

SAFETY Act 101 Briefing

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



Office of SAFETY Act Implementation Science and Technology Directorate




**Homeland
Security**

Science and Technology



A Summary of the SAFETY Act

- Congressionally enacted as part of the Homeland Security Act of 2002 
- Provides legal liability protections for ***Sellers** of qualified anti-terrorism technologies (QATTs) 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 approved technologies have been deployed

***Seller-** any person, firm, or other entity that provides a QATT to customer(s) and to whom SAFETY Act protection has been issued



What is Eligible for SAFETY Act Protections?

The SAFETY Act liability protections apply to a wide range of technologies, including:

- Products
- Services
- Software and other forms of intellectual property

Examples of eligible technologies:

Threat and Vulnerability Assessment Services

Detection Systems

Blast Mitigation Materials

Screening Services

Sensors and Sensor Integration

Threatening Object Detectors

Decision Support Software

Security Plans / Services

Crisis Management Systems

Venue Security

Recent Approvals

- Multi-layered security system deployed at a major venue
- Anti-terrorism detection, collection, and analysis tool for the detection of terrorist surveillance and pre-attack planning
- System design, integration, monitoring and maintenance for perimeter security and anti-intrusion systems
- Physical security services that deter, prevent, detect, alert and respond to a variety of security threats at commercial facilities



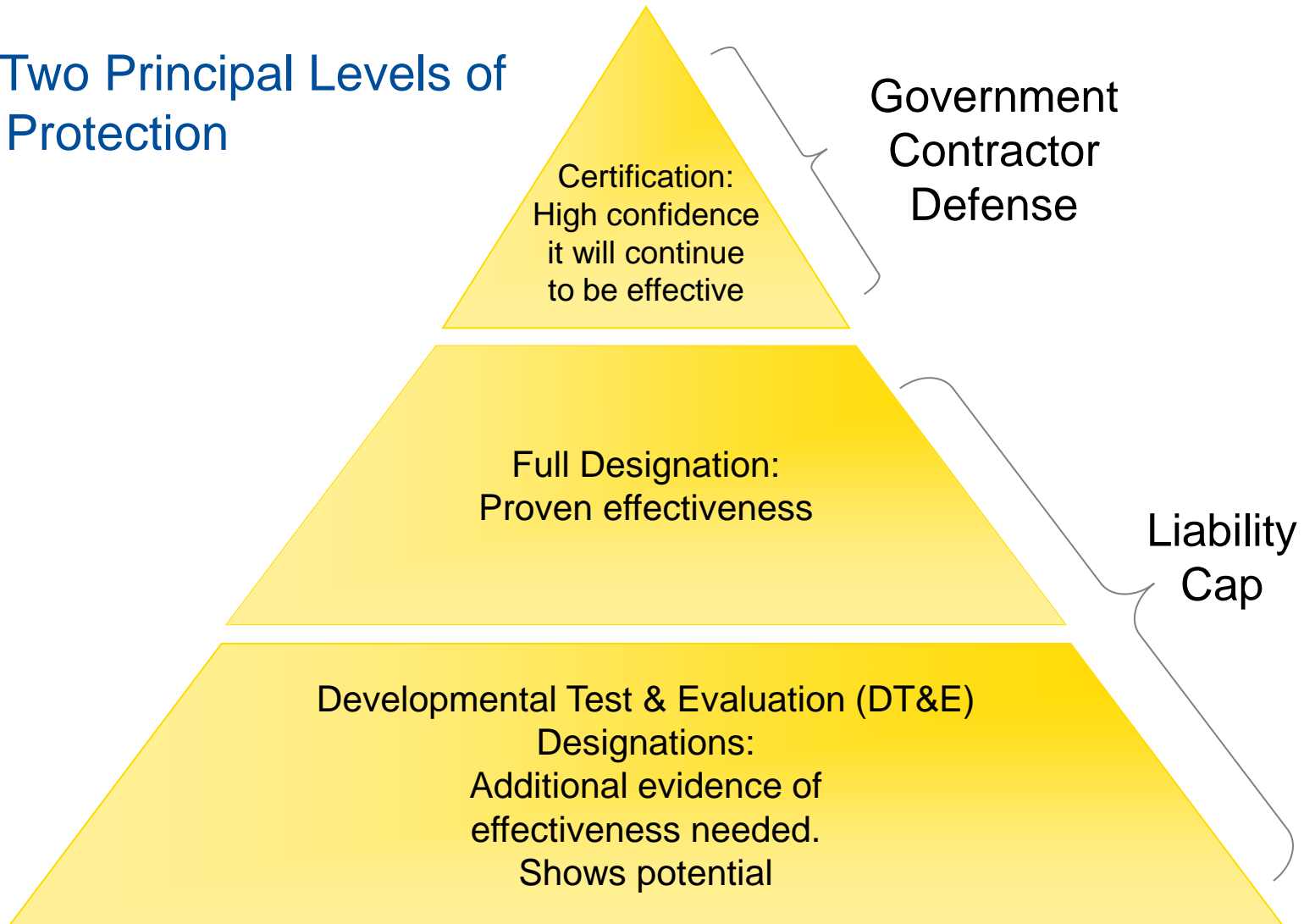
Recent Approvals

- Explosives detection canine services
- Real-time, web-based situational awareness dashboard, data surveillance and early-warning software system
- An evacuation planning tool undergoing testing and evaluation that provides evacuation modeling for sports stadiums
- Codes and standards that have an association with preventing, detecting, identifying, deterring acts of terrorism or limiting the damage such acts might cause



Essential Concepts

1. Two Principal Levels of Protection



2. Benefits of Designation

- Liability = Insurance determined by the DHS
- Exclusive action in Federal Court
- No Joint and Several Liability for non-economic damages
- No punitive damages or prejudgment interest
- Recovery reduced by amounts from collateral sources



Liability Insurance Required

In determining the amount of liability insurance required, the DHS may consider:

- The particular Technology at issue
- The amount of liability insurance the Seller maintained prior to application
- The amount of liability insurance maintained by the Seller for other Technologies or for the Seller's business as a whole
- The amount of liability insurance typically maintained by Sellers of comparable Technologies
- Information regarding the amount of liability insurance offered on the world market
- Data and history regarding mass casualty losses
- The intended use of the Technology
- 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.

Liability Insurance Required

The Seller shall provide:

- Names of insurance companies, policy numbers, and expiration dates
- 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)
- Dollar limits per occurrence and annually of such insurance, including any applicable sub-limits
- Deductibles or self-insured retentions, if any, that are applicable
- 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

Liability Insurance Required (cont.)

- 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 QATT deployed in defense against, or response to, or recovery from an Act of Terrorism.
- 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 QATT deployed in defense against, response to, or recovery from an Act of Terrorism.
- Any limitations on such liability insurance.

Seller's Continuing Obligations

Has to maintain the required insurance.

The Under Secretary may terminate a Designation if the Seller:

- Fails to provide any of the insurance certifications required
- Provides a false certification

3. Benefits of Certification

- Benefits of Designation +
- Assert Government Contractor Defense that immunizes Sellers of qualified anti-terrorism technologies from liability for claims brought under the SAFETY Act
- Placed on SAFETY Act's Approved Product List for Homeland Security



4. SAFETY Act Protections Extend to Users

(whether Designation or Certification)

“Such cause of action may be brought only against the Seller* of the QATT** and may not be brought against the buyers, the buyers’ contractors, downstream users of the Qualified Anti-Terrorism Technology, the Seller’s suppliers or contractors, or any other person or entity...”

Preamble to Final Rule, 6 CFR Part 25, at 33150

5. Criteria for Designation

- Prior United States Government use or demonstrated substantial utility and effectiveness
- Availability of the Technology for immediate deployment in public and private settings
- Existence of extraordinarily large or unquantifiable potential third party liability risk exposure to the Seller or other provider of the technology
- Substantial likelihood that the Technology will not be deployed unless SAFETY Act risk management protections are extended
- Magnitude of risk exposure to the public if the Technology is not deployed
- Evaluation of scientific studies that can be feasibly conducted in order to assess the capability of the Technology to substantially reduce risks of harm
- Whether the Technology is effective in facilitating the defense against Acts of Terrorism
- ATT determination made by Federal, State, or Local officials

Red=Technical criterion Blue=Economic criterion

Essential Concepts

5a. How to Establish Effectiveness

- Successful testing in operational environment
- Operational testing
 - Evidence of performance metrics, including:
 - Probability of Detection
 - False Positive and False Negative Rates
 - Limits of Detection (and why that limit is relevant)
 - Interferents
 - Maintenance and Training
- Suitable performance of past deployments documented
- Domain expertise appropriate and available
- In/external audits favorable
- Customer feedback favorable
- QA plans documented
- Repeatability proven



6. Criteria for Certification

Designation is a prerequisite for granting Certification.

To receive Certification, a QATT must also be shown to:

- Perform as intended
- Conform to the Seller's specifications
- Be safe for use as intended
 - Seller is required to provide safety and hazard analyses

6a. Performs as Intended

High confidence it will continue to be effective:

- Consistent positive results (e.g., long-term low failure rates and false alarms)
- Reliability/Availability is high (e.g., MTBF)
- Performs in accordance with performance specifications
- Installation, use, maintenance procedures proven
- Documented processes (e.g., training, hiring, technology refresh) are being followed
- Standards are identified and met
- QA/QC processes are effective

7. DT&E Designation

For technology that:

- Is in a prototype stage
- Has lab tests that are not operational in nature (too controlled)
- Indicated potential effectiveness
- Has a testing scenario identified and “customers” to prove relevant metrics
- Limited term (up to 3 years) and limited number of sites

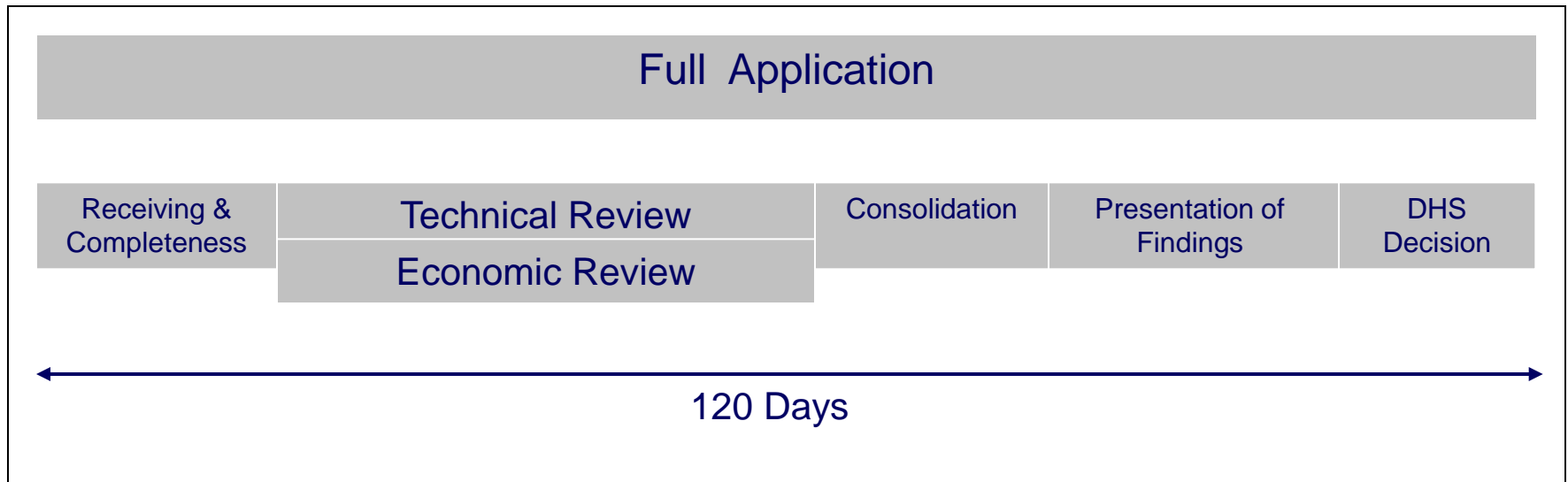
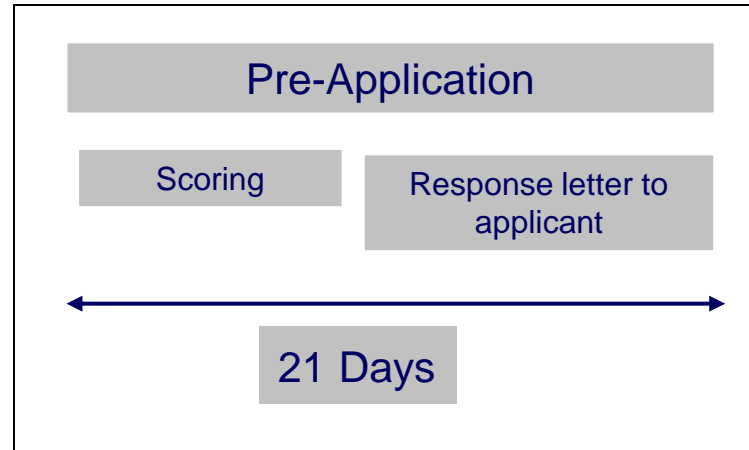


Essential Concepts

8. SAFETY Act Approval Summary

	DTED	Designation	Certification
Effectiveness Evaluation	Needs more proof, but potential exists	Proven effectiveness (with confidence of repeatability)	Consistently proven effectiveness (with high confidence of enduring effectiveness)
Protection	Liability cap only for identified test event(s) and for limited duration (≤ 3 yrs)	Liability cap for any and all deployments made within 5 year term	Government Contractor Defense (GCD) for any and all deployments made within 5 year term

Timeline: SAFETY Act Application



How is Your Proprietary Data Protected?

- Strong data protection measures that conform to DHS information security standards
- All application reviewers are screened for conflicts of interests, sign conflict of interest statements for each application they review, and sign non-disclosure agreements



Who are the SAFETY Act Reviewers?

- Reviewers from the FFRDCs, non-profits, Federal Government, Federal & National Labs, and Academia
- 100+ trained reviewers (SMEs) in areas of:
 - Cyber
 - Economic
 - Chemical
 - Biological
 - Explosives
 - Rad/Nuclear
 - Human Factors
- Three Technical Reviewers and two Economic Reviewers per application
- Conflict of Interest & Non-Disclosure Agreement signed by each reviewer per application



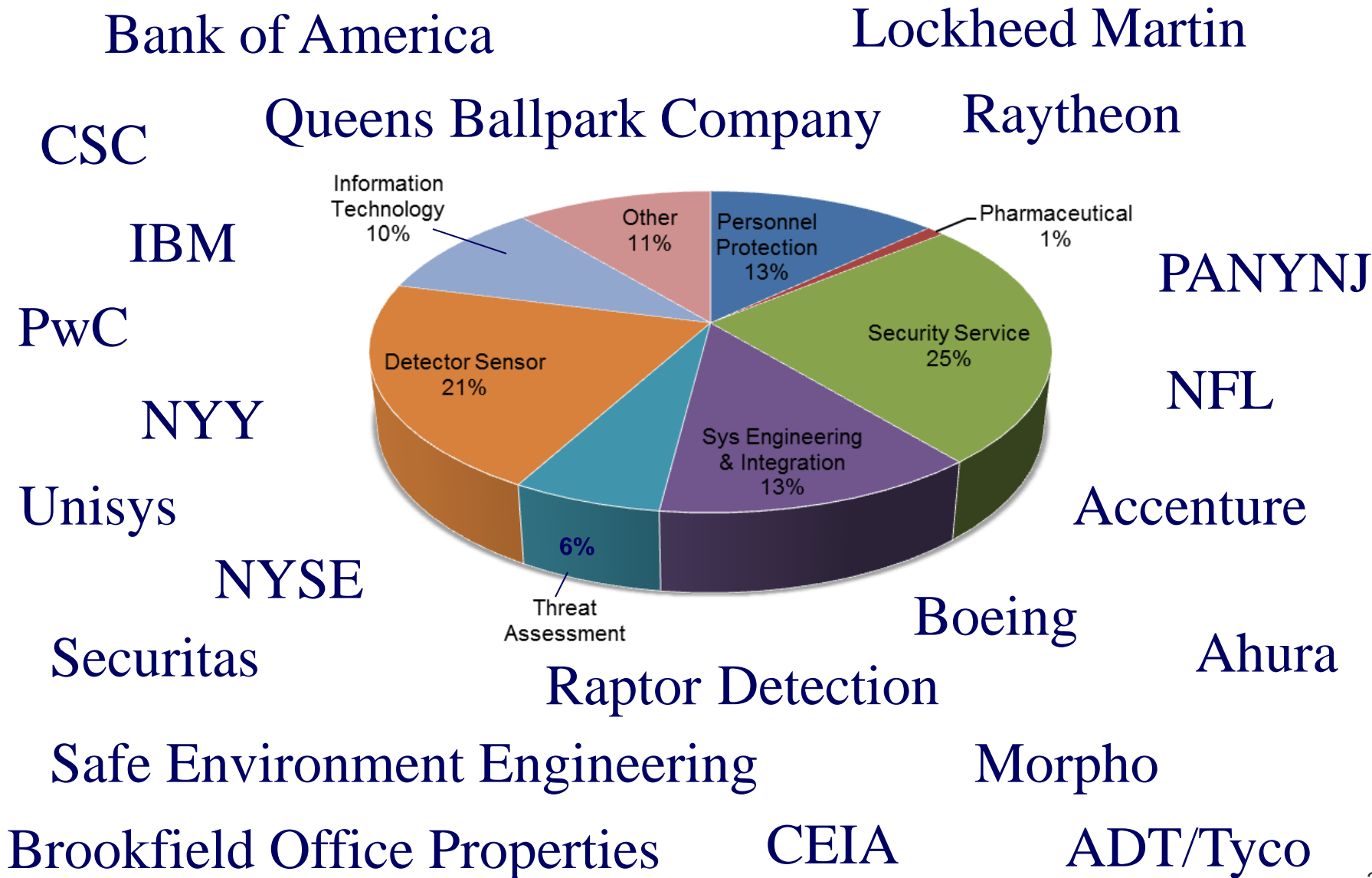


SAFETY Act Marks





SOME RECENT APPLICANTS



FY13 Program Performance

60 Technologies were approved:

22 from small businesses (37%)

14 from medium businesses (23%)

24 from large businesses (40%)

Average Processing Time: 112.5

These approved Technologies are among the most complex and significant applications received in the history of the Program and were deployed at:

- Bank of America Corporation
- Citi Field Stadium (Mets) – NY
- World Financial Center – NY
- Willis Tower – IL

Additional SAFETY Act Information



Online: www.safetyact.gov

- FAQs
- Help Topics
- Help Desk: Online form for questions requiring an individual response

Email: SAFETYActHelpDesk@dhs.gov

Toll-Free: 1-866-788-9318



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