

§ 25.5

6 CFR Ch. I (1–1–07 Edition)

condition precedent to the establishment of any deployment or use condition and any other obligation established by the Under Secretary pursuant to this paragraph. Those seeking a DT&E Designation for a QATT pursuant to this paragraph (f) shall follow the procedures for DT&E Designations set forth in the SAFETY Act Application Kit.

§ 25.5 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. The Under Secretary may request at any time that the Seller of a 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 of the requirements of this section.

(b) *Amount of Liability Insurance.* (1) The Under Secretary may determine the appropriate amounts and types of liability insurance that the Seller will be required to obtain and maintain based on criteria he may establish to satisfy compensable third-party claims arising from, relating to or resulting from an Act of Terrorism. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

(i) The particular Technology at issue;

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

(iii) The amount of liability insurance maintained by the Seller for other Technologies or for the Seller's business as a whole;

(iv) The amount of liability insurance typically maintained by Sellers of comparable Technologies;

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

(vi) Data and history regarding mass casualty losses;

(vii) The intended use of the Technology; and

(viii) 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.

(2) In determining the appropriate amounts and types of insurance that a particular Seller is obligated to carry, the Under Secretary may not require any type of insurance or any amount of insurance that is not available on the world market, and may not require any type or amount of insurance that would unreasonably distort the sales price of the Seller's anti-terrorism Technology

(c) *Scope of Coverage.* (1) Liability insurance required to be obtained 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:

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

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

(2) Notwithstanding the foregoing, in appropriate instances the Under Secretary will specify in a particular Designation that, consistent with the Department's interpretation of the SAFETY Act, an action for the recovery of damages proximately caused by a Qualified Anti-Terrorism Technology that arises out of, relates to, or results from an Act of Terrorism may properly be brought only against the Seller and, accordingly, the liability insurance required to be obtained pursuant to this section shall be required to protect only the Seller.

(d) *Third Party Claims.* To the extent available pursuant to the SAFETY

Act, liability insurance required to be obtained 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 resulting 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, provided that the Seller has used diligent efforts in good faith to obtain all required reciprocal waivers, 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) *Information to be Submitted by the Seller.* As part of any application for a Designation, the Seller shall provide all information that may be requested by the Under Secretary or his designee, regarding a Seller's 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 or other factors that would affect the amount of 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.

(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;