also consider such failure to provide the certification or provision of a false certification when reviewing future applications from the same Seller. The Seller must also notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any qualified anti-terrorism technology.

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

(a) *Application procedure.* Any Seller seeking a designation shall submit information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology (“the Assistant Secretary”), or such other official of such Directorate as may be designated from time to time by the Under Secretary. The Under Secretary shall make application forms available at <http://www.dhs.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(b) *Initial notification.* Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that:

- (1) The Application is complete and will be reviewed, or
- (2) That the Application is incomplete, in which case the missing or incomplete parts will be specified.

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

- (1) Request additional information from the Seller;
- (2) Meet with representatives of the Seller;
- (3) Consult with, and rely upon the expertise of, any other Federal or non-Federal entity;

(4) Perform studies or analyses of the technology or the insurance market for such technology; and

(5) Seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary.* (1) Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application:

(i) That the Application be approved and a Designation be issued to the Seller;

(ii) That the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or

(iii) That the Application be denied.

(2) If approval is recommended, the recommendation shall include a recommendation regarding the certification required by § 25.4(h). The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Action by the Under Secretary.* Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this section, the Under Secretary shall take one of the following actions:

(1) Approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by § 25.4(h);

(2) Notify the Seller 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 Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 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.

(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 based upon the technology) commencing on the date of issuance. At any time commencing two years prior to the expiration of a Designation, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at <http://www.dhs.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) *Transfer of Designation.* (1) Except as may be restricted by the terms and conditions of a Designation, any Designation may be transferred and assigned to any other person or 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 or 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:

(i) 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.dhs.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), and

(ii) The transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller.

(2) 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 assign-

ment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(h) *Application of Designation to licenses.* Except as may be restricted by the terms and conditions of a Designation, any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or non-exclusively) the right to manufacture, use, or and 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.dhs.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.

(i) *Termination of Designation resulting from significant modification.* A Designation shall terminate automatically, and have no further force or effect, if the designated qualified anti-terrorism technology is significantly changed or modified. A significant change or modification in the technology is one that could significantly reduce the safety or effectiveness of the technology. This could include, in the case of a device, a significant change or modification in design, material, chemical composition, energy source, manufacturing process, or purpose for which it is to be sold, and in the case of a service, a significant change or modification in methodology, procedures, or purpose for which it is to be sold. If a Seller is planning a change or modification to a designated technology, such Seller may apply for a corresponding modification of the applicable Designation in advance of the implementation of such modification. Application for such a modification must be made using the “Application for Modification of Designation” form issued by the Under Secretary. The Under Secretary shall

make this application form available at <http://www.dhs.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Changes or modifications will be evaluated at a minimum with reference to the description of the technology and its purposes as provided in the Seller's application and with reference to what was designated in the applicable Designation. In lieu of issuing a modified Designation in response to such an application, the Under Secretary may elect to issue a certificate to the Seller certifying that the submitted changes or modifications are not significant within the meaning of this paragraph (i) and that the Seller's existing Designation continues to be applicable to the changed or modified technology.

§ 25.6 Government contractor defense.

(a) *Criteria for certification.* The Under Secretary may certify 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 grant such certification, the Under Secretary or his or her 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 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 or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

(b) *Extent of liability.* Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism,

when qualified anti-terrorism technologies certified by the Under Secretary as provided in §§ 25.6 and 25.7 of this part have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Assistant Secretary during the course of the Assistant Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers. Such presumption shall apply in perpetuity to all deployments of a qualified anti-terrorism technology (for which a Certification has been issued by the Under Secretary as provided in this section and § 25.7) that occur on or after the effective date of the Certification applicable to such technology in defense against, response to, or recovery from any act of terrorism, provided that the sale of such technology was consummated by the Seller on or after the earliest date of sale of such technology specified in such Certification (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Certification.

§ 25.7 Procedures for certification of approved products for homeland security.

(a) *Application procedure.* A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under § 25.6 (a "Certification") shall submit information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available 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,

§ 25.7

6 CFR Ch. I (1-1-05 Edition)

Washington, DC 20528. An application for a certification may not be filed unless the Seller has also filed an application for designation of qualified anti-terrorism technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial notification.* Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that:

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

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

(c) *Review process.* The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or non-federal entity; and

(4) Perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary.* (1) Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application:

(i) That the Application be approved and a Certification be issued to the Seller;

(ii) That the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) That the Application be denied.

(2) The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Action by the Under Secretary.* (1) Within 30 days after receiving a recommendation from the Assistant Sec-

retary pursuant to paragraph (d) of this section, the Under Secretary shall take one of the following actions:

(i) Approve the Application and issue an appropriate Certification to the Seller;

(ii) Notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) Deny the Application, and notify the Seller in writing of such decision.

(2) The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and 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.

(f) *Designation is a pre-condition.* The Under Secretary may approve an application for a certification only if the Under Secretary has also approved an application for a designation for the same technology under section 25.3.

(g) *Content and term of certification; renewal.* A Certification shall specify the technology, the Seller(s) of the technology, and the earliest date of sale of the technology to which the Certification 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 Certification). The Certification 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. A certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must

be made using the “Application for Certification of an Approved Product for Homeland Security” form issued by the Under Secretary.

(h) *Application of Certification to licensees.* Any certification shall apply to any other person or entity to which the Seller licenses (exclusively or non-exclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such certification 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 Approved Anti-terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at <http://www.dhs.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 Certification.

(i) *Transfer of Certification.* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(j) *Issuance of Certificate; Approved Product List.* For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security, which shall be published by the Department of Homeland Security.

§ 25.8 Confidentiality and protection of intellectual property.

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

§ 25.9 Definitions.

Act of Terrorism—The term “act of terrorism” means any act that—

- (1) Is unlawful;
- (2) Causes 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.

Assistant Secretary—The term “Assistant Secretary” means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

Certification—The term “Certification” means (unless the context requires otherwise) a certification 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” of a Seller means any person or entity with whom or with which the Seller has entered into a contract 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 a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated 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.

Physical harm—The term “physical harm” as used in the Act shall mean a physical injury to the body 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 (QATT)—The term “qualified anti-terrorism technology” means any 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, for which a Designation has been issued under this Part.

SAFETY Act or Act—The term “SAFETY Act” or “Act” means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted

as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107-296.

Seller—The term “Seller” means any person or entity to whom or to which (as appropriate) a Designation has been issued under this Part (unless the context requires otherwise).

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

PART 29—PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

Sec.

- 29.1 Purpose and scope.
- 29.2 Definitions.
- 29.3 Effect of provisions.
- 29.4 Protected Critical Infrastructure Information Program administration.
- 29.5 Requirements for protection.
- 29.6 Acknowledgment of receipt, validation, and marking.
- 29.7 Safeguarding of Protected Critical Infrastructure Information.
- 29.8 Disclosure of Protected Critical Infrastructure Information.
- 29.9 Investigation and reporting of violation of Protected CII procedures.

AUTHORITY: Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

SOURCE: 69 FR 8083, Feb. 20, 2004, unless otherwise noted.

§ 29.1 Purpose and scope.

(a) *Purpose of the rule.* This part implements section 214 of Title II, Subtitle B, of the Homeland Security Act of 2002 through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Federal government through the Department of Homeland Security. Title II, Subtitle B, of the Homeland Security Act is referred to herein as the Critical Infrastructure Information Act of 2002 (CII Act of 2002). Consistent with the statutory mission of the Department of Homeland Security (DHS) to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism, it is the policy of DHS to encourage the voluntary submission of CII by safeguarding and protecting that information from unauthorized disclosure and