

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CH. 13 ]

### Propane and Liquefied Petroleum Gas

Under section 16 of the Propane and Liquefied Petroleum Gas Act (35 P. S. §§ 1329.1—1329.19) (act), the Department of Labor and Industry (Department) is submitting proposed rulemaking for the regulation of propane and liquefied petroleum gas (LPG).

The Department proposes the following amended regulations for propane and liquefied petroleum gas under the act as set forth in Annex A.

#### *Statutory Authority*

This proposed rulemaking is issued under the authority provided in section 16 of the act (35 P. S. § 1329.16) which provides: “The department shall promulgate and enforce regulations to implement this Act. These regulations may include setting forth minimum general standards covering the design, installation and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases, specifying the odorization of the gases and establishing guidelines for the processes and technologies that are not covered by industry standards.”

Section 5(a) of the act (35 P. S. § 1329.5(a)) also mandates that the Department establish fees by regulation for the approval of new and expansion of existing liquefied petroleum gas facilities, permits and certification of training programs. Section 17(a)(1) of act charges the Department with responsibility for enforcing the act and regulations promulgated under act (35 P. S. § 1329.17(a)(1)).

#### *Background*

Liquefied petroleum gas is a highly flammable and combustible material, which can pose a serious threat to life and property if stored or handled improperly or if a leak occurs. The Commonwealth previously enacted the act of December 27, 1951 (P. L. 1793, No. 475) (35 P. S. §§ 1321—1329) (Repealed). In 2002, the Legislature replaced this repealed act with the act in an effort to bring the Commonwealth’s liquefied petroleum gas program up to current National standards of safety, training and inspection. The act’s primary improvement was requiring Nationally-accepted standards for and consistent application of inspections of liquefied petroleum gas containers and facilities. The proposed rulemaking is intended to amend the existing regulations regarding liquefied petroleum gas at 34 Pa. Code Chapter 13, Subchapter A (relating to liquefied petroleum gas).

#### *Compliance with Executive Order 1996-1, Regulatory Review and Promulgation*

Since the passage of the act, the Department has sought input from the Liquefied Petroleum Gas Advisory Board. The Liquefied Petroleum Gas Advisory (Board) was created under section 12 of the act (35 P. S. § 1329.12) to review and comment on all regulations before release of the regulations. The Board consists of representatives from the Liquefied Petroleum Gas Industry and a consumer representative. The Board reviewed drafts of this proposed rulemaking and provided com-

ments and input on a number of substantive issues. The Board met to review and comment on the proposed rulemaking on November 16, 2004, June 17, 2008, and September 9, 2008.

The Department has also provided draft copies of this proposed rulemaking to industry representatives and associations for input during the drafting process, including the Pennsylvania Propane Gas Association.

#### *Purpose*

This proposed rulemaking is necessary to implement the act. The regulation adopts National standards which bring the Commonwealth’s program to the most current “state of the art” in technology and safety. The rulemaking applies to bulk plants, distributors and industrial users and regulates the storage, transfer, sale and use of liquefied petroleum gas, including providing for approval of training programs for authorized attendants. This rulemaking adopts fees, provides for registration and annual permits and requires facilities to maintain insurance. The rulemaking sets forth the application and plan approval processes and provides for enforcement by the Department if an inspection reveals violations of the act or its rulemaking.

Under section 18(b) of the act (35 P. S. § 1329.18(b)), this proposed rulemaking does not apply to persons that both sell liquefied petroleum gas and the container in which the liquefied petroleum gas is contained if the container is not more than 2.5 pounds water capacity.

This proposed rulemaking will amend the existing regulations dealing with liquefied petroleum gas in Chapter 13 (relating to gas, lead and nitro amido compounds).

### SUMMARY OF PROPOSED RULEMAKING

#### *Subchapter A. GENERAL PROVISIONS*

##### *§ 13.1. Definitions.*

This section provides definitions for the terms used in the chapter. It provides the statutory citation for the act.

This section identifies and provides addresses for the American Society of Mechanical Engineers (ASME), the Propane Education and Research Council, the National Board of Boiler and Pressure Vessel Inspectors, the National Fire Protection Association (NFPA) and the National Propane Gas Association (NPGA).

It also provides information on the National standards adopted by this chapter, such as ASME Code, National Board Inspection Code and NFPA 58 and it contains definitions of terms as “bulk plant,” “container,” “cylinder,” “cylinder exchange cabinets,” “dispensing station,” “industrial user,” “tank” and “transfer.”

##### *§ 13.2. Scope.*

This proposed rulemaking applies to the registration and permitting of bulk plants, distributors and industrial users. It applies to any storage, transfer, sale or use of liquefied petroleum gas. It applies to the design, construction, location, operation and inspection of tanks, cylinders and piping from the tank or cylinder to the regulator immediately outside a building. It sets forth the process for the approval of training programs for authorized attendants.

§ 13.3. *Fees.*

This section sets out the fees for facility applications, plan approvals, permits and training program certifications, required under section 5 of the act. This section also establishes a \$100 fee to apply for an Industrial Board variance. The fee is consistent with the Uniform Construction Code variance application fee. See 34 Pa. Code § 401.2(h) (relating to Department fees).

§ 13.4. *Adoption of National standards.*

This section states that the Department adopts NFPA 54 and NFPA 58, the standards referenced in these publications and published cases, interpretations or tentative interim amendments approved by the Industrial Board, except NFPA 58 sections that were specifically excluded from this rulemaking. It also sets forth effective dates for certain portions of NFPA 58.

§ 13.5. *Registration and annual permits.*

This section requires operators of bulk plants, distributors and industrial users to register with the Department by submission of a form, payment of the appropriate fee and submission of a valid copy of an industry standard insurance certificate, demonstrating liability insurance coverage as required under § 13.6 (relating to insurance).

This section also provides that the Department will issue an annual permit, which shall be posted by the bulk plant, distributor or industrial user.

§ 13.6. *Insurance.*

This section requires liquefied petroleum gas facilities to secure and maintain liability insurance policies in the amounts set forth, according to the facility's storage capacity.

§ 13.7. *Transfer of LPG.*

This section provides that only an authorized attendant, as defined in the regulations, may transfer liquefied petroleum gas. It further provides that a distributor may not provide product to a bulk plant, industrial user or other distributor unless the distributor has a current annual permit issued by the Department.

*Subchapter B. REQUIREMENTS FOR FACILITIES, TANKS AND CYLINDERS*

§ 13.20. *Application process and plan approval.*

This section requires the owner or operator of the following to submit an application to the Department: a liquefied petroleum gas tank exceeding 2,000 gallons capacity, a fixed location with aggregate capacity exceeding 4,000 gallons, or a dispensing station or a cylinder exchange cabinet location. The application must include a completed registration form and proof of annual insurance set forth in § 13.5 the appropriate fee set forth in § 13.3 (relating to fees); plans that provide information regarding equipment, distances of equipment to buildings, security, fire protection and vehicle protection measures; a fire safety analysis required by NFPA 58; and, a manufacturer's data report for each unfired pressure vessel.

For distributors installing or expanding a bulk plant with a capacity of less than 9,000 gallons or industrial users with a total storage capacity of less than 9,000 gallons, this section permits submission of a Notice of Intent to Install Form, instead of plans.

This section prohibits an owner or operator of the following to operate until it has received an annual permit issued by the Department: a liquefied petroleum gas tank exceeding 2,000 gallons capacity, a fixed location

with aggregate capacity exceeding 4,000 gallons, a dispensing station or a cylinder exchange cabinet. It also requires the Department to inspect applicants for compliance with the plans or notice of intent to install before issuance of the annual permit.

This section requires that a manufacturer's data report for every unfired pressure vessel be registered with the National Board.

§ 13.21. *LPG facilities over 400,000 gallons.*

This section requires the owner or operator of a new liquefied petroleum gas facility in excess of 400,000 gallons or an existing liquefied petroleum gas facility expanded to exceed 400,000 gallons to submit an application to the Department. The application must include a completed registration form required by § 13.5 and documentation and plans demonstrating storage quantities; proximity to populated areas and public ways; the impact of rejection from the Department upon the facility's ability to service current and anticipated customer needs and upon the facility's business investment; risk to and from existing adjacent facilities; topography of the site; access for emergency vehicle response; utilities (public and private); requirements for receipt or shipment of products; compliance with local land use ordinances; and the safety plan proposed by the facility. The application must also include proof of notification to the municipality set forth in subsection (b). The application must include the appropriate fee required by § 13.3.

Subsection (b) requires that upon submission of an application, the applicant shall send notification to the municipality where the facility is located of its Department filing through certified mail.

This section provides that the Department will publish notice of the application in the *Pennsylvania Bulletin* and provides an aggrieved party 45 days from this publication to file a protest with the Department. In addition, the municipality or county has 45 days to file a written comment with the Department.

Within 90 days of publication, the Department will issue a written determination approving or disapproving the application and will send a copy by certified mail to the applicant and to any party who filed a protest or submitted written comments.

Subsection (e) prohibits the facility owner or operator from installing or operating the facility or the expanded portion of the facility until it receives an annual permit issued by the Department.

§ 13.22. *Underground tanks.*

This section requires that underground tanks be installed in accordance with NFPA 58 and that dealers maintain records of installation locations using GPS coordinates for underground tanks exceeding 2,000 gallons water capacity.

§ 13.23. *Repairs to ASME vessels.*

This section requires that repairs to ASME vessels be performed in accordance with the National Board Inspection Code.

§ 13.24. *Cylinder exchange cabinets.*

This section requires retailers and locations using cylinder exchange cabinets to comply with Section 8.4.1 of NFPA 58 and provides that busy thoroughfares or sidewalks, as those terms are used in Section 8.4.1.2(3) of NFPA 58, include sidewalks, concrete aprons and parking lots at retail establishments.

*Subchapter C. TRAINING PROGRAMS**§ 13.40. Training programs for authorized attendants.*

This section requires that an individual must satisfactorily complete a training program approved by the Department for becoming an authorized attendant. It requires that all training programs include information regarding physical properties and combustion characteristics of propane; propane industry standards, safety codes and regulations; basic parts of propane tanks, cylinders and bulk storage installations; proper use of safety and protective equipment; and, maintenance of a safe working environment.

In addition to these basic requirements, training programs for attendants who will deliver liquefied petroleum gas must also include proper inspection, maintenance and operation of bulk propane delivery vehicles; proper inspection and filling of propane storage containers; and proper delivery of propane including exchange and filling of LPG containers. This section also requires that training programs for attendants who are employed in bulk plant operations must include identification and installation of valves in propane storage containers; identification and installation of gauges in propane storage containers; safe removal of propane from tanks and cylinders at the plant and at the container site; inspection, maintenance and filling of propane tanks and cylinders at the plant and at the container site; and proper unloading of propane transports and rail cars, in addition to the basic training requirements.

*§ 13.41. Training program approval.*

This section provides that the Department will approve facility operator provided training programs. It requires each liquefied petroleum gas operator that has individuals who transfer liquefied petroleum gas to submit a completed application for training program approval to the Department, with a detailed description of its training program and the appropriate fee under § 13.3. The Department will issue a program approval certificate or will inform the facility operator in writing of the reasons for rejecting a training program.

Subsection (c) requires facility operators to notify the Department in writing of any changes in their approved training program.

Subsection (d) provides that instead of developing and submitting a training program for authorized attendants, an LPG facility operator may utilize the Propane Education and Research Council training programs. A facility electing to use the Propane Education and Research Council program must notify the Department in writing of that election.

Subsection (e) requires facility operators to maintain training records for as long as the authorized attendant is employed by the facility. The records must include the date of training, the name of the authorized attendant, the name of the course and the name of the trainer or supervisor.

*Subchapter D. ADMINISTRATION**§ 13.50. Suspension of annual permit for container.*

This section provides that the Department will suspend the annual permit and seal of a liquefied petroleum gas container that is unsafe. It provides that a person, firm, partnership or corporation operating a liquefied petroleum gas container or facility with a suspended permit is subject to the penalties of section 17 of the act (35 P. S. § 1329.17).

*§ 13.51. Suspension of annual permit for owner or operator.*

This section provides that the Department will suspend the annual permit of an owner or operator for failure to pay the fee required in § 13.3 or for any violation of the act or this chapter.

*§ 13.52. Notice of deficiency.*

This section sets forth the procedures that will be used by the Department if an inspection reveals any violation of the act or this chapter. It provides that the Department will issue a written notice of deficiency to the owners or operators of the container or facility containing a description of the violations and an order requiring correction of the violations and repairs. The written notice of deficiency will include a certification for the owner or operator to complete certifying that the required repairs have been completed, which must be returned to the Department.

If the owner or operator does not correct the deficiency within the period of time allowed, or fails to return the certification, the Department may issue an order to show cause. This section requires the order to show cause to include a statement of the grounds for the action, the alleged violations of the act and its regulations, and notification that the equipment may be placed out of service. The order to show cause will direct the owner or operator to provide a written response within 30 days. The Department will serve an order to show cause by personal service or certified mail. Any answer filed by the owner or operator must be filed within 30 days following service of the order to show cause, must contain specific admissions or denials of the allegations set forth in the order to show cause, and must set forth the specific facts, matters of law, or regulation interpretation that the owner or operator relies upon. The answer may also contain a request for a variance or extension of time for compliance. This section requires the Department to forward all requests for variances, extension of time or appeals regarding interpretation of the regulation to the Industrial Board.

A request for variance, extension of time or an appeal will be considered a stay to the enforcement action.

At the expiration of an extension of time or other time period granted for compliance, the Department will inspect the container or facility. If the container or facility is found to violate the act or regulations after the inspection, the Department may seal the liquefied petroleum gas container or facility.

The Department will issue a notice to discontinue operation to the owner or operator for a violation that was not corrected, either by personal service or by certified mail. This notice will require the owner or operator to discontinue the use of the container or facility within 24 hours. The equipment may be returned to service only when the violations have been corrected, the repairs have been made and the Department removes the seal. A party aggrieved by a notice of deficiency or a notice to discontinue operation may appeal that order to the Industrial Board (Board) within 30 days of the issuance of the order. Appeals from the Board Order may be filed within 30 days of that order.

*§ 13.53. Notice and hearing.*

This section provides that any actions of the Department relating to a notice of deficiency, notice to discontinue operation or suspension of an annual permit for a container under §§ 13.50, 13.51 and 13.52 will be taken

subject to the right of notice, hearing and adjudication under 2 Pa.C.S. (relating to Administrative Law and Procedure). It further provides that proceedings will be conducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

§ 13.54. *Municipal preemption.*

This section provides that the Department has the sole right and ability to regulate the liquefied petroleum gas industry and that no municipality or subdivision may adopt or enforce an ordinance or regulation that differs from the Act or these regulations. Municipalities may not prohibit placement of liquefied petroleum gas containers, other than to establish an absolute setback of 10 feet from a property line.

This section also provides that municipalities retain the right, in accordance with local zoning ordinances, to require a facility to locate in an approved zone and to require zoning permits and fees. Buildings located at LPG facilities must comply with municipal standards applied to primary structures.

*Affected Persons*

This proposed rulemaking affects owners and operators of liquefied petroleum gas bulk plants, cylinder exchange cabinets, dispensing stations, distributors and industrial users. The general public is also affected, as updating the regulations related to liquefied petroleum gas to National standards will increase public safety.

*Fiscal Impact*

The Commonwealth will incur no additional cost under these proposed rulemaking. The costs will be similar to costs now incurred by the Department's liquefied petroleum gas inspection and inspector certification program. This rulemaking will not increase administrative, enforcement or legal activity.

*Reporting, Recordkeeping and Paperwork Requirements*

This rulemaking will not require the creation of new forms and reporting requirements. Current forms may be updated.

*Sunset Date*

A sunset date is not appropriate for this rulemaking. However, the Department will continue to monitor the impact and effectiveness of the rulemaking.

*Effective Date*

This proposed rulemaking will take effect upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

*Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jack Davenport, Bureau of Occupational and Industrial Safety, Department of Labor and Industry, 16th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121 or by electronic mail to [jacdavenport@state.pa.us](mailto:jacdavenport@state.pa.us) within 30 days of publication in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 9, 2009, the Department submitted a copy of this proposed rulemaking to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee (Committee) and to the Independent Regulatory Review Commission (IRRC). In addition to submitting the proposed rulemaking, the

Department has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking to the Department within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

SANDI VITO,  
*Secretary*

**Fiscal Note:** 12-76. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY**

**PART I. DEPARTMENT OF LABOR AND INDUSTRY**

**CHAPTER 13. [GAS, LEAD AND NITRO AMIDO COMPOUNTS] PROPANE AND LIQUEFIED PETROLEUM GAS REGULATIONS**

**Subchapter A. [ LIQUEFIED PETROLEUM GAS ] GENERAL PROVISIONS**

**Subchapter A. GENERAL PROVISIONS**

**§ 13.1. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—[ **The act of December 27, 1951 (P. L. 1793 No. 475) (35 P. S. §§ 1321—1329) ] The Propane and Liquefied Petroleum Gas Act (35 P. S. §§ 1329.1—1329.19).**

*ASME*—**The American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5990 or its current address.**

*ASME Code*—**“The Boiler and Pressure Vessel Code,” 2007 edition and any published cases and interpretations adopted by the Industrial Board under § 3a.4 (relating to adoption of National standards).**

*Authorized attendant*—An employee of a manufacturer, distributor or user of [ **liquefied petroleum gas** ] LPG who [ **has been** ] was trained, in a manner approved by the Department, in the proper performance of duties, [ **with complete training recognition in the hazards involved in the handling of liquefied petroleum gas** ] and who [ **has been** ] was officially [ **authorized to perform designated duties by the employer** ] recognized by the facility operator to perform those duties.

*Bulk plant*—[ **Any liquefied petroleum storage facility consisting of storage tank or tanks and related equipment used for the filling of smaller liquefied petroleum gas containers which are sold or delivered, or both, to wholesale or retail dealers or to users; the term shall include consumers of lique-**

fied petroleum gas who use storage tanks to refill their own cylinders or tanks if the storage facilities are less than 2000-gallons water capacity. ]

(i) An LPG storage facility which has the primary purpose of distribution of LPG and which has both of the following:

(A) A bulk storage capacity of more than 2,000 gallons.

(B) Container-filling or tank-loading facilities on the premises.

(ii) The term includes a consumer of LPG that uses storage tanks to refill the consumer's own containers if the consumer's storage facility has a bulk storage capacity of less than 2,000 gallons and the storage tanks are not owned by a distributor.

**Certified Employee Training Program**—The "Certified Employee Training Program," available from the Propane Education and Research Council, 1140 Connecticut Avenue NW, Suite 1075, Washington, DC 20036 or its current address.

**Container**—A vessel such as a cylinder, tank, portable tank, and cargo tanks used for the transporting or storing of LPG.

**Cylinder**—[ Any container constructed and maintained in accordance with the Interstate Commerce Commission cylinder specifications for use in storing and transporting liquefied petroleum gas ] A container constructed in accordance with United States Department of Transportation regulations, 49 CFR 171 (relating to general information, regulations, and definitions).

**Cylinder exchange cabinets**—A lockable and ventilated metal locker or rack for the storage of LPG cylinders that prevents tampering with valves and pilferage to the cylinders.

[ **Dealer**—Any person who sells liquefied petroleum gas to customers located in this Commonwealth except:

(i) Merchants who sell both liquefied petroleum gas and the container thereof where such container is 2 1/2 pounds of water capacity or less.

(ii) Public utilities regulated by the Public Utility Commission distributing liquefied petroleum gas by pipelines.

(iii) Producers not selling to users directly. ]

**Dispensing station**—Fixed equipment with an aggregate of 2,000 or less gallons of water capacity where LPG is stored and dispensed into portable containers.

**Distributor**—

(i) A person authorized by the Department to sell or transfer LPG.

(ii) The term includes a cylinder exchange cabinet or a dispensing station.

**Gallons**—The term shall be measured in terms of water capacity.

**GPS**—Global positioning system.

[ **Industrial and utility user**—Any person who is the consumer of liquefied petroleum gas who maintains total storage capacity of 2,000-gallons water capacity or more. ]

**Industrial Board**—The Industrial Board of the Department established under sections 445 and 2214 of The Administrative Code of 1929 (71 P. S. §§ 155 and 574), which hears requests for variances and extensions of time and appeals of Department interpretations regarding LPG matters.

**Industrial user**—A person who is the consumer of LPG and who maintains a total storage capacity at a site of more than 2,000 gallons and whose storage tanks are not registered under a distributor. This consumer may be a residential or a commercial location.

[ **Industry**—Standards developed by the National Fire Protection Association for the storage and handling of liquefied petroleum gases (NFPA-58) and the installation of gas appliances and gas piping (NFPA-54). ]

**LPG**—Liquefied petroleum gas.

**LPG facility**—Distributors, bulk plants and industrial users.

**Liquefied petroleum gas**—[ Any substance in a liquefied or gaseous state which is composed predominately of any hydrocarbon such as propane, propylene, butane, normal butane or isobutane and butylene or their mixtures. ] A material in liquid form that is composed predominately of any of the following hydrocarbons or their mixtures:

(i) Propane.

(ii) Propylene.

(iii) Normal butane or isobutane.

(iv) Butylenes.

**NFPA**—National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269.

**NFPA-54**—The "National Fuel Gas Code," 2006 edition, issued by the NFPA.

**NFPA 58**—The "Liquefied Petroleum Gas Code," 2008 edition issued by the NFPA.

**NGPA**—National Propane Gas Association, 1150 17th Street, NW Suite 310, Washington, DC 20036-4523 or its current address.

**National Board**—National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229 or its current address.

**National Board Inspection Code**—The "National Board Inspection Code," 2007 Edition, issued by the National Board.

**Person**—[ Any ] An individual, firm, partnership, unincorporated association, corporation, [ or municipality and ] political subdivision or authority, including the Commonwealth.

[ **System**—An assembly of the cylinder or cylinders, tank or tanks and auxiliary equipment, with the piping connecting such parts. This term does not include any public utility distribution systems. ]

**Tank**—A portable or stationary ASME approved vessel used [ on storing ] to store [ liquefied petroleum gas with a water weight capacity more than 1,000 pounds avoirdupois ].

*Transfer*—To cause LPG to pass from any pipeline, tank, container, tank truck, receptacle or storage location to a similar or different type of pipeline, tank, container, tank truck, receptacle or storage location.

§ 13.2. [ Purpose ] Scope.

[ (a) This subchapter sets forth rules to safeguard the lives, limbs and health of the public and of workers where liquefied petroleum gas is manufactured, handled or used.

(b) The employer, employe and user of liquefied petroleum gas shall have the responsibility of complying with the provisions of this subchapter. ]

This chapter applies to:

(1) The registration and permitting of bulk plants, distributors, industrial users, dispensing stations and cylinder exchange cabinets.

(2) The storage, transfer, sale and use of LPG.

(3) The design, construction, location, operation and inspection of tanks, cylinders, equipment, piping and appliances used in the handling, storage and use of LPG.

(4) The approval of training programs for authorized attendants who transfer LPG.

§ 13.3. [ Administration ] Fees.

[ All industrial and utility users of liquefied petroleum gas with storage facilities in excess of 2,000 gallons water capacity and all bulk plants and dealers in liquefied petroleum gas shall comply with the registration provisions of the act of December 27, 1951 (P. L. 1793, No. 475), as amended (35 P. S. §§ 1321—1329). ]

(a) The following fees apply to facility applications, plan approvals, permits and training program certifications. Fees are nonrefundable.

(1) Annual permit and registration fees:

(i) Bulk plants with the following storage capacities:

- (A) 30,000 gallons or less \$ 90
- (B) 30,001 to 90,000 gallons 135
- (C) 90,001 gallons or more 180

(ii) Industrial users with the following storage capacities:

- (A) 2,001 to 30,000 gallons \$ 45
- (B) 30,001 to 180,000 gallons 90
- (C) 180,001 gallons or more 180

(iii) Distributors, other than cylinder exchange cabinets, having the following number of customers:

- (A) Less than 1,000 \$ 112.50
- (B) 1,000 to 2,999 235
- (C) 3,000 to 5,999 337.50
- (D) 6,000 or more 450

(iv) Cylinder exchange cabinet location \$ 50 (per physical address)

(2) Application and plan review, including Fire safety analysis review, for new LPG facilities ex-

ceeding 400,000 gallons and existing LPG facilities expanded to exceed 400,000 gallons in total capacity \$ 500

(3) Application and plan review fee:

(i) For a facility 4,001 to 400,000 gallons in total capacity \$ 150

(ii) For a facility less than 4,001 gallons in total capacity \$ 50

(4) Duplicate permit fee \$ 25

(5) Authorized attendant training program approval \$ 200

(6) Request for Industrial Board variance, appeals and extensions of time \$ 100

(b) The Department will invoice bulk plant owners, industrial users and distributors annually for each location of usage. Payment is due within 30 days of invoice date.

§ 13.4. [ Scope ] Adoption of National standards.

(a) [ The provisions of this subchapter apply to the design, construction, transportation, handling, location, operation, and inspection of tanks, cylinders, equipment, piping, appliances, and transportation facilities utilized in the handling, transportation, and use of liquefied petroleum gas as defined in this subchapter.

(b) The provisions of §§ 13.11—13.29 (relating to general requirements) apply to all classes of vessels and equipment.

(c) The provisions of §§ 13.31—13.45 (relating to special requirements) apply to the particular vessels and equipment designated in each individual section, in addition to the requirements of §§ 13.11—13.29.

(d) Standards as developed for the 1976 edition of the Storage and Handling of Liquefied Petroleum Gases (NFPA # 58) and the 1969 edition of the Installation of Gas Appliances and Gas Piping (NFPA # 54), are part of these regulations by reference and shall govern only when they are more inclusive or more stringent than the Pennsylvania Regulations for Liquefied Petroleum Gas. ]

The Department adopts the following standards and any of the standards' published cases, interpretations or tentative interim amendments approved by the Industrial Board under this chapter and the act. Other authorities referenced in these standards are adopted if the authority is not excluded in subsection (b):

- (1) NFPA 54.
- (2) NFPA 58.

(b) The Department will not adopt the following NFPA 58 provisions:

- (1) Chapter 9 (relating to Vehicle transportation).
- (2) Chapter 13 (relating to Marine shipping and receiving).

(c) The following NFPA 58 provisions which will take effect on the enumerated dates:

(1) Chapter 5, section 5.2.3 regarding the requalification of cylinders filled onsite, effective January 1, 2013.

(2) Chapter 6, section 6.25 regarding fire safety analysis for existing installations, effective January 1, 2012.

(3) Chapter 5, section 5.7.4.2(d) regarding the installation of valves for existing installations, effective January 1, 2018.

(4) Chapter 6, section 6.11 regarding the installation of internal valves for existing installations, effective January 1, 2018.

(d) The Industrial Board may also approve any NFPA 54 and 58 published cases, interpretations or tentative interim amendments as standards for use under the act and this chapter. Provisions enumerated in subsection (b) may not be approved.

§ 13.5. [ Penalty ] Registration and annual permits.

[ Any person who violates any of the provisions of this subchapter and any regulations of the Department, or who interferes with the Department or its duly authorized representative in the enforcement of such provisions shall be subject to summary proceedings before an alderman, magistrate, or justice of the peace, and upon conviction shall be penalized under the provisions of act of May 2, 1929 (P. L. 1513, No. 451) (35 P. S. § 1318) and section 7 of act of December 27, 1951 (P. L. 1793, No. 475) (35 P. S. § 1327). ]

(a) An operator of an LPG bulk plant, a distributor and an industrial user shall register annually with the Department on a registration form provided by the Department.

(b) An applicant for registration shall submit a completed registration form, the annual fee required under § 13.3 (relating to fees) and a valid copy of an industry standard insurance certificate equal to or greater than the amount of liability insurance required under § 13.6 (relating to insurance).

(c) The Department will issue an annual permit. The permit shall be posted at the location of each bulk plant, distributor and industrial user.

§ 13.6. [ Certificates of registration ] Insurance.

[ (a) A person shall be billed for each class of registration required by section 3.2 of the act (35 P. S. § 1323.2).

(b) Dealers shall be billed for on certificate based on the total number of customers served regardless of the number of locations used in the dealership.

(a) Bulk plant owners shall be billed for a certificate for each location of bulk plants.

(b) Industrial and utility users shall be billed for a certificate for each location of usage.

(c) Certificates shall be posted at the location of each bulk plant and industrial and utility usage and the original certificate shall be posted at the main office of dealers with photocopies of the certificate to be posted at each dealership location. ]

An LPG facility shall obtain and maintain policies of liability insurance in the following amounts:

(1) An LPG facility with a storage capacity of not more than 9,000 gallons shall maintain minimum liability coverage of \$250,000.

(2) An LPG facility with a storage capacity in excess of 9,000 gallons shall maintain minimum liability coverage of \$1 million per incident and \$2 million in the aggregate.

§ 13.7. [ Notification to Department ] Transfer by authorized attendant and supply.

[ The owner of a bulk plant shall, 15 days prior to the installation modification or removal of storage facilities, notify the Boiler Division, Bureau of Occupational and Industrial Safety, of these activities. ]

The following paragraphs apply to LPG transfer and supply:

(1) Only authorized attendants may transfer LPG.

(2) A distributor may not supply LPG to any bulk plant, industrial user or other distributor unless the distributor has a current annual permit.

*(Editor's Note: The Department is proposing to rescind §§ 13.11—13.17 as they currently appear in the Pennsylvania Code in pages 13-6—13-9 (serial pages (220114)—(220117)).)*

§§ 13.11—13.17. (Reserved).

#### [ GENERAL REQUIREMENTS ]

##### Subchapter B. REQUIREMENTS FOR FACILITIES, TANKS AND CYLINDERS

§ 13.20. [ Vessels filled at installation ].

Application process and plan approval.

[ Filing connections on tanks and cylinders which are filled at the installation shall be provided with effective check valves. ]

(a) All of the following entities shall submit an application to the Department before installation or modification:

(1) An owner or operator of an LPG tank exceeding 2,000 gallons capacity.

(2) An owner or operator of a fixed location with aggregate capacity exceeding 4,000 gallons.

(3) An owner or operator of a dispensing station or a cylinder exchange cabinet location.

(b) The application must contain the following:

(1) A completed registration form and proof of valid insurance required by § 13.5 (relating to registration and annual permit).

(2) The appropriate fee required by § 13.3 (relating to fees).

(3) Plans that contain the following information:

(i) Equipment to be installed.

(ii) Distances of equipment to buildings and property lines.

(iii) Security measures provided.

(iv) Fire protection measures provided.

(v) Vehicle protection measures provided.

(4) A fire safety analysis required by NFPA 58, Chapter 6, section 6.25.

(5) A manufacturer's data report (U1-A) for each unfired pressure vessel.

(c) A Department-provided notice of intent to install form may be submitted instead of the plans required under subsection (b)(3) for the following:

(1) A distributor installing or expanding a bulk plant with a capacity of less than 9,000 gallons.

(2) An industrial user with a total storage capacity of less than 9,000 gallons.

(d) The Department will inspect applicants under subsections (a) and (c) for compliance with the plans or notice of intent to install before issuance of the initial annual permit.

(e) If the inspection reveals a violation of the act or this chapter, the Department will issue a written notice of deficiency to the owner or operator. The written notice of deficiency will contain a certification to be completed by the owner or operator certifying that the deficiencies were corrected. The Department will not issue an annual permit unless the certification is executed by the owner or operator and returned to the Department after the deficiencies are corrected.

(f) An owner or operator may not operate an LPG tank, fixed location, dispensing station or cylinder exchange cabinet until it receives an annual permit issued by the Department.

(g) A manufacturer shall register a data report (U1-A) for each unfired pressure vessel with the National Board.

§ 13.21. [ Vaporizers ] LPG facilities over 400,000 gallons.

[ Vaporizers shall not be installed inside of any storage tank or cylinder. ]

(a) The owner or operator of a new LPG facility in excess of 400,000 gallons or an existing LPG facility expanded to exceed 400,000 gallons shall submit an application to the Department which includes the following:

(1) A completed registration form required by § 13.5 (relating to registration and annual permits) and a completed application required under § 13.20 (relating to application process and plan approval).

(2) Documentation and plans providing all of the following information:

(i) Storage quantities.

(ii) Proximity to populated areas and public ways.

(iii) The impact of any rejection from the Department upon the LPG facility's ability to service current and anticipated consumer needs and upon the LPG facility's business investment.

(iv) The risk to and from existing adjacent facilities.

(v) Topography of the site.

(vi) Access for emergency vehicle response.

(vii) Public and private utilities.

(viii) Requirements for receipt or shipment of products.

(ix) Compliance with local land use ordinances.

(x) The safety plan proposed by the LPG facility, such as emergency systems, spill containment, fire protection, fencing and lighting.

(3) Proof of notification to the municipality required in subsection (b). The Department will accept a copy of the notification and signed certified mail receipt card as proof of notification to the municipality.

(4) The appropriate fee required under § 13.3 (relating to fees).

(b) The applicant shall notify the municipality where the facility is located by certified mail that an application is being filed with the Department.

(c) The Department will publish a notice of the application in the *Pennsylvania Bulletin* within 10 business days of receipt of the application. An aggrieved party may file a protest with the Department 45 days from the publication of the notice. A municipality or county may file written comment with the Department within 45 days from publication of the notice.

(d) Within 90 days of publication of the notice, the Department will issue a written determination containing the approval or disapproval of the application. The Department will send a copy of the determination by certified mail to the applicant and to all parties who filed a notice of protest or submitted written comments.

(e) The facility owner or operator may not install or operate the facility or the expanded portion of the facility until it has received an annual permit issued by the Department.

§ 13.22. [ Fuel for internal combustion engines ] Underground tanks.

(a) [ Intake and discharge connections on tanks as well as on cylinders, which are used to supply fuel directly to internal combustion engines, shall be labeled to designate whether they communicate with vapor or liquid space ] Underground tanks shall be installed in accordance with NFPA 58.

(b) [ A positive automatic shutoff valve or regulator shall be provided in the fuel system to prevent flow of gas to the mixer when the engine is not running ] A distributor shall keep records of all installation locations, including their location by GPS coordinates, for individual underground LPG tanks exceeding 2,000 gallons water capacity.

§ 13.23. [ Regulators ] Repairs and alterations to ASME vessels.

[ Pressure reducing regulators shall be connected to the shutoff valve directly or by means of a suitable flexible connection. In either case the connection shall be rigidly supported. ]

Repairs and alterations to ASME vessels shall be performed in accordance with the National Board Inspection Code.

§ 13.24. [ Openings ] Cylinder exchange cabinets.

[ There shall be no more than two plugged openings on a tank or cylinder of 2,000 or less gallons water capacity. ]

(1) A retailer or location using a cylinder exchange cabinet shall comply with section 8.4.1 of NFPA 58.



(2) The term "busy thoroughfares or sidewalks" contained in section 8.4.1.2(3) of NFPA 58 shall include sidewalks, concrete aprons and parking lots at retail establishments.

*(Editor's Note: The Department is proposing to rescind §§ 13.25—13.29 and 13.31—13.38 as they currently appear in the Pennsylvania Code in pages 13-11—13-16 (serial pages (220120) to (220124)).)*

§§ 13.25—13.29. (Reserved).

§§ 13.31—13.38. (Reserved).

#### [ SPECIAL REQUIREMENTS FOR CYLINDERS ]

##### Subchapter C. TRAINING PROGRAMS

§ 13.40. Training programs for authorized attendants.

(a) An individual shall satisfactorily complete a Department-approved training program to become an authorized attendant to transfer LPG.

(b) Programs must include training on all of the following:

(1) Physical properties and combustion characteristics of propane.

(2) Propane industry standards, safety codes and regulations.

(3) Basic parts of propane tanks, cylinders and bulk storage installations.

(4) Proper use of safety and protective equipment.

(5) Maintenance of safe working environment.

(c) Programs for attendants who will deliver LPG shall include all of the following training in addition to the training enumerated in subsection (b):

(1) Proper inspection, maintenance and operation of bulk propane delivery vehicles.

(2) Proper inspection and filling of propane storage containers.

(3) Proper delivery of propane, including exchange and filling of LPG containers.

(d) Programs for attendants who are employed in bulk plant operations must include the following training in addition to the training enumerated in subsection (b):

(1) Identification and installation of valves in propane storage containers.

(2) Identification and installation of gauges in propane storage containers.

(3) Safe removal of propane from tanks and cylinders at the plant and at the container site.

(4) Inspection, maintenance and filling of propane tanks and cylinders at the plant and at the container site.

(5) Proper unloading of propane transports and rail cars.

#### SPECIAL REQUIREMENTS FOR CYLINDERS

§ 13.41. [ Design, construction, test and inspection ] Training program approval.

(a) [ Cylinders shall be designed, constructed, tested and inspected in accordance with the re-

quirements of nationally accepted standards after approval of such standards by the Board ] The Department will approve LPG facility operator-provided training programs. An LPG facility operator that has individuals who transfer LPG shall submit a completed application for training program approval to the Department with a detailed description of its training program for authorized attendants and the appropriate fee under § 13.3 (relating to fees).

(b) [ To assist in the accomplishment of this requirement all distributors of liquefied petroleum gas shall keep accurate record of all installations at point of distribution, such records to be readily available to inspectors of the Department ] The Department will issue a program approval to each approved training program or inform the LPG facility operator in writing of its reasons for rejecting a training program.

(c) [ When LP-Gas and one or more other cylinder gases are stored or used side by side, labeling may be necessary to identify cylinder content. Such labeling shall be in compliance with American Standard ASA Z48.1-1954, Method of Marking Portable Compressed Gas Containers to Identify the Material Stored ] An LPG facility operator shall notify the Department in writing of any changes in an approved training program.

(d) Instead of developing and submitting a training program for authorized attendants, an LPG facility operator may utilize the Propane Education and Research Council training programs. The facility shall notify the Department in writing that it is using a Propane Education and Research Council training program.

(e) An LPG facility operator shall maintain training records for an authorized attendant as long as the authorized attendant is employed by the facility. The records shall contain the following information:

(1) The date of training.

(2) The name of authorized attendant.

(3) The name of course.

(4) The name of trainer or supervisor.

(f) The Department may revoke approval of any training program that does not comply with § 13.40 (relating to training programs for authorized attendants) or this section. Actions will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

*(Editor's Note: The Department is proposing to rescind §§ 13.42—13.45 as they currently appear in the Pennsylvania Code in pages 13-17 and 13-18 (serial pages (220125) and (220126)).)*

§§ 13.42—13.45. (Reserved).

#### [ VAPORIZERS ]

##### Subchapter D. ADMINISTRATION

§ 13.50. Suspension of annual permit for container.

The Department will suspend the annual permit for an LPG container and seal an LPG container that is unsafe or when there are violations of this

act or this chapter. A person, firm, partnership, or corporation operating an LPG container with a suspended annual permit or system containing an LPG container with a suspended annual permit is subject to the penalties of section 17 of the act (35 P. S. § 1329.17).

§ 13.51. [ Direct and indirect fired vaporizers ] Suspension of annual permit for an owner or operator.

[ (a) Direct fired vaporizers shall be constructed, marked, installed, and inspected as required by §§ 3.71—3.76, 3.81—3.87 and 3.131—3.136. ] The Department may suspend an owner's or operator's annual permit for any of the following reasons:

(1) Failure to pay the required registration fee in § 13.3 (relating to fees).

(2) Violation of the act or this chapter.

[ (b) Indirect fired vaporizers shall be constructed, marked, installed and inspected according to the requirements of §§ 3.141 and 3.151—3.156 except vaporizers having an inside diameter of six inches or less. Such vessels shall be designed and constructed as to safely sustain a working pressure of not less than 250 pounds per square inch. These vessels need not be permanently marked except for the nature of the manufacturer and the designed pressure.

(c) The application of direct heat to tanks and cylinders containing liquefied petroleum gas is prohibited. ]

§ 13.52. [ Location ] Notice of deficiency.

(a) [ Vaporizers shall be located with respect to adjacent tanks, cylinders and buildings in accordance with safe practices developed in the industry. ] The Department will use the following procedures to suspend an annual permit or for alleged violations of the act or this chapter:

(1) The Department will issue a written notice of deficiency to the owner or operator of the container or facility. The notice will contain a description of the deficiency, an order requiring repairs and correction of the deficiency and a compliance date. The notice will contain a certification to be completed by the owner or operator certifying that the required repairs were completed and the deficiency was corrected.

(2) The owner or operator shall execute the certification and submit it to the Department immediately after the required repairs are completed and the deficiency is corrected.

(3) If the owner or operator does not correct the deficiency within the period of time allowed in the notice of deficiency or fails to return the certification, the Department may issue an order to show cause under 1 Pa. Code § 35.14 (relating to order to show cause).

(i) The order to show cause will contain a statement of the grounds for the action, the alleged violations of the act and this chapter and notification that the container or facility may be placed out of service. The order to show cause will contain notification that the owner or operator shall submit

a written answer within 30 days. The Department will serve the order to show cause upon the owner or operator.

(ii) The owner or operator may file a written answer to the order to show cause with the Department within 30 days following service of the order to show cause under 1 Pa. Code § 35.37 (relating to answer to order to show cause). The answer must contain specific admissions or denials of the allegations contained in the order to show cause and set forth the specific facts, matters of law or regulation interpretation relied upon by the owner or operator. The answer may contain a request for a variance, an extension of time for compliance or an appeal. The Department will forward all requests for variances, extensions of time or appeals regarding interpretations of the regulation to the Industrial Board.

(b) [ The use of vaporizers in buildings where persons are employed, other than attendants, is prohibited except in buildings used exclusively in gas manufacturing and distribution ] The Department will consider the request for variance, extension of time, or appeal as a stay to an enforcement action.

(c) [ Where vaporizers are installed in buildings, rooms, housings, sheds or lean-tos used exclusively for gas manufacturing or distribution, such structures shall be of noncombustible construction or equivalent and well ventilated near the floor line and roof ] The Department will inspect the container or facility at the expiration of an extension of time or other time period granted for compliance under this section. If the container or facility violates the act or this chapter following inspection, the Department may seal the container or facility.

(d) [ Pressure regulating and pressure reducing equipment, if located close to a direct fired vaporizers, shall be separated from the open flame by a substantially airtight noncombustible partition or partitions ] The Department will issue an order to discontinue operation to the owner or operator for a violation that was not corrected. The Department will serve the order upon the owner or operator by certified mail or personal service. The order to discontinue operation will require the owner or operator to discontinue the use of the container or facility within 24 hours.

(e) After the container or facility is sealed, it may not be returned to service until the violations have been corrected, the repairs have been made and the Department removes the seal.

(f) A party aggrieved by a notice of deficiency or a notice to discontinue operation may appeal the order to the Industrial Board within 30 days of the issuance of the order. Appeals from the order of the Industrial Board's may be filed with the Commonwealth Court within 30 days of the date of the order.

(g) This section supplements 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders showing cause).

§ 13.53. [ Drain protection ] Notice and hearing.

[ Drains to sewers or sump pits from vaporizers shall be adequately protected ] Actions of the De-

partment relating to notice of deficiency, a notice to discontinue operation or suspension of annual permit under §§ 13.50—13.52 (relating to suspension of annual permit for container; suspension of annual permit for an owner or operator; and notice of deficiency) will be taken subject to the right of notice, hearing and adjudication under 2 Pa.C.S. (relating to Administrative Law and Procedure) Proceedings will be conducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

§ 13.54. [ Liquid discharge ] Municipal preemption.

[ Vaporizers shall be provided with suitable automatic means to prevent liquid passing from the vaporizers to the gas discharge piping. ] The Department has the sole right and ability to regulate all matters related to the operation of the LPG industry under section 15 of the act (35 P. S. § 1329.15).

(a) A municipality or other political subdivision may adopt or enforce an ordinance or regulation which differs from or conflicts in whole or in part with the act or this chapter regarding permits, licensing standards, fees, construction, installation, maintenance, operation, inspection, location or placement of LPG containers or LPG facilities or other matters related to this industry within this Commonwealth.

(b) A municipality may not prohibit placement of an LPG container in an existing yard setback area except to establish an absolute setback of 10 feet from a residential property line.

(c) A municipality may retain the right, under local zoning ordinances, to require an LPG facility to locate within approved residential, industrial commercial or other zones and to require an LPG facility to obtain zoning permits, pay zoning fees and undergo inspections related to the zoning of the LPG facility. A building at an LPG facility must comply with the municipal standards applied to primary structures.

*(Editor's Note: The Department is proposing to delete §§ 13.55—13.58, 13.61—13.68, 13.71—13.74, 13.81, 13.82, 13.91—13.96, 13.101, 13.102 and 13.111 as they currently appear in the Pennsylvania Code in pages 13-18—13-25 (serial pages (220126), (316911), (316912) and (220129) to (220133)).*

§§ 13.55—13.58. (Reserved).

§§ 13.61—13.68. (Reserved).

§§ 13.71—13.74. (Reserved).

§ 13.81. (Reserved).

§ 13.82. (Reserved).

§§ 13.91—13.96. (Reserved).

§§ 13.101.(Reserved).

§ 13.102. (Reserved).

§ 13.111. (Reserved).

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