

DHS CFATS Program Reauthorization Considerations for Propane

The Issue: The Chemical Facility Anti-Terrorism Standards (CFATS) is a duplicative and burdensome regulatory scheme overseen by the Department of Homeland Security (DHS). CFATS does not provide a retail exemption for propane facilities, unlike other chemical safety regulatory schemes. As a result, CFATS creates artificial ceilings for propane storage, raises consumer prices, and limits supply potential during times of peak consumption.

Background: Propane is one of over 340 substances on the DHS Chemical of Interest list. The threshold level for propane is 60,000 pounds (about 14,200 gallons). Propane is a ubiquitous fuel better described as a community commodity than a chemical. Locations storing propane above the threshold include customers, such as residential community gas systems, fuel dispensers for public and private fleet vehicles, and retail facilities selling directly to the end user.

Unlike the CFATS program as currently authorized, Congress defined propane as outside the scope of other regulatory requirements when used as a heating fuel or held for direct sale at a retail facility. By the *Chemical Safety Information, Site Security and Fuels Regulatory Relief Act*, EPA's Risk Management Program does not apply to locations that hold propane as fuel or for sale at a retail facility. Congress enacted this exclusion specifically to provide consistency with OSHA's Process Safety Management Standard, which does not impose requirements on locations that use propane for heat or retail locations.

This exclusion does not remove the required safety and security measures for these locations. In addition, other federal and state regulations already require security measures in the context of propane's everyday role in communities. For example:

- DOT requires the industry to develop security plans that address personnel security, unauthorized access, and en route security.
- The National Fire Protection Association's *LP-Gas Code* contains specific requirements to address security and deter criminal or terrorist activities. The code also requires facilities with more than 4,000 gallons of storage to perform a Fire Safety Analysis (FSA). The FSA plans for the response to incidents such as a release of propane, fire, or security breach in coordination with local emergency responders and also analyzes the potential for hazardous exposures to the facility surroundings and the public.
- EPA requires facilities to prepare and file annual reports with the State Emergency Response Commission, Local Emergency Planning Committee and affected fire departments under the Emergency Planning and Community Right-to-Know Act.

The Ask: In its reauthorization of the DHS CFATS program, Congress should conform the regulatory requirements of the CFATS program with the regulations of other similar agency programs by excluding retail facilities.