

# SAFETY Act

The Support Anti-terrorism by Fostering Effective Technologies Act of 2002



Andrea T. Schultz, CPP  
Deputy Director,  
Office of SAFETY Act Implementation  
DHS S&T



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# SAFETY Act Basics

- Congressionally enacted as part of the Homeland Security Act of 2002
- Provides legal liability protections for providers of qualified anti-terrorism technologies that could save lives in the event of a terrorist attack
- Protections apply **only** to claims arising out of, relating to, or resulting from an **act of terrorism** when SAFETY Act covered technologies have been deployed
- The Secretary of Homeland Security determines an act to be an “act of terrorism” for purposes of the SAFETY Act



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# C-TPAT & the SAFETY Act

## Program Partnership:

- Applied as a pre-applicant for the program in 2014
- Assigned a SAFETY Act advisor
- Met with DHS internally to discuss program objectives and processes
  - Got the SAFETY Act 101
- Completed documentation explaining how our “technology” would prevent or deter acts of terrorism
  - Applied for creation of a “block designation”
    - Idea was to have C-TPAT companies get better at anti-terror prevention
  - Our approach is to tackle many areas of security not just one element
    - Our security criteria functions as a service and technology
    - Risk assessment requirements
    - Security profiles enhance security



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# C-TPAT / Why SAFETY Act?

- Demand from our partners
- It makes sense
  - The C-TPAT program and CBPs primary objective is anti-terrorism
  - C-TPAT's security criteria lessens the chance of tampering cargo and qualifies as a "technology."
- Provides an additional benefit to C-TPAT partners
  - Saves time and effort for those applying to the SAFETY Act
- Incentive to improve levels of security beyond that of the minimum security criteria.
  - C-TPAT evolves to get better as the threats change
  - Reminder that this program can prevent loss of life



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# C-TPAT Entity Participation

- Tier III companies
  - Importers
  - Exporters
  - Why? Safety Act is an incentive program built on the need to increase anti-terrorism detection, deterrence and prevention capabilities.
  - DHS desires the highest levels of security



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# C-TPAT / SAFETY Act Requirements

- You must be in good standing with the C-TPAT program
  - Once you lose C-TPAT Tier III status, SAFETY Act coverage will end
    - Security profiles up to date
    - Risk assessments completed
    - Revalidations are done timely
  - SAFETY Act Designation may be reinstated when C-TPAT Tier III status is restored
- General Liability Insurance that will respond to an act of Terrorism
- DHS does not charge fees for being in the program



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# What protections are available?

**Liability cap**

**Exclusive action in federal court**

**No joint and several liability for non-economic damages**

**No punitive damages or prejudgment interest**



**Limitations on the use and deployment**

**Limited term**

**Liability protections associated apply only to acts that occur during the term**

**All benefits of Designation plus...**

**Assert Government Contractor Defense**

**Placed on SAFETY Act's Approved Products list for Homeland Security**



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# Applicability of SAFETY Act Protections

- Hypothetical scenario where third party liability might apply to a C-TPAT Tier III Applicant
  - Components, weapons or persons smuggled into the United States through a cargo container.



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# C-TPAT / Time Saved Applying through C-TPAT

- Benefits of applying for SAFETY Act through the C-TPAT Tier III Block Designation:
  - The normal time it takes for a SAFETY Act Application to be reviewed is approximately 120 days; under the C-TPAT Block Designation, processing time is estimated at 90 days
  - Your preparation of an Application for SAFETY Act Protection is simplified.
    - The requirement for technical documentation supporting the application is minimized; a pre-application isn't needed.



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# Streamlined Review Basics

- Block Designations and Block Certifications (Blocks)
  - Streamlined reviews assume that:
    - A company has an anti-terrorism technology which meets established performance standards or defined technical characteristics as reflected the Block Designation.
    - The managing Government Program Office has evaluated or otherwise assessed the Technology and made a determination that it meets or exceeds the program standards.
    - A company can reasonably obtain an amount of insurance required by DHS that would respond to third-party liability claims in the event of an act of terrorism.



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# C-TPAT Block Designation

- Terms and Conditions
  - Issue Date: September 11, 2014
  - Block Designation for the U.S. Customs and Border Protection (CBP) Tier 3 Customs-Trade Partnership Against Terrorism (C-TPAT) Services. Participation in the CBP C-TPAT program at a Tier 3 level has relevance to the Department's anti-terrorism mission and Tier 3 partners may apply for this Block Designation.
  - Timeline for Expedited Review. Pursuant to Section 25.6(h)(1) of the Regulations, the Office of SAFETY Act Implementation (OSAI) expects to process complete applications related to this Block Designation Notice within 90 days of receipt. This will allow for a complete review of an Applicant's insurance and financial information as well as allow OSAI to coordinate with CBP.
- Entities that provide shipping services that are currently certified under the CBP C-TPAT program at a Tier 3 level may apply for SAFETY Act protections using a Block Designation Application found at [www.safetyact.gov](http://www.safetyact.gov)



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# Protection Coverage / Exhibit A

- The Technology includes implementation of policies and procedures which exceed the minimum security criteria of the C-TPAT program's layered security model listed below:
  - An annual security profile review
  - An annual risk assessment process that includes mapping cargo flows, conducting threat assessments, and creating action plans to address vulnerabilities
  - A verifiable, written selection process of business partners
  - Personnel security practices such as background checks and termination procedures as a part of processes for the hiring, vetting, and screening of personnel
  - Procedural security measures including documentation of manifesting procedures, detecting cargo discrepancies, etc.
  - Physical security measures such as fencing, gates/gate houses, parking, building structures, lock and key controls, security lighting, alarms and video surveillance cameras

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# Protection Coverage / Exhibit A

*Continued*

- The Technology includes implementation of policies and procedures which exceed the minimum security criteria of the C-TPAT program's layered security model listed below:
  - Access control measures for employees, visitors, deliveries, etc.
  - Container security through container inspection, storage, and seals
  - Security training of employees in all areas of the security criteria
  - Information technology security measures such as administrative controls, password protection, employee accountability and network security
  - Outreach to ensure business partners are in compliance with C-TPAT minimum security standards as applicable to Tier 3
  
- Together, these security elements function as a system to prevent cargo tampering in the international supply chain



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# Application

How to find the Application and detailed instructions

[www.safetyact.gov](http://www.safetyact.gov)

*What is the SAFETY Act?*

The SAFETY Act provides important legal liability protections for providers of Qualified Anti-Terrorism Technologies - whether they are products or services. The goal of the SAFETY Act is to encourage the development and deployment of effective anti-terrorism products and services by providing liability protections.

For more details, see the [SAFETY Act Final Rule](#).

**The SAFETY Act Benefits to Your Company**

Encouraging the DEVELOPMENT and DEPLOYMENT of ANTI-TERRORISM TECHNOLOGIES

## RECENTLY APPROVED TECHNOLOGIES

**Sensity Systems Inc.**

August 06, 2014 - Sensity Systems Inc. provides NetSense (the "Technology"). The Technology is a Light Sensory Network ("LSN") which may be used as a wired or WiFi network that allows for the connection of third party products such as cameras and sensors. The Technology also includes site surveys, photometric evaluations, design, and installation. This Designation will expire on August 31, 2019.

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## PROCUREMENTS AND BLOCKS

- [Active Procurement List](#)
- [Active Block Designations](#)
- [Active Block Certifications](#)

## PRINTER FRIENDLY MATERIALS

- [SAFETY Act 101 For Small Businesses](#)
- [Step by Step User Guide](#)
- [SAFETY Act 101 Briefing](#)
- [SAFETY Act Fact Sheet](#)
- [See More Materials](#)

**Number:** BD-10  
**Issue Date:** August 22, 2014  
**Expiration Date:** September 30, 2019  
**Instruction:** Risk Assessments Performed Using the Environmental Protection Agency ("EPA") Vulnerability Self Assessment Tool ("VSAT") 6.0 : The Under Secretary for Science and Technology, Department of Homeland Security, announces the approval of a Block Designation for Risk Assessments Performed Using the Environmental Protection Agency ("EPA") Vulnerability Self Assessment Tool ("VSAT") 6.0. Entities using VSAT 6.0 to conduct risk assessments of water, wastewater, or combined utilities, may apply for SAFETY Act protections using a Block Designation form. Please see the "Block Designation" list on [www.safetyact.gov](http://www.safetyact.gov) for additional information, as well as the specific instructions for this Block Designation.

### Attachments

- [BD-10 SAFETY Act Block Notice](#)
- [BD-10SAFETY Act Block Instructions](#)



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# Application Requirements

The Application includes a series of basic questions

- BD1. Type of Application
  - BD1.1. Public Web Site Listing
- BD2. Registration Status
- BD3. Name of Seller
- BD4. Company Description
- BD5. Additional Sellers
- BD6. Earliest Date of Sale
- BD7. Identify the Block Designation
- BD8. Information demonstrating your Technology's conformance
- BD9. Compliance
- BD10. Any additional Information
- BD11. Insurance Data
- BD12. Financial Data



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# Application Requirements

## BD.11. Insurance Data

- **BD11.1.** Please provide information for any and all current liability insurance policies that are available to satisfy otherwise compensable third party claims arising out of, relating to, or resulting from an act of terrorism were your Technology deployed in defense against, in response to, or recovery from such an act:
  - Primary Named Insured and any additional named insured relevant to the Technology Sellers
  - Type of and Policy Dates
  - Insurer as well as the per-occurrence limits and aggregate limits
  - Annual Premium and deductible(s) or Self-insured retentions
  - Exclusions (*please note and explain any pertinent insurance exclusions or cancellation provisions that would potentially dilute or eliminate the availability of coverage of any of the policies identified above*).



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# Application Requirements

## BD.11. Insurance Data

### ▪ **BD11.1. continued:**

- Describe the type and limits of terrorism coverage for this policy.
  - Please elaborate on the applicability of the policies identified above to address the foreseeable risks associated with the deployment of the Technology including those risks arising from the deployment of the Technology in advance of or response to an act of terrorism. Please also indicate whether the identified policy(ies) provides coverage under the Terrorism Risk Insurance Act (TRIA) of 2002, as amended, or other insurance policy(ies) provisions or endorsements.
- Describe whether the relevant policy(ies) covers SAFETY Act claims and whether the policy(ies) has a dedicated limit that applies to SAFETY Act claims only or has a shared limit (i.e., shared with non- SAFETY Act claims). Please indicate whether you have received a written interpretation letter from either the carrier or insurance broker indicating whether the policy covers SAFETY Act claims; if so, please provide a copy of such document.



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# Application Requirements

## BD.11. Insurance Data

### ▪ **BD11.2. Unavailability of Insurance**

- If you do not currently carry insurance for the Technology that would be applicable in the event of an act of terrorism, please indicate the reasons. If you have attempted to purchase insurance but it is not available on the world market, please so indicate with specific inquiries you have made. (You may submit written communications from insurance companies or brokers explaining why your Technology cannot be insured.)
- If you have endeavored to purchase insurance but have not done so because you have concluded that the cost of insurance premiums would unreasonably distort the price of the Technology, please describe those efforts to find appropriate insurance and state why you have concluded that the cost of insurance for your Technology would unreasonably distort its sales price. In this context, you may need to provide an explanation with relevant documentation (e.g., insurance quotes with limits, premiums, exclusions, and other key items plus other relevant financial and market data).



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# Application Requirements

## BD.11. Insurance Data

### ▪ **BD11.3.** Insurance Point of Contact.

- Provide a point of contact, including telephone number and e-mail address for someone authorized to discuss your company's insurance information with the Department. This point of contact may be the same person identified in your registration statement and may be your counsel, insurance expert, or any other person with appropriate information.



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# Application Requirements

## BD.11. Insurance Data

### ▪ **BD11.4. Revenue Projection**

- In order for us to determine the amount of insurance that would not unreasonably distort the sales price of your Technology, we need you to provide us with
  - Three (3)-year projected (prospective) revenue estimates for your Technology - all assuming that your Technology is approved under the SAFETY Act. The three-year period should include your current fiscal year, if incomplete, and two subsequent years.
  - If you do not have current year sales for your Technology, please provide us with three (3)-year projected revenue data. The revenue data needs only to pertain to your Technology and the numbers need only to be summarized data (that is, we do not require the revenue sources to be itemized).
  - The revenue data should be matched with summarized cost data (e.g., cost of goods sold); as with the revenue data, we do not require breakdown of data by cost centers.



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# Application Requirements

## BD.11. Insurance Data

### ▪ **BD11.5. Deployment**

- Establish how the deployment of your Technology as an antiterrorism technology would expose you to extraordinarily high liability and what this liability might be. This can be accomplished by developing a plausible scenario that establishes how the Technology could be the proximate cause of third-party claims in the event of an act of terrorism.
- Please make the scenario and third-party liability claims specific to the deployment and use of your Technology.



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# Application Requirements

- BD.12. Financial Data
- Certain financial information regarding your company and projected/prospective technology revenue may be particularly relevant to the application process. This is particularly true when questions arise as to whether insurance costs for specified coverage limits unduly distort the price of your Technology.
  - **BD12.1.** Please provide a copy of the financial statement for the most recent fiscal year.
    - For public companies, the most recent SEC annual report (Form 10-K) and SEC quarterly report (Form 10-Q), together with any amendments thereto, should suffice.
    - For non-publicly traded companies, you may choose to include the following information for the most recent fiscal year: income statement, statement of cash flow, and balance sheet as well as pro forma financial statement.
  - OSAI will seek additional and more specific information only when necessary for a particular application.



# Additional Information

- Online: [www.safetyact.gov](http://www.safetyact.gov)
  - FAQs
  - Help Topics
  - Step-by-Step User Guide
  - SAFETY Act Fact Sheet
- Help Desk: Online form for questions requiring an individual response
  - Email: [SAFETYActHelpDesk@dhs.gov](mailto:SAFETYActHelpDesk@dhs.gov)
  - Toll-Free: 1-866-788-9318



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