

Regulatory Timeline

October 4, 2006—Section 550 of the Homeland Security Appropriations Act signed into law by President Bush.

December 28, 2006—Advanced Notice of Rulemaking published.

April 9, 2007—Interim Final Rule and draft Appendix A published with comments due by May 9, 2007. Of the 4,300 comments submitted, over 4,000 (93%) of them raise concerns with the treatment of propane.

May 21, 2007—NPGA meets with DHS officials to present concerns.

August 24, 2007—17 Senators write to White House Office of Management and Budget expressing concerns.

September 6, 2007—NPGA meets with White House representatives

November 20, 2007—Final rule published

January 19, 2008—Deadline for submitting Top Screens to DHS (*may be extended to January 22, 2008*).

U.S. Department of Homeland Security Chemical Anti-Terrorism Standards

On November 20, 2007, the U.S. Department of Homeland Security (DHS) completed its Chemical Facility Anti-Terrorism Standards (CFATS) rulemaking. Appendix A to the regulations is a list of 325 substances that DHS defines as Chemicals of Interest (COI). Propane is listed on Appendix A as a COI with a Screening Threshold Quantity (STQ) of 60,000 pounds.

The purpose of this NPGA Member's Brief is to provide an overview of what propane marketers and customers must do to comply with the CFATS regulations. As will be explained in more detail below, compliance with this regulation may only occur through the internet, so we believe it is particularly important to provide information on where companies can go to obtain additional information for compliance.

Important Acronyms

AHQ – Area of Highest Quantity
CFATS – Chemical Facility Anti-Terrorism Standards
COI – Chemical of Interest
CSAT – Chemical Security Assessment Tool
DHS – Department of Homeland Security
SSP – Site Security Plan
STQ – Screening Threshold Quantity
SVA – Security Vulnerability Analysis

Note: This document is provided for general informational purposes and should not be relied upon as definitive regulatory guidance for particular situations. Furthermore, this document should not be interpreted to imply that NPGA supports the regulations or has ceased its activities to obtain relief.

Facilities covered by the regulations

Propane is one of 325 Chemicals of Interest (COI) covered by the CFATS. Propane is regulated as a “release-flammable” substance with a Screening Threshold Quantity (STQ) of 60,000 pounds (14,285 gallons). According to DHS, release-flammable substances are “chemicals with the potential to create a vapor cloud explosion that would affect populations within and beyond the facility, if intentionally released.”

Any facility storing more than 60,000 pounds of propane must register for access to the CSAT and, when registered, complete a Top Screen questionnaire. However, when calculating whether a facility exceeds the STQ for propane, a facility need not include propane stored in quantities of 10,000 pounds (2,380 gallons) or less. This provision was added by DHS to exempt end users from the regulations such as farms, residences, and others storing relatively small quantities propane in multiple tanks on the property that might otherwise add up to more than 60,000 pounds. In other words, all propane stored in quantities greater than 10,000 pounds must be aggregated for purposes of calculating a facility’s exceedance of the STQ.

DHS will review all Top Screen submittals and determine whether each facility presents a high level of security risk. DHS’s determination will be communicated back to the facility in writing.

Initial Regulatory Milestone: Top Screen

Publication of the final rules on November 20, 2007 initiates a 60-day time period ending January 19, 2008 during which all facilities storing more than the propane threshold must complete a Top Screen questionnaire. Top Screen is the online screening process through which DHS will analyze facility-specific data submitted electronically to determine whether or not the facility is “high risk”. Facilities designated through Top Screen as “High risk” facilities will have additional responsibilities under the regulations, while those designated not “high risk” will wash out of the system.

It is important to note that **DHS will only accept Top screen submittals online via their secure website. Paper submittals are not a compliance option. It is also important to know that DHS will NOT accept submissions from unsecured e-mail addresses such as Hotmail, AOL or Yahoo. The CSAT includes detailed instructions on how to register for the system.**

Everything Must Done Electronically

The only way a facility may comply with the regulations is via the internet. The CSAT is the DHS’s system for collecting and analyzing data from facilities. Only through the CSAT are facilities able to register for access to the CSAT and identify facilities that store more than 60,000 pounds of propane. The CSAT is the primary source of compliance information and it comprises four secure, web-based tools:

- Registration Questionnaire
- Top-Screen Questionnaire
- Security Vulnerability Assessment (SVA) tool
- Site Security Plan (SSP) template

What Happens If DHS Determines A Facility Is “High Risk”?

Upon receipt of a facility’s Top Screen, DHS will make an initial determination of whether or not the facility presents a “high risk” and should be further regulated. If DHS determines additional regulation is not warranted, it will issue a written letter to that effect and the facility washes out of the program. A facility receiving such a letter should retain a copy in its permanent files. If DHS determines additional regulation of the facility is warranted, it will notify the facility that it has 90 calendar days in which to perform a Security Vulnerability Analysis (SVA). Also, should DHS require a Site Security Plan, you must submit it within 120 calendar days of being notified.

Facilities designated as “high risk” will be assigned to one of four risk-based tiers. Tier 1 is the most severe designation, while Tier 4 is the least severe designation. The tier designation will lead to progressively greater regulation and will also require facilities to re-submit their Top Screens on a designated schedule. DHS provides a mechanism for certain facilities designated “high risk” can comply with the some or all of the regulations through an “Alternative Security Program”. Considering the similarity among propane storage facilities, NPGA is considering whether to pursue a template ASP for propane marketers designated as “high risk”.

What Does A Security Vulnerability Analysis Entail?

The Security Vulnerability Analysis must address the following aspects:

1. **Asset Characterization**, including the identification and characterization of critical assets; identification of hazards and consequences of concern for the facility, its surroundings, its critical asset(s), and supporting infrastructure; and identification of existing layers of protection;
2. **Threat Assessment**, including a description of possible internal threats, external threats, and internally-assisted threats;
3. **Security Vulnerability Analysis**, including the identification of potential security vulnerabilities and the identification of existing countermeasures and their level of effectiveness in both reducing identified vulnerabilities and in meeting the applicable Risk-Based Performance Standards;
4. **Risk Assessment**, including a determination of the relative degree of risk to the facility in terms of the expected effect on each critical asset and the likelihood of a success of an attack; and
5. **Countermeasures Analysis**, including strategies that reduce the probability of a successful attack or reduce the probable degree of success.

DHS will have significant guidance on the performance of an SVA in the CSAT.

What Must a Security Plan Entail

The Site Security Plan must address the following aspects:

1. **Restrict Area Perimeter**. Secure and monitor the perimeter of the facility;
2. **Secure Site Assets**. Secure and monitor restricted areas or potentially critical targets within the facility;

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3. **Screen and Control Access.** Control access to the facility and to restricted areas within the facility by screening and/or inspecting individuals and vehicles as they enter,
 4. **Deter, Detect, and Delay.** Deter, detect, and delay an attack, creating sufficient time between detection of an attack and the point at which the attack becomes successful;
 5. **Shipping, Receipt, and Storage.** Secure and monitor the shipping, receipt, and storage of hazardous materials for the facility;
 6. **Theft and Diversion.** Deter theft or diversion of potentially dangerous chemicals;
 7. **Sabotage.** Deter insider sabotage;
 8. **Cyber.** Deter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls,
 9. **Response.** Develop and exercise an emergency plan to respond to security incidents internally and with assistance of local law enforcement and first responders;
 10. **Monitoring.** Maintain effective monitoring, communications and warning systems
 11. **Training.** Ensure proper security training, exercises, and drills of facility personnel;
 12. **Personnel Surety.** Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets,
 13. **Elevated Threats.** Escalate the level of protective measures for periods of elevated threat;
 14. **Specific Threats, Vulnerabilities, or Risks.** Address specific threats, vulnerabilities or risks identified by DHS for the particular facility;
 15. **Reporting of Significant Security Incidents.** Report significant security incidents to DHS and to local law enforcement officials;
 16. **Significant Security Incidents and Suspicious Activities.** Identify, investigate, report, and maintain records of significant security incidents and suspicious activities in or near the site;
 17. **Officials and Organization.** Establish official(s) and an organization responsible for security and for compliance with these standards;
 18. **Records.** Maintain appropriate records; and
 19. **Address** any additional performance standards DHS may specify.

DHS will have significant guidance materials available on the performance of SSPs on its website. Marketers should remember that material in company security plans required by the U.S. Department of Transportation's HM-232 regulation may be useful for purposes of complying with the DHS security plan requirements.

Penalties

DHS is authorized to seek civil and criminal damages for violations of the regulations up to \$25,000 per day.

Additional Resources

Companies with questions should visit the DHS website at www.dhs.gov/chemicalsecurity for detailed information and additional resources for compliance. Resources available include:

- Registration materials and instructions to gain access to the CSAT
- Written versions of the Top Screen questionnaire and other guidance documents

Companies should also be aware that DHS is maintaining a help desk. You may access the help desk by calling 1-866-323-2957 from 7:00 a.m. – 7:00 p.m., Eastern Time, Monday-Friday.

Step-by-Step Instructions

1. In order to comply with the regulations you will have to have access to a computer with internet access and an e-mail address from a credible domain. No free or public domain e-mail addresses such as Yahoo, AOL, or Hotmail will be allowed. You will also have to have the ability to read PDF format documents, such as through Adobe Acrobat (a free program).
2. Once you are on the internet, all materials you will need are available from the DHS website at www.dhs.gov/chemicalsecurity. The first things you should learn about is the Chemical Security Assessment Tool (CSAT), which is the online system for collecting and analyzing data from chemical facilities.
3. You will have to register with DHS for access to the CSAT before you will be allowed to go on to the next step. The registration process will ask you to input information for three types of people for each facility: the Preparer, the Submitter, and the Authorizer. (A reviewer with no editing rights may also be designated later). The Preparer, Submitter, and Authorizer can be the same person or different people.
4. Once all the data is input into the CSAT system, you will need to save the resulting PDF document, print it, sign it, and return it to DHS either **by mail** to: Chemical Security Compliance Division, ATTN: CSAT User Registration, Department of Homeland Security, Building 5300, MS 6282, P.O. Box 2008, Oak Ridge, TN, 37831-6282, or **by fax** to 1-866-731-2728. Additional detail on registering for the CSAT can be found in the *CSAT User Registration: User Guide* document published by DHS.
5. DHS will provide each facility with a secure user name and password which will provide access to the Top Screen. The three primary Top Screen users and their roles are defined as follows:
 - Preparer may enter data into the system, but not submit the data to DHS.
 - Submitter is designated by the company to submit the information to DHS
 - Authorizer provides assurance to DHS that the submitter and preparer are authorized
 - Reviewer is an optional function that allow a person to review information, but not enter, edit, or submit it to DHS.
6. All facilities will be required to provide the following general information:
 - Facility Name specific to the site.
 - Facility North American Industrial Classification System (NAICS) code For propane marketers, this should be 454312.
 - Facility DUNS number, if available.
 - Facility Type. For propane marketers, this will be “Chemical manufacturing, use, storage, distribution”.
 - Facility Location Address. This must be a physical street address, not a PO box.
 - Facility Latitude and Longitude. There are several publicly available tools on the internet to help you find this information, including Google Earth.
 - Facility County.
 - Owner name.
 - Operator name. The person with responsibility for daily operations and may be the same as the

owner.

- Facility statutory exclusions. This section relates to the specific exclusion from the regulations for facilities covered by the Maritime Transportation Security Act (MTSA), public water systems, certain federal government owned facilities, nuclear facilities. Propane marketers will not be excluded from the regulations under this section.
- EPA status under the Risk Management Program (RMP) regulations. Propane retailers and customers are exempt from the RMP regulations.
- Co-located host/tenant facility.
- Number of full-time employees typically onsite at any given time.
- Parent company name
- Security Vulnerability Assessment. This section allows the facility to state whether and when the last SVA was performed.

7. The next section of importance to propane marketers and customers relates to storage information at the site.

- Each facility needs to determine whether it exceeds the 60,000 pound Screening Threshold Quantity (STQ). Determine this by adding together all propane stored in amounts greater than 10,000 pounds (2,380 gallons). You must also include all quantities that may be found in railcars or transports that are used as storage and are disconnected from the engine or tractor.
- Administrative controls such as letters or memos to the file that limit the maximum quantity in tanks and vessels can be used to document whether propane in tank does not need to be added to the site's total.
- You will also have to determine the amount of propane stored in the Area of Highest Quantity (AHQ) for the facility. The AHQ is the area within a diameter of 340 feet where the greatest amount of propane is stored. The total for the AHQ will probably only be different from the total facility storage if propane is stored at multiple locations on the facility.

8. Completing Top Screen.

- The Preparer inputting the top screen answers will be given an opportunity to review and validate answers. The Preparer will then be able to transfer the answers to the Submitter you designated before.
- Once the Submitter has accessed the CSAT and completed his/her review of the answers, it can be transmitted to DHS. MAKE SURE YOU SAVE A COPY! Once you send it to DHS, you will no longer have access to it.

National Propane Gas Association
1150 17th Street NW, Suite 310 * Washington, DC 20036
Phone: (202) 466-7200 * Fax: (202) 466-7205
www.npga.org