

eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this interim rulemaking on insurers is ambiguous but could very well be positive. We also expect that this interim 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 interim 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 interim 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.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this interim 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 interim 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 interim rule to the extent that they are purchasers of qualified anti-terrorism technologies. The Department requests comment on the federalism impact of this Interim rule. In particular, the Department seeks comment on whether this interim rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in 6 CFR Part 25

Business and industry, Insurance, Practice and procedure, Science and technology, Security measures.

■ For the reasons discussed in the preamble, 6 CFR Chapter I is 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.
- 25.3 Designation of qualified anti-terrorism technologies.
- 25.4 Obligations of seller.
- 25.5 Procedures for designation of qualified anti-terrorism technologies.
- 25.6 Government contractor defense.
- 25.7 Procedures for certification of approved products for homeland security.
- 25.8 Confidentiality and protection of intellectual property.
- 25.9 Definitions.

Authority: Subtitle G, Title VIII, Pub. L. 107–296, 116 Stat. 2238 (6 U.S.C. 441–444).

§ 25.1 Purpose.

This part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107–296 ("the SAFETY Act" or "the Act").

§ 25.2 Delegation.

All of the Secretary's responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security ("the Under Secretary") or the Under Secretary's designees.

§ 25.3 Designation of qualified anti-terrorism technologies.

(a) *General.* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107–296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be considered.* In determining whether to grant the designation under paragraph (a) (a "Designation"), the Under Secretary may exercise discretion and judgment in interpreting and weighting the following criteria in each case:

- (1) Prior United States Government use or demonstrated substantial utility and effectiveness.
- (2) Availability of the technology for immediate deployment in public and private settings.
- (3) Existence of extraordinarily large or extraordinarily unquantifiable

potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under 6 U.S.C. 441–444 are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(8) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland security of the United States.

(c) *Use of standards.* From time to time the Under Secretary may develop, issue, revise, and adopt technical standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at <http://www.dhs.gov>, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a) of this section; in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of substantial equivalence.* In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies ("predicate technologies") that have been previously designated as "qualified anti-terrorism technologies" under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if:

- (1) it has the same intended use as the predicate technology; and
- (2) it has the same or substantially similar technological characteristics as the predicate technology.