

period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses * * *." TRIA § 101(b)(2).

The United States remains at risk to terrorist attacks. It is in the public's interest to have this interim rule effective immediately because its aim is to foster the development and deployment of anti-terrorism technologies. Additionally, this interim rule will clarify to the greatest extent possible the application of the liability protections created by the SAFETY Act, thus providing an instant incentive for prospective applicants to apply for its protections and for others to begin exploring new measures that will prevent or reduce acts of terrorism. The interim rule will also provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage. The application process is interactive. Those persons availing themselves of the protections afforded in this interim rule will also be interacting with the Department in the application process. Furthermore, the Department will continue to consider comments on this interim rule. Since the use of the liability protections afforded in this interim rulemaking is voluntary, there are no mandatory costs or burdens associated with the immediate implementation of this rule.

By having these provisions in place, the Department may begin processing applications for the liability protections and thus provide qualified Sellers of anti-terrorism technologies valuable incentives to develop and sell such technologies, as well as incentives for others to deploy such technologies. The purpose of those technologies is to detect, deter, mitigate, or assist in the recovery from a catastrophic act of terrorism. Thus, the Department finds that it is not only impracticable to delay an effective date of implementation, but it is also in the public's interest to make the interim rule effective upon publication in the **Federal Register**.

As previously mentioned in the proposed rule, the Department does not intend to resolve every conceivable programmatic issue through this interim rule. Instead, this interim rule sets out a basic set of regulations that implements the SAFETY Act program. The Department will continue to consider public comments and determine whether possible supplemental regulations are needed as we gain experience with implementing the Act.

Discussion of Comments and Changes

The Department received 43 different sets of comments on the proposed rule during the comment period. Two additional sets of comments were received on August 12, 2003, the day after the comment period ended, but in view of the relatively brief comment period (30 days), the Department has decided to accept those comments as well. The Department has considered all of the aforementioned 45 sets of comments, and summaries of the comments and the Department's responses follow.

Applicability and Use of Standards

The Department received a total of 24 comments relating to references to standards in the proposed rule. A change in the term "safety and effectiveness standards," used in Section 25.3(c) of the proposed rule, to the industry accepted term "technical standards," was suggested and has been implemented in Section 25.3(c) of the interim rule. A number of comments were made regarding the use of voluntary consensus technical standards and the advisability of ensuring that the Department provide for stakeholder participation in any standard development activities. The Department recognizes the advisability of such participation and has instituted a comprehensive program based on using the voluntary consensus process for the majority of its standard development activities. This process is designed to involve users, manufacturers, and private and public sector technical communities in all phases of standard development. The American National Standards Institute, numerous Standards Development Organizations, and the National Institute for Standards and Technology already have been actively involved in assisting the Department in accomplishing its standard development goals. Although the Department is vested with the authority to promulgate regulatory standards, the circumstances under which Department regulations governing anti-terrorism technologies are likely to be required are unusual. Therefore, the Department does not believe that there is a need for specific language about rulemaking with respect to standards.

One comment suggested postponing standard setting activities for two years in order to allow the market to stabilize. Other comments indicated a concern regarding possible prejudice against technologies that were not governed by formally accepted standards. The Department believes, however, that

because of the rapidly evolving threat environment and the lack of basic standards for many classes of technologies, it is not in the best interest of the nation—and particularly of the emergency response community—to delay standard development activities. The Department also understands, however, that there is a continuing need for flexibility in the technical evaluation criteria under the SAFETY Act, and accordingly the Department will apply standards in SAFETY Act evaluations only to the extent that they are applicable to a particular technology and the circumstances of its proposed deployment. For those technologies without applicable standards (or with incomplete standards), additional methods of evaluation will be used, such as best practices, existing laboratory or field testing, etc. It will be highly desirable to use test information, where appropriate, from independent, accredited laboratories. The Department has also initiated a program to establish a network of certified labs that should address this need.

It will be important for SAFETY Act applicants to identify applicable standards that are appropriate to the specific operating environment and threat conditions for any potential anti-terrorism technology. The degree to which a proposed technology meets applicable standards will certainly be used to inform the technical evaluation process. However, technical effectiveness is only one facet of the criteria for issuance of a Designation or a Certification. Therefore, prior approval or certification by a United States Government agency (such as the Food and Drug Administration) will not be sufficient to form the basis for a SAFETY Act Designation or Certification per se, although such approval or certification might constitute relevant evidence of utility, effectiveness, or safety, and of course prior use of a technology by the United States Government is expressly relevant to the first criterion in Section 862(b)(1) of the SAFETY Act and the corresponding provision of the interim rule (§ 25.3(b)(1)).

Section 25.3(c) of the proposed rule stated that the Department will make available standards that are developed for anti-terrorism technologies. This service will apply only to potential regulatory criteria established by the Department. As noted by several commenters, many voluntary consensus technical standards are developed and owned by private sector entities. Where voluntary consensus standards are identified by the Department as being applicable to anti-terrorism