

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 substantial 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 affect the safety or effectiveness of the device. This could include a significant change or modification in design, material, chemical composition, energy source, manufacturing process, or purpose for which it is to be sold. 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. If a Seller is planning a significant change or modification to a designated technology as defined above, 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.

#### **§ 25.6 Government contractor defense.**

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.

#### **§ 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 all 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, 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 nonfederal entity; and

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

(d) *Recommendation of the Assistant Secretary.* 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: that the Application be approved and a Certification be issued to the Seller; 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 that the Application be denied. 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: approve the Application and issue an appropriate Certification to the Seller; 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 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, 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 § 25.3.

(g) *Term of certification; renewal.* 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 nonexclusively) 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