

U.S. regulatory issues. (Legal Reporter)

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SAFETY Act. The Department of Homeland Security (DHS) has closed the comment period on regulations that would implement the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002, also known as the SAFETY Act. The act is designed to encourage the development and rapid deployment of life-saving anti-terrorism technologies by providing manufacturers or sellers with limited liability risks. Under the act, companies will have to submit plans for anti-terrorism technology to the government for review to be eligible for liability protection.

Those commenting on the proposed regulations raised questions about the conditions under which companies would be protected, the protection of intellectual property, and liability protections for contractors and vendors as well as sellers.

Of the 50 comments received by the DHS, several expressed concerns over the lack of a definition of the term "act of terrorism" in the regulations. Without a specific definition, many commenters interpreted an act of terrorism as the "design or intent to cause mass destruction, injury, or other loss to citizens."

This could exclude smaller attacks such as car bombs, noted Marc Sands, vice president of Qualcomm Incorporated in San Diego. In his comments, Sands contends that such a narrow interpretation could prevent products designed to deter smaller scale terrorist acts from coming to market.

Similarly, letter writers took issue with language in the regulations that provides protection to companies that sell products that would be deployed during an act of terrorism. This definition excludes products that are designed to prevent terrorist attacks, says Marjorie Powell, senior assistant general counsel for the Pharmaceutical Research and Manufacturers of America. If the regulations implementing the act do not make clear that preventive technology is also covered, Powell notes, companies might be reluctant to develop bioterrorism countermeasures such as vaccines.

**Several comments addressed the protection of intellectual property and trade secrets. For example, Bob Karl of Willis Global Aviation noted that the regulation does not explore the various laws that govern the disclosure of information given to the government.**

**Although federal law does protect proprietary information presented to the government, it is unclear what rules would apply to project evaluations submitted to the DHS.**

Other commenters expressed concern that the proposed regulations do not define sellers broadly enough. As noted by Karen Hendon of SBC Affiliates in San Antonio, this language may leave others in the supply chain unprotected. Hendon suggested that the term be broadened to include everyone in the supply chain. For example, Hendon notes that, as the proposed regulation stands, contractors, subcontractors, suppliers, vendors, and customers could all be open to litigation.

After reviewing the comments, the DHS may issue an interim final rule and seek additional input. However, regardless of the rule status, the DHS has announced plans to begin accepting SAFETY Act applications as early as September 1, 2003.