

STATEMENT
of the
NATIONAL PROPANE GAS ASSOCIATION
to the
House Homeland Security Subcommittee
on
Transportation Security and Infrastructure Protection

*“Chemical Security: A Rising Concern for America: Examination of the Department’s
Chemical Security Regulations and its Effect on the Public and Private Sector.”*

July 23, 2007

INTRODUCTION

The National Propane Gas Association (NPGA) is the national trade association of the propane industry with a membership of about 3,600 companies, including 39 affiliated state and regional associations representing members in all 50 states. The single largest group of NPGA members is retail propane marketers whose total membership is approximately 3,000 companies, the vast majority of which are small businesses. Retail propane marketers distribute propane gas for use in residential and commercial installations, in agricultural applications, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and nonroad engines such as those used in forklifts.

IN GENERAL

NPGA appreciates the opportunity to submit the following statement on the applicability and consequences of the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS). The standards were published April 9, 2007 and included a proposed list (Appendix A) of 344 chemicals to which the regulations would apply if stored in greater than threshold quantities. In particular, NPGA is extremely concerned over the impact that the Screening Threshold Quantity (STQ) of 7,500 pounds for propane as contained in Appendix A will have on the propane industry and its customers from the standpoints of safety, energy reliability and fuel switching among others.

DHS WILL CAUSE PROPANE SAFETY TO DECREASE

The STQ for propane is so low that it will decrease safety within the propane industry by creating significant incentives for consumers to keep storage levels below the threshold, thereby increasing the frequency of shipments and product transfer operations. As word of this regulation has spread, customers have already indicated they will ask their fuel suppliers to not deliver more than the threshold quantity. This will require propane marketers to increase the number of deliveries to each customer to meet their onsite demands.

Within the propane distribution chain, the least risk incurred is when the product is in stationary storage. Transportation of the propane increases the risk while the actual product transfer operation represents the greatest level of comparative risk. In other words, any incentives precipitated by the DHS regulations to keep inventory levels below

the threshold will shift the risk category from lowest to highest and, thus, decrease overall safety.

DHS WILL REDUCE ENERGY SUPPLY TO CUSTOMERS

In addition to the impact on safety, a reduction in inventory levels at customer facilities will increase the risk to energy supplies. Propane is in greatest demand during the winter heating season. By reducing customer storage levels, it will invariably lead to major supply and distribution bottlenecks at the most critical time of year, i.e. winter.

Propane retailers maintain multiple storage locations around the country to facilitate efficient servicing of customer needs, a concept that significantly benefits both retail marketers and customers as evidenced by last year's ice storms. Compliance with these regulations will require that retailers measure the expectations of the government against the expectations of their customers. If companies decide that the burden of compliance outweighs the benefit of multiple storage, many of these locations would likely be eliminated, which would place a greater strain on the overall delivery infrastructure (e.g. highway, pipeline, rail, etc.) at the most critical time of propane demand.

Many customers benefit from the multiple storage concept beyond those in the residential, commercial and agricultural sector and include those in government agencies, hospitals, nursing homes, etc. Government agencies will be the first to demand to know why, in times of critical demand or supply disruptions, there was not enough infrastructure to serve the needs of customers. The bottom line is that a further reduction in storage levels will place severe constraints on transportation.

DHS HAS IGNORED THE INTENT OF SECTION 550

The DHS regulations fail to recognize the limitations placed on its authority by Congress in Section 550 of the authorizing legislation, i.e. the Homeland Security Appropriations Act of 2007 (Public Law 109-295), regarding overlap with other applicable laws. Specifically, paragraph (f) states that *“Nothing in this section shall be construed to supersede, amend, alter or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment or disposal of chemical substances or mixtures.”*

An existing regulatory framework for propane was already established by Congress through the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106-40), which addresses EPA’s Risk Management Program (RMP) requirements. In particular, the law provides that large, propane wholesale and production facilities should be covered while retail and customer sites should be excluded.

This bipartisan measure was approved by unanimous consent in both the House and Senate and signed into law by President Clinton. To disregard these exclusions as mandated in federal law would appear to violate the terms of Section 550(f) of the authorizing legislation, which was meant to ensure consistency in the application of the laws pertaining to chemicals.

Propane is designated under the Clean Air Act and Energy Policy Act as a clean-burning alternative fuel, but the burdensome requirements imposed on propane as a result of the low STQ and corresponding DHS regulations will lead to fuel switching by

customers. Thus, other less environmentally friendly energy sources, particularly those not listed in Appendix A, would actually reap a benefit.

DHS MISSED THE MARK IN UNDERSTANDING WHO THEY WERE
REGULATING

DHS has vastly underestimated the number of facilities that would need to complete a Top Screen analysis under its regulations by setting the threshold level for propane at 7,500 pounds. The agency believes that the number of facilities for all listed chemicals possessing amounts in excess of the STQ is about 40-50,000. Some statistics from the propane industry may help put into perspective how low this estimate is.

Using private industry data, based on the percentage of customers exceeding the 7,500 pound storage level, the number of each of these customers served by a given marketer, the number of actual propane marketers and the number of covered facilities per marketer, NPGA estimates that the number of covered facilities for *propane alone* will exceed 144,000. NPGA estimates that over 100,000 of these facilities represent farm or small business customers. We believe that the great disparity in these estimates suggests that the agency failed to adequately assess the impact the regulations would have on the propane industry, particularly the agricultural and small business sectors of the industry.

DHS is requiring that the Top Screen questionnaire can only be completed and submitted online, i.e. via the internet. Such a requirement is unnecessary and places an arbitrary burden on companies and citizens who may not have online access or possess broadband connectivity. The submission of the Top Screen questionnaire via the internet

only will require entities subject to the regulations to either a) obtain a computer and internet access for a one-time event, b) go to a public location, e.g. library, which may not provide a secure connection, to submit their Top Screens, or c) choose not to submit either because they cannot afford a computer/internet connection or do not have public access to a computer or internet in close proximity, in which case they face substantial penalties.

Propane typically serves customers who work or reside outside natural gas utility service. While rural Americans have become much more computer savvy in recent years and many have access to the internet, it is wrong to assume that all facilities storing more than 7,500 pounds of propane have internet access.

DHS MADE PROCEDURAL MISTAKES IN ITS RULEMAKING

NPGA appreciates the challenge DHS has in seeking to comply with the Congressional timeline for completion of the regulations. However, we believe in its haste to do so, the agency's proposed Appendix A fails to comply with the Administrative Procedures Act because it does not provide the regulated community with sufficient explanation regarding the development of the Appendix.

The methodology used to evaluate which chemicals should be on the list is not mentioned anywhere in the Federal Register preamble or rulemaking docket materials. For example, propane is identified on the RMP list (when not being held for retail sale or for on-site fuel consumption) and DOT HAZMAT list, but DHS does not explain why propane is on Appendix A for all possible activities with a threshold of 7,500 pounds

when the RMP threshold for propane is 10,000 pounds and is only applicable to non-fuel uses.

NPGA believes that the determination of the various storage threshold quantities in Appendix A was entirely arbitrary. Further, NPGA believes that the DHS regulations and development of Appendix A suffer from a number of procedural flaws that may not withstand judicial review.

CONCLUSION

NPGA appreciates the opportunity to submit this statement to the House Homeland Security Subcommittee on Transportation and Infrastructure Protection. In doing so, NPGA urges the subcommittee to legislatively direct DHS to adhere to the existing bipartisan, consensus framework that was passed by unanimous consent in both chambers of Congress and signed into law by President Clinton. Enactment of such a provision will allay the major safety, energy, environmental and consumer concerns raised herein and allow the agency to concentrate its limited resources on facilities that pose the highest risk.