

# Rules and Regulations

Federal Register

Vol. 73, No. 56

Friday, March 21, 2008

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## DEPARTMENT OF HOMELAND SECURITY

### 6 CFR Part 27

[DHS-2006-0073]

RIN 1601-AA41

### Clarification to Chemical Facility Anti-Terrorism Standards; Propane

**AGENCY:** Department of Homeland Security.

**ACTION:** Clarification.

**SUMMARY:** This notice clarifies how certain provisions of the Chemical Facility Anti-Terrorism Standards (CFATS) apply to the Chemical of Interest (COI) propane, which the Department of Homeland Security (DHS or Department) understands to contain at least 87.5% of the chemical propane. Specifically, this notice clarifies how the Screening Threshold Quantity and certain counting rule provisions apply to the COI propane.

**DATES:** *Effective Dates:* Effective March 21, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Dennis Deziel, Infrastructure Security Compliance Division, Department of Homeland Security, 703-235-5263.

**SUPPLEMENTARY INFORMATION:** Section 550 of the Homeland Security Appropriations Act of 2007 provided the Department with authority to promulgate interim final regulations for the security of certain chemical facilities in the United States. *See* Pub. L. 109-295, sec. 550. On December 28, 2006, the Department issued an Advance Notice of Rulemaking seeking comment on the significant issues and regulatory text (*see* 71 FR 78276) for such rulemaking, and on April 9, 2007, the Department published an Interim Final Rule (IFR) establishing the Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR Part 27 (*see* 72 FR 17688).

The IFR, except for Appendix A to Part 27, went into effect on June 8, 2007. Appendix A to the IFR contained a tentative list of Chemicals of Interest (COIs) and corresponding Screening Threshold Quantities (STQs). DHS accepted comments on the tentative list of COIs and STQs. In an Appendix A Final Rule published on November 20, 2007, the Department responded to the many comments received and provided a final list of COIs and STQs. *See* 72 FR 65396. Pursuant to 6 CFR 27.210(a)(1)(i), any facility that possesses any of the COIs listed in Appendix A at or above any applicable STQ must complete and submit a Top-Screen questionnaire to DHS. *See* 6 CFR 27.200(b)(2).

Among other revisions to the final Appendix A, DHS set a special STQ for the COI propane.<sup>1</sup> DHS listed the COI propane as a release-flammable COI with an STQ of 60,000 pounds; this is in contrast to the 10,000 pound STQ that DHS used for most other release-flammable COI.<sup>2</sup> In addition, the Appendix A Final Rule included a special rule for calculating whether a facility meets the STQ for the COI propane.<sup>3</sup> The reasons for the unique STQ provisions for the COI propane are detailed in the preamble to the Appendix A Final Rule. *See* 72 FR 65406-65407, 65409-65410.

The Appendix A Final Rule also included provisions on how facilities should treat mixtures of COI (known as the mixtures provisions). *See* 6 CFR 27.204. Under certain conditions, 6 CFR 27.204(a)(2) (the release-flammable mixtures rule) provides that if a release-flammable COI is present in a mixture in a concentration equal to or greater than one percent by weight, the facility shall count the entire amount of the mixture toward the STQ for that COI.

Since publication of the Appendix A Final Rule, the Department has received numerous inquiries about the STQ provisions for the COI propane and about the applicability of the release-

flammable mixture provisions to products that contain the COI propane and to other products that contain some propane. To respond to those inquiries and alleviate any confusion, the Department is publishing this notice to provide clarification on this matter.

The Appendix A Final Rule was drafted with the understanding that the COI propane consists predominantly of the chemical propane, in combination with other flammable gases—such as butane, pentane, ethane, and/or propylene (which are also release-flammable COI under Appendix A). That understanding was likewise in mind when the Department developed the special STQ (i.e., 60,000 pounds) and STQ counting rule for the COI propane (*see* 6 CFR 27.204(b)(3)). It was, and is, commonly understood, however, that not every product containing any amount of the chemical propane is considered “propane” for commercial or other purposes.

As is well-known, the COI propane typically consists predominantly of the chemical propane in combination with other release-flammable COI, as noted above.<sup>4</sup> Within the propane industry, it is very typical for the COI propane to contain at least 87.5 percent of the chemical propane. This is reflected in the Material Safety Data Sheets (MSDS) for Odorized Propane of many propane companies as well as in the model MSDS from the National Propane Gas Association (NPGA).<sup>5</sup> This is consistent with DHS’s understanding of the COI propane.

Since DHS intends the COI propane to refer to products containing at least 87.5 percent of propane, as well as other release-flammable COI, it follows that the release-flammable mixtures rule does not apply to such products. In fact, it would not make sense to apply the release-flammable mixtures rule to the combination of chemicals that constitute the COI propane because that would largely negate the intended effect of the 60,000 pound STQ and the special STQ counting rule for the COI propane.<sup>6</sup> By contrast, the release-

<sup>1</sup> In this notice, DHS clarifies what is meant by the Chemical of Interest propane (or COI propane), as opposed to other products that contain some amount of the chemical propane.

<sup>2</sup> In the tentative list of chemicals in the IFR, DHS had suggested an STQ of 7,500 pounds for all release-flammable COI, including the COI propane. *See* 72 FR 17743 (April 9, 2007).

<sup>3</sup> Under 6 CFR § 27.203(b)(3), in calculating whether a facility possesses an amount that meets the 60,000 pound STQ for the COI propane, a facility need not include propane in tanks of 10,000 pounds or less.

<sup>4</sup> The COI propane may also contain relatively small amounts of additives (such as odorants) or contaminants.

<sup>5</sup> The model MSDS from NPGA can be found on the NPGA Web site at [http://www.npga.org/files/public/Tech\\_Bulletin\\_NPGA\\_210-96.pdf](http://www.npga.org/files/public/Tech_Bulletin_NPGA_210-96.pdf).

<sup>6</sup> For example, if a combination of 90% propane and 10% butane were subject to the release-

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flammable mixtures rule does apply to products that are a combination of less than 87.5 percent propane and other release-flammable COI, since such mixtures are not themselves the COI propane.<sup>7</sup>

**Robert Stephan,**

*Assistant Secretary for Infrastructure Protection, Department of Homeland Security.*

[FR Doc. 08-1059 Filed 3-18-08; 12:04 pm]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket #AMS-2006-0136; FV-06-303]

#### Potatoes; Grade Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the United States Standards for Grades of Potatoes. These standards are issued under the Agricultural Marketing Act of 1946. The rule provides en route or at destination tolerances for the U.S. No. 1 and U.S. No. 2 grades, revises current tolerances in all grades, deletes the U.S. Extra No. 1 grade and "Unclassified" section, and defines damage and serious damage by the following defects which will be added to Table III of the External Defects section: Cuts, Clipped Ends, Elephant Hide, Flattened or Depressed Areas/Pressure Bruises, Grub Damage, Nematode (Root Knot), Rodent or Bird Damage, Russeting, Silver Scurf, Sunken Discolored Areas, and Surface Cracks. The following defects and scoring guidelines that are currently listed in Table III of the External Defects section are also revised to reflect current inspection instructions: Air Cracks, Bruises, External Discoloration, Flea

flammable mixtures provision, as little as 10,000 pounds of that product would meet the STQ for butane, and thus trigger the Top-Screen reporting requirement of CFATS. This effect would be inconsistent with the purpose of the special 10,000 pound counting rule and the 60,000 pound STQ for the COI propane and with DHS's express intent not to subject facilities to the Top-Screen requirement when the only COI that would otherwise trigger that requirement is less than 60,000 pounds of COI propane. See 72 FR 65406-65407, 65409-65410.

<sup>7</sup>The statement in the Appendix A Final Rule preamble that the mixtures provisions for propane are the same as for all other release-flammables, 72 FR 65407, should be read in this intended context. Since it would not be logical or reasonable to apply the release-flammable mixtures provision to the COI propane (products containing at least 87.5% propane), the preamble statement was intended to cover mixtures containing less than 87.5% propane.

Beetle Injury, Greening, Growth Cracks, Rhizoctonia, Pitted Scab, Russet Scab, Surface Scab, and Wireworm or Grass Damage. Also, changes to the current scoring guide for sprouts are being made. In the Internal Defects section, Internal Black Spot is revised by implementing a color chip to assist in the scoring of this defect. Also, Table IV in this section is redesignated as Table I. Additionally, a revised large size is added as well as the inclusion of Chef and Creamer sizes. Most of the changes were the result of the detailed work performed by the Joint U.S./Canadian Potato Council that was charged with harmonizing the U.S. and Canadian Potato Grade Standards. This rule updates and revises the standards to more accurately reflect today's marketing practices.

**DATES:** Effective April 21, 2008.

**FOR FURTHER INFORMATION CONTACT:** Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720-2185. The United States Standards for Grades of Potatoes are available through the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfprfv.htm>.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

##### Regulatory Flexibility Act and Paperwork Reduction Act

The Joint U.S./Canadian Harmonization Council (Council) which was established by the United States Secretary of Agriculture and the Canadian Minister of Agriculture, is charged with harmonizing the U.S. and Canadian grade standards. The United States Standards for Grades of Potatoes was last revised in 1991. The Council, which consists of representatives from the industry and government, meets annually to discuss issues concerning cross border marketing and trade of potatoes. AMS and the Canadian Food Inspection Agency (CFIA) have been working with the Council for the past 14 years in the harmonizing of the standards. To complete the

harmonization process, both the Canadian and U.S. grade standards, require revisions. The revision will benefit all aspects of the potato industry and make the standards current with today's marketing trends and practices.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule revises the U.S. Standards for Grades of Potatoes that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) (Act). Standards issued under the Act are voluntary.

Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Using annual data from the National Agricultural Statistics Service (NASS), the average potato crop value for 2002-2004 is \$2.538 billion. Dividing that figure by 9,408 farms yields an average potato crop value per farm of just under \$270,000. Since this is well under the SBA threshold of annual receipts of \$750,000, it can be concluded that the majority of these producers may be classified as small entities. Additionally, there are approximately 180 handlers of potatoes which are classified as small entities, that may be affected by this rule.

Additional evidence comes from examining the Agricultural Census acreage breakdown more closely. Out of a total of 9,408 potato farms in 2002, 60 percent were under 5 acres and 76 percent were under 100 acres. An estimate of the number of acres that it would take to produce a crop valued at \$750,000 can be made by dividing the 2002-04 average crop value of \$2.538 billion by three-year average bearing acres (1.227 million), yielding an average potato revenue per acre estimate of \$2,068. Dividing \$750,000 by \$2,068 shows that farms with at least 363 acres that received at least the average price in 2002-04 would have produced crops valued at \$750,000 or more, and would therefore be considered large potato