

liability might discourage the deployment of anti-terrorism technologies designed to address the most likely and catastrophic scenarios, because profit-maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of the Department that liability discouragement in this market is too strong or prohibitive, for the reasons mentioned above. The Department tentatively concludes that this rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. The Department welcomes comments informing this tradeoff argument, and public input on whether this rulemaking does strike the correct balance.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Department to determine whether this proposed rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this proposed rulemaking will impose a significant financial impact on them. In fact, we believe this proposed rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this proposed rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this rule. The Department believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this rulemaking on insurers is ambiguous but could very well be positive. We also expect that this rulemaking will affect relatively few firms and relatively few insurers either positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of proposed rulemaking will not have a significant impact on a substantial

number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The Department will submit the following information collection request to the Office of Management and Budget (OMB) for review in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

The Department will request comments on at least the following four points:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) The quality, utility, and clarity of the information to be collected; and
- (4) The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Designation of Qualified Anti-terrorism Technology; Application for Certification as an Approved Product for Homeland Security.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Numbers: SAFETY-001, SAFETY-002, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers and potential Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Designation and/or Approval

of Qualified Anti-terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 applicants annually. 40 to 200 hours per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 to 200,000 hours.

If additional information is required, contact: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this proposed rule would not qualify as a "major rule" as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132—Federalism

The Department of Homeland Security does not believe this proposed rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this rule to the extent that they are purchasers of qualified anti-terrorism technologies. The Department requests comment on the federalism impact of this Rule. In particular, the Department seeks comment on whether this proposed rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in 6 CFR Part 25

Administrative practice and procedure, Business and industry, Insurance, Science and technology, Security measures.

For the reasons discussed in the preamble, 6 CFR Chapter I is proposed to be amended by adding part 25 to read as follows:

PART 25—REGULATIONS TO SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES

Sec.

25.1 Purpose.

25.2 Delegation.