

(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 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,