

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, 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.* (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