

### § 25.3

### 6 CFR Ch. I (1–1–07 Edition)

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.

(vii) 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.

(viii) A determination made by Federal, State, or local officials, that the Technology is appropriate for the purpose of preventing, detecting, identifying or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

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

(2) The Under Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary depending upon the particular Technology at issue and the threats that the Technology is designed to address. The Under Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Under Secretary is not required to reject an application that fails to meet one or more of the criteria. The Under Secretary may conclude, after considering all of the relevant criteria and any other relevant factors, that a particular Technology merits Designation as a Qualified Anti-Terrorism Technology even if one or more particular criteria are not satisfied. The Under Secretary’s considerations will take into account evolving threats and conditions that give rise to the need for the anti-terrorism Technologies.

(c) *Use of Standards.* From time to time, the Under Secretary may develop, issue, revise, adopt, and recommend technical standards for various categories or components of anti-terrorism Technologies (“Adopted Standards”). In the case of Adopted Standards that are developed by the Department or that the Department