



**HIGH
RISK**

Far-ranging DHS reg will hit customers and suppliers hard.

Are Scout camps, Salvation Army children's camps, and camps for seriously ill children chemical facilities at risk and in need of regulations from the U.S. Department of Homeland Security (DHS)? This month DHS's Chemical Facility Anti-Terrorism Standards (CFATS) go into effect, requiring hundreds of thousands of "facilities" that have certain quantities of specified chemicals on-site to complete a preliminary screening assessment that should determine the level of risk associated with the facility.

For propane storage, the aggregate quantity is 7500 pounds (1785 gallons). That extremely low threshold hits thousands of propane facilities and customer locations.

A facility with three 1000-gal. tanks, manifolded together or not, qualifies. A facility with six 500-gal. tanks serving six different buildings spread out on a piece of property qualifies. A facility that has one 1000-gal. refueling tank, a second 1000-gal. tank providing fuel for heating, and enough forklift cylinders to meet the threshold amount qualifies.

The list of "facilities" and storage tank/cylinder configurations is endless. From "Big Box" stores and commercial buildings in rural, off-the-mains areas to schools, hospitals, emergency services buildings, to even the President's ranch in Texas, myriad facilities will be covered. Just about all bulk storage at hotels and resorts on Hawaii, outside of Honolulu, will probably qualify, as would a large number of emergency personnel training facilities and large warehouse operations.

The agricultural industry could be hit the hardest across the country—from farms and ranches that meet the threshold quantity to processing facilities that need hot water to grain/corn drying operations to hog/poultry/dairy operations, not to mention the family farm operations where the aggregate storage in the tanks at the homes and outbuildings meets the threshold.

In just one Iowa county, one farm cooperative has 9000 farms affected, says the Iowa Propane Gas Association.

The rule's far-reaching effects touch even Washington, D.C.

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and the surrounding region, where a number of commercial, industrial, and residential facilities have propane storage that qualifies, including a significant number of vacation resorts and homes frequented by DHS executives nearby. Have these DHS executives considered how they will meet their own agency's requirements?

Little Time for Public Comment

Is this what Congress had in mind when it passed the DHS Appropriations Act of 2007, which included the preliminary proposal for CFATS? President Bush signed the act on Oct. 4, providing the agency the authority to regulate the security of "high-risk" chemical facilities (Public Law 109-295, sec. 550) and directed the agency to issue regulations within six months of its enactment.

This aggressive timeframe put tremendous pressure on DHS regulators to write and release the regulation. While propane was kept out of the original act, DHS was given the broad and vague authority to include into the rules any hazmat it deemed necessary.

The agency released the initial rulemaking in December, without mentioning any specific chemical or the quantity that would qualify. There also has been a very restricted one-month period to take public comment on the rulemaking. That information, along with specific details on what had to be reported, how it was to be reported, a timeframe for reporting, and penalties for not complying, was not announced when DHS released its interim final rule in mid-April. The rule goes into effect this month, June 8, if DHS takes no further action.

Propane and other LPGs, along with threshold quantities, were included in the April announcement as Appendix A. A long list of flammables and other hazmats, but at much lower threshold levels, are on the list of substances covered in the January rulemaking and the subsequent Appendix A, imitating the Environmental Protection Agency's (EPA) list from its risk management program (RMP) put in place in the late 1990's



The National Propane Gas Association (NPGA) hasn't just been sitting around waiting for the information. Staff has been lobbying DHS since the appropriations bill was introduced last fall to keep propane—or at least the majority of propane storage—out of the final rule (*BPN*, May, p. 11). Leading up to the publication of the final rule and following it, NPGA has met with agency representatives to point out a range of reasons why to not include propane, as well why the agency should keep the threshold quantity as high as possible. The association also submitted comments to DHS in early February, emphasizing why propane should be exempt from such security rules based on the exclusions already applied to propane within the RMP regulations. Right before press time, NPGA was able to meet with DHS two more times to provide additional information and to discuss with the agency how to find ways to carve out relief for marketers. said one staff member.

Letter-Writing Campaign

Following the April announcement, comments were taken on Appendix A through May 9. At that time, NPGA kicked its grass-roots organizing efforts into high gear, asking industry members to join it in writing DHS. Among the items NPGA requested be included in the letters was an extension of the comment period through July 9, which was not granted.

Through the May comment period about half of the more than 3000 letters received by DHS on the covered substances were from propane industry members. Information on the campaign and form letters are on NPGA's website, www.npga.org State associations have been encouraging their members to join the campaign and a coalition of 20 agricultural associations supported NPGA's position as well.

NPGA's top priority is to change how the initial Top Screening Analysis is handled, including the very low 7500-lb threshold for propane and the requirement for completing the analysis via the Internet. The association stressed that the rule was written so broadly that many customers will demand that

suppliers do the Top Screen Analysis for them or pay someone to do it for them as the price of remaining a customer. NPGA and other groups have warned DHS about the possibility of a new industry of consultants springing up to help those affected by the regulations. Most importantly, NPGA emphasized that the regulations should be consistent with the RMP rules.

Because DHS has not defined a facility in any specificity, the agency has severely underestimated the number of facilities that will be affected by the rule, said NPGA senior vice president Phil Squair. Its estimate of as many as 50,000 chemical facilities of all types that will have to be initially screened to see if they fit the "high-risk" standard does not take into account the large number of customer installations.

A number of marketers say there could be more than 140,000 installations—11,000 of these are just propane marketer facilities. Backing up this estimate is the number of 1000-gal. ASME standard propane tanks—530,000—that have been built and installed at about 21,500 customer sites in the U.S. over the past 10 years. NPGA calculates that 1.7% of all propane customers store more than 7500 lb.

The cost of complying with the rules is also under debate by many industries. NPGA says the agency's \$2300 to \$3500 per facility cost estimate to do just the Top Screen Analysis could be on the low side and is a significant cost burden on the industry, not to mention its customers. If a site is deemed a high risk, there are additional analyses that must be filled out and the cost impact per facility to perform a subsequent Site Vulnerability Assessment jumps to nearly \$25,000, based on DHS' regulatory assessment of the rules.

Also in its comments to DHS, NPGA noted that the Internet-based reporting is neither workable nor fair and will create a burden for companies and individuals not online or possessing broadband connectivity; the rules could decrease safety in the propane industry by keeping storage levels low, thereby increasing the frequency of shipments and product transfers; the rules will lead to poorer environmental quality due to fuel

Should these installations qualify as “High Risk” facilities?



— **Restaurants**

Gasoline Stations —



— **Orchards & Vineyards**

Motels —



— **Town Gas Systems**

Mini-Malls —



— **Resorts**

Crop Drying —



— **Summer Camps**

Fleet Refueling Sties —



switching by customers; DHS ignored the limitations placed on its authority by Congress in Section 550 of the Homeland Security Appropriations Act regarding the overlap with other health, safety, and environmental laws because the Top Screen Analysis is, in effect, an overlap of the RMP evaluation; the agency hasn't undertaken adequate analysis of the substances it intends to regulate; it has ignored the Administrative Procedure Act, which was designed to protect citizens from arbitrary agency rulemaking; and it failed to provide the regulated community "fair notice" of the conduct it seeks to regulate, a violation of the Due Process Clause.

Most disconcerting, according to NPGA, is DHS' apparent failure to thoroughly analyze its proposal, which led to its vastly underestimated number of facilities that will have to be processed. NPGA wrote DHS that it "may have missed the mark by an order of magnitude for propane alone." In its executive summary for April 1, DHS estimates that as many as 50,000 facilities will have to register. It then readjusted that number downward by 20% to 40,000 facilities in its interim final rule dated April 9.

"We believe the fact that DHS published two different estimates that were 20% different in the course of little more than a week is troubling," said NPGA. "What is even more troubling, however, is the fact that DHS believes only 40,000-50,000 facilities in the U.S. possess any of the 344 covered substances in amounts over the Screening Threshold Quality."

A number of marketers have told *BPN* their amusement park, recreation, and hotel/resort customers will balk at this increased cost. Is it worth it to a hotel on the Vegas Strip to continue using propane for the special effects it produces daily?

Many marketers who believe the total number of facilities that will be affected is much larger also believe the total cost estimate for marketers and their customers to comply nationwide would be over a billion dollars!

Whose cost estimates and numbers of facilities are more realistic'?

—Ann Rey