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Title: **Certified Cargo Screening Facilities – Protection for new exposures**

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As part of the Certified Cargo Screening Program, the Transportation Security Administration required 50 percent of all cargo transported on passenger aircrafts be screened by Feb. 3, 2009. Screening will be mandatory for 100 percent of cargo by Aug. 3, 2010. Avalon Risk Management recognizes that cargo screening is well underway but would like to inform our clients about the additional liability exposures a Certified Cargo Screening Facility (CCSF) faces.

To prevent delays, cargo can be screened by a CCSF prior to arriving at the airport and still meet the regulatory requirement. Businesses that transport cargo directly to a freight forwarder or air carrier can apply to become a CCSF. Types of businesses that may qualify include: manufacturers, warehouses, distribution centers, third party logistics providers, indirect air carriers, airport cargo handlers and independent cargo screening facilities. CCSFs need to recognize the additional risks they may encounter and should take steps to limit their legal liability.

According to the Federal Register, the final rule implementing the Safety Act became effective in July 2006 to promote development and deployment of anti-terrorism products and services. The Safety Act limits legal liability for sellers of qualified anti-terrorism technologies (QATT) including: products, services and intellectual property such as software. The action of screening cargo by a CCSF is considered a service, which allows the CCSF to qualify for protection as part of the Safety Act. Sellers of anti-terrorism technologies will need to apply to have their products qualified. The two levels of qualification are designation and certification. For more information on how to apply, please visit www.safetyact.gov.

The next step to limiting your liability is reviewing your current insurance program. Your local Avalon office is available to help review your coverage and answer questions. Businesses interested in working with anti-terrorism technologies should consider the following when reviewing coverage:

- **The Safety Act does not afford coverage** – At the designation level of liability protection, the Department of Homeland Security (DHS) determines the amount of liability insurance the seller is required to carry. The seller’s liability for these “designated technologies” is then limited to the amount DHS requires.

At the certification level of liability protection, the seller can utilize the Government Contractor Defense for claims arising out of terrorism acts. The certified product will also be added to DHS’s Approved Products List for Homeland Security.
- **QATT seller’s liability** – According to DHS’s interpretation of the Safety Act, only the seller of QATT can be sued for third-party injuries occurring as a result of terrorism. Besides maintaining the levels of liability insurance required by DHS, businesses should also obtain Product Liability Insurance, which covers bodily injury or property damage resulting from a faulty product.

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- **Request an indemnification agreement** – CCSFs are encouraged to ask the manufacturer of the anti-terrorism equipment to sign an indemnification agreement and request to be added as an additional insured on their insurance policy. This option may not be realistic for all contracts or projects, but could significantly reduce the risk involved with anti-terrorism equipment.
- **Many insurance policies contain terrorism exclusions** – Companies should check with their insurance agent to ensure their Commercial General Liability policy does NOT contain a terrorism exclusion as coverage could be denied if a claim occurs from handling anti-terrorism products.
- **Policy territory** – When dealing with air cargo, it is important to check how international airspace is covered. Most policies only cover international airspace when the points of transit are within the policy's territory. CCSFs working with international cargo need a policy with a coverage territory that includes all cargo destinations as well as the airspace between them.
- **Insurance policies may need to be modified** – Most insurance companies will need to know the insured's insurable interest regarding the equipment. An insured with a policy covering personal property of others might need to provide the insurance company with replacement cost of equipment or contractual liability. Policy premium may need to be adjusted to include coverage for additional exposure.

It is important to recognize that CCSFs may incur liabilities that do not fall within the protection of the Safety Act. The Safety Act only provides liability protection for acts of terrorism. If a loss occurs and terrorism was not the cause, CCSFs may find that they have significant liability. For example, assume a CCSF screens a shipment containing oxygen generators, which needed to be shipped by ocean but were inadvertently sent by air freight as a result of a shipper error. The CCSF screens the cargo and misses the presence of the oxygen generators. The aircraft subsequently crashes during flight and an investigation reveals the crash was a result of the oxygen generators heating and causing a fire. This is clearly not a terrorist act and therefore liability would not be limited to the amount of insurance the CCSF was required to carry. Issues such as these should thoroughly be discussed and analyzed when making the decision to become a CCSF.

For more information about the Safety Act, please visit www.safetyact.gov. If you have questions regarding the exposure and/or risk involved with handling anti-terrorism products, please contact legal counsel.

As a premier provider of innovative insurance and surety solutions for the transportation industry, Avalon understands your business and its changing needs. We have strong relationships with many insurers to find you the best insurance program for your unique needs. Avalon can provide you with **General Liability and Product Liability Insurance** to help protect against the additional exposures of a CCSF.

For more information, please contact your local Avalon office or Anna Vize, Product Manager, at (847) 700-8154 or avize@avalonrisk.com. A list of our North American offices can be found at www.avalonrisk.com.

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