

ARTHUR COCCODRILLI, CHAIRMAN
GEORGE D. BEDWICK, VICE CHAIRMAN
S. DAVID FINEMAN, ESQ.
SILVAN B. LUTKEWITTE III
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 23, 2009

Honorable Sandi Vito, Secretary
Department of Labor and Industry
1700 Labor and Industry Building
Harrisburg, PA 17120

Re: Regulation #12-76 (IRRC #2775)
Department of Labor and Industry
Propane and Liquefied Petroleum Gas

Dear Secretary Vito:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable John R. Gordner, Majority Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee
Honorable Robert E. Belfanti, Jr., Majority Chairman, House Labor Relations Committee
Honorable Gene DiGirolamo, Minority Chairman, House Labor Relations Committee

Comments of the Independent Regulatory Review Commission



Department of Labor and Industry Regulation #12-76 (IRRC #2775)

Propane and Liquefied Petroleum Gas

September 23, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the July 25, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Labor and Industry (Department) to respond to all comments received from us or any other source.

1. Section 13.1. Definitions. – Consistency with statute; Need; Clarity.

Cylinder

The broad reference in this definition to 49 CFR 171 includes many provisions that appear to be unrelated to the definition of “cylinder.” We recommend using a more specific reference to the Code of Federal Regulations.

Cylinder exchange cabinets

A commentator is uncertain whether this definition is limited to retail locations that exchange grill cylinders or whether it also applies to commercial and industrial cylinder exchange cages. As written, it appears this definition would apply to all. The Department should explain its intent for the application of this definition and make amendments as appropriate.

Distributor

The second sentence of this definition states, “The term includes a cylinder exchange cabinet or a dispensing station.” This sentence does not appear in the statutory definition. 35 P.S. §1329.2. Also, by statute, a distributor is a person, not an inanimate object. The Department should explain how the second sentence of the definition is consistent with the statute and justify the need to include this sentence.

Industrial user

The second sentence of this definition states that a “consumer may be a residential or a commercial location.” Again, this second sentence is not found in the statutory definition. 35 P.S. §1329.2. The Department should explain how the second sentence of the definition is consistent with the statute and justify the need to include it.

LPG facility

This term is defined in both the statute (35 P.S. §1329.2) and the regulation. However, the term “facility” also appears in the regulation. For examples, see Sections 13.21(e) and 13.52(a)(1). The regulation should consistently use the defined term “LPG facility.”

2. Section 13.5. Registration and annual permits. – Economic impact; Reasonableness.

Online registration and forms

A commentator suggests that online registration would save resources and expedite registrations. We note that the Department’s website currently includes “Online Services” and “Downloadable Forms.” We have two questions. First, does the Department offer online registrations to comply with this section of the regulation? Second, Subsection (a) asks for registration “on a registration form provided by the Department.” Are these forms available on the Department’s website? If the answer is yes to either of these questions, the regulation should identify the online service or form number to be used. If the answer is no to either of these questions, the Department should explain why these forms or services are not available online.

3. Section 13.20. Application process and plan approval. – Feasibility; Economic impact; Reasonableness; Clarity.

Modifications

Subsection (a) requires entities to submit an application before installation or “modification.” It is not clear what degree of “modification” would require an application. For example, would the Department require an application if there was a minor repair or would the Department only require an application if the owner installed more capacity or changed the location of a tank? The regulation should specify the types of modifications that require an application.

Availability of U1-A reports for older tanks

A commentator stated that the “U1-A” reports, required by Paragraph (b)(5) and Subsection (g) are not available for older tanks. The Department should

explain how all existing tanks can comply with the requirements in Paragraph (b)(5) and Subsection (g). If some tanks cannot comply, the Department should include an alternative compliance mechanism for these tanks and address the economic impact of the alternate compliance mechanism on the tank owners.

4. Section 13.24. Cylinder exchange cabinets. – Reasonableness; Need.

Sidewalks, concrete aprons and parking lots at retail establishments

Paragraph (2) states that the term “busy thoroughfares or sidewalks” includes “sidewalks, concrete aprons and parking lots at retail establishments.” A commentator does not believe it is appropriate to include “sidewalks, concrete aprons and parking lots at retail establishments.” The commentator asserts that this phrase is not needed at larger retail stores because the threat from traffic is significantly reduced in parking lots. The Department should explain the reasonableness of and need for this provision.

5. Miscellaneous Clarity.

- Under Section 13.6, the subsection designations of the deleted language are be confusing because they do not follow the designations in existing regulation of Subsections (a) through (e).
- There is a difference between two definitions in Section 13.1 in the July 9, 2009 submittal of the proposed regulation and the version published in the July 25, 2009 *Pennsylvania Bulletin*. The following definitions should be reconciled in the final-form regulation submittal:
 - The defined acronym for the National Propane Gas Association should be “NPGA,” not “NGPA.” Also, the word “propane” is incorrectly spelled in the *Pennsylvania Bulletin* version of this definition.
 - In the definition of “tank,” the phrase “liquefied petroleum gas” would be deleted by the placement of the bracket in the *Pennsylvania Bulletin* version.

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: *Daniel Razaarsky*
Agency: Department of Labor & Industry
Phone: (717) 787-5087
Fax: (717) 783-5225
Date: **September 23, 2009**
Pages: 5

RECEIVED
2009 SEP 23 AM 8:39
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-76 (IRRC #2775). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____

Date: _____

08 Sep 09