

Calendar No. 576

104TH CONGRESS
2^D Session

H. R. 1514

AN ACT

To authorize and facilitate a program to enhance safety, training, research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes.

SEPTEMBER 5, 1996

Received; read twice and placed on the calendar

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AN ACT

To authorize and facilitate a program to enhance safety, training, research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Propane Education
3 and Research Act of 1996”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (1) propane gas, or liquefied petroleum gas, is
7 an essential energy commodity providing heat, hot
8 water, cooking fuel, and motor fuel among its many
9 uses to millions of Americans;

10 (2) the use of propane is especially important to
11 rural citizens and farmers, offering an efficient and
12 economical source of gas energy;

13 (3) propane has been recognized as a clean fuel
14 and can contribute in many ways to reducing the
15 pollution in our cities and towns; and

16 (4) propane is primarily domestically produced
17 and its use provides energy security and jobs for
18 Americans.

19 **SEC. 3. DEFINITIONS.**

20 For the purposes of this Act—

21 (1) the term “Council” means a Propane Edu-
22 cation and Research Council created pursuant to
23 section 4 of this Act;

24 (2) the term “industry” means those persons
25 involved in the production, transportation, and sale
26 of propane, and in the manufacture and distribution

1 of propane utilization equipment, in the United
2 States;

3 (3) the term “industry trade association”
4 means an organization exempt from tax, under sec-
5 tion 501(c) (3) or (6) of the Internal Revenue Code
6 of 1986, representing the propane industry;

7 (4) the term “odorized propane” means pro-
8 pane which has had odorant added to it;

9 (5) the term “producer” means the owner of
10 propane at the time it is recovered at a gas process-
11 ing plant or refinery;

12 (6) the term “propane” means a hydrocarbon
13 whose chemical composition is predominantly C^3H^8 ,
14 whether recovered from natural gas or crude oil, and
15 includes liquefied petroleum gases and mixtures
16 thereof;

17 (7) the term “public member” means a member
18 of the Council, other than a representative of pro-
19 ducers or retail marketers, representing significant
20 users of propane, public safety officials, academia,
21 the propane research community, or other groups
22 knowledgeable about propane;

23 (8) the term “qualified industry organization”
24 means the National Propane Gas Association, the
25 Gas Processors Association, a successor association

1 of such associations, or a group of retail marketers
2 or producers who collectively represent at least 25
3 percent of the volume of propane sold or produced
4 in the United States;

5 (9) the term “retail marketer” means a person
6 engaged primarily in the sale of odorized propane to
7 the ultimate consumer or to retail propane dispens-
8 ers;

9 (10) the term “retail propane dispenser” means
10 a person who sells odorized propane to the ultimate
11 consumer but is not engaged primarily in the busi-
12 ness of such sales; and

13 (11) the term “Secretary” means the Secretary
14 of Energy.

15 **SEC. 4. REFERENDA.**

16 (a) CREATION OF PROGRAM.—The qualified industry
17 organizations may conduct, at their own expense, a ref-
18 erendum among producers and retail marketers for the
19 creation of a Propane Education and Research Council.
20 The Council, if established, shall reimburse the qualified
21 industry organizations for the cost of the referendum ac-
22 counting and documentation. Such referendum shall be
23 conducted by an independent auditing firm agreed to by
24 the qualified industry organizations. Voting rights in such
25 referendum shall be based on the volume of propane pro-

1 duced or odorized propane sold in the previous calendar
2 year or other representative period. Upon approval of
3 those persons representing two-thirds of the total volume
4 of propane voted in the retail marketer class and two-
5 thirds of all propane voted in the producer class, the Coun-
6 cil shall be established, and shall be authorized to levy an
7 assessment on odorized propane in accordance with section
8 6. All persons voting in the referendum shall certify to
9 the independent auditing firm the volume of propane rep-
10 resented by their vote.

11 (b) TERMINATION.—On the Council’s own initiative,
12 or on petition to the Council by producers and retail mar-
13 keters representing 35 percent of the volume of propane
14 in each class, the Council shall, at its own expense, hold
15 a referendum, to be conducted by an independent auditing
16 firm selected by the Council, to determine whether the in-
17 dustry favors termination or suspension of the Council.
18 Termination or suspension shall not take effect unless it
19 is approved by persons representing more than one-half
20 of the total volume of odorized propane in the retail mar-
21 keter class and more than one-half of the total volume of
22 propane in the producer class, or is approved by persons
23 representing more than two-thirds of the total volume of
24 propane in either such class.

1 **SEC. 5. PROPANE EDUCATION AND RESEARCH COUNCIL.**

2 (a) SELECTION OF MEMBERS.—The qualified indus-
3 try organizations shall select all retail marketer, public,
4 and producer members of the Council. The producer orga-
5 nizations shall select the producer members of the Council,
6 the retail marketer organizations shall select retail mar-
7 keter members, and all qualified industry organizations
8 shall jointly select the public members. Vacancies in unfin-
9 ished terms of Council members shall be filled in the same
10 manner as were the original appointments.

11 (b) REPRESENTATION.—In selecting members of the
12 Council, the qualified industry organizations shall give due
13 regard to selecting a Council that is representative of the
14 industry, including representation of—

15 (1) gas processors and oil refiners among pro-
16 ducers;

17 (2) interstate and intrastate operators among
18 retail marketers;

19 (3) large and small companies among producers
20 and retail marketers, including agricultural coopera-
21 tives; and

22 (4) diverse geographic regions of the country.

23 (c) MEMBERSHIP.—The Council shall consist of 21
24 members, with 9 members representing retail marketers,
25 9 members representing producers, and 3 public members.
26 Other than the public members, Council members shall be

1 full-time employees or owners of businesses in the industry
2 or representatives of agricultural cooperatives. No em-
3 ployee of a qualified industry organization or other indus-
4 try trade association shall serve as a member of the Coun-
5 cil, and no member of the Council may serve concurrently
6 as an officer of the Board of Directors of a qualified indus-
7 try organization or other industry trade association. Only
8 one person at a time from any company or its affiliate
9 may serve on the Council.

10 (d) COMPENSATION.—Council members shall receive
11 no compensation for their services, nor shall Council mem-
12 bers be reimbursed for expenses relating to their service,
13 except that public members, upon request, may be reim-
14 bursed for reasonable expenses directly related to their
15 participation in Council meetings.

16 (e) TERMS.—Council members shall serve terms of
17 3 years and may serve not more than 2 full consecutive
18 terms. Members filling unexpired terms may serve not
19 more than a total of 7 consecutive years. Former members
20 of the Council may be returned to the Council if they have
21 not been members for a period of 2 years. Initial appoint-
22 ments to the Council shall be for terms of 1, 2, and 3
23 years, staggered to provide for the selection of 7 members
24 each year.

1 (f) FUNCTIONS.—The Council shall develop programs
2 and projects and enter into contracts or agreements for
3 implementing this Act, including programs to enhance
4 consumer and employee safety and training, to provide for
5 research and development of clean and efficient propane
6 utilization equipment, to inform and educate the public
7 about safety and other issues associated with the use of
8 propane, and to provide for the payment of the costs there-
9 of with funds collected pursuant to this Act. The Council
10 shall coordinate its activities with industry trade associa-
11 tion and others as appropriate to provide efficient delivery
12 of services and to avoid unnecessary duplication of activi-
13 ties.

14 (g) USE OF FUNDS.—Not less than 5 percent of the
15 funds collected through assessments pursuant to this Act
16 shall be used for programs and projects intended to bene-
17 fit the agriculture industry in the United States. The
18 Council shall coordinate its activities in this regard with
19 agriculture industry trade associations and other organiza-
20 tions representing the agriculture industry. The percent-
21 age of funds collected through assessments pursuant to
22 this Act to be used for projects relating to the use of pro-
23 pane as an over-the-road motor fuel shall not exceed the
24 percentage of the total market for odorized propane that

1 is used as a motor vehicle fuel, based on the historical
2 average of such use over the previous 3-year period.

3 (h) PRIORITIES.—Issues related to research and de-
4 velopment, safety, education, and training shall be given
5 priority by the Council in the development of its programs
6 and projects.

7 (i) ADMINISTRATION.—The Council shall select from
8 among its members a Chairman and other officers as nec-
9 essary, may establish committees and subcommittees of
10 the Council, and shall adopt rules and bylaws for the con-
11 duct of business and the implementation of this Act. The
12 Council shall establish procedures for the solicitation of
13 industry comment and recommendations on any signifi-
14 cant plans, programs, and projects to be funded by the
15 Council. The Council may establish advisory committees
16 of persons other than Council members.

17 (j) ADMINISTRATIVE EXPENSES.—(1) The adminis-
18 trative expenses of operating the Council (not including
19 costs incurred in the collection of the assessment pursuant
20 to section 7) plus amounts paid under paragraph (2) shall
21 not exceed 10 percent of the funds collected in any fiscal
22 year.

23 (2) The Council shall annually reimburse the Sec-
24 retary for costs incurred by the Federal Government relat-
25 ing to the Council, except that such reimbursement for

1 any fiscal year shall not exceed the amount that the Sec-
2 retary determines is the average annual salary of two em-
3 ployees of the Department of Energy.

4 (k) BUDGET.—Before August 1 each year, the Coun-
5 cil shall publish for public review and comment a budget
6 plan for the next calendar year, including the probable
7 costs of all programs, projects, and contracts and a rec-
8 ommended rate of assessment sufficient to cover such
9 costs. Following this review and comment, the Council
10 shall submit the proposed budget to the Secretary and to
11 the Congress. The Secretary may recommend programs
12 and activities the Secretary considers appropriate.

13 (l) RECORDS; AUDITS.—The Council shall keep min-
14 utes, books, and records that clearly reflect all of the acts
15 and transactions of the Council and make public such in-
16 formation. The books of the Council shall be audited by
17 a certified public accountant at least once each fiscal year
18 and at such other times as the Council may designate.
19 Copies of such audit shall be provided to all members of
20 the Council, all qualified industry organizations, and to
21 other members of the industry upon request. The Sec-
22 retary shall receive notice of meetings and may require
23 reports on the activities of the Council, as well as reports
24 on compliance, violations, and complaints regarding the
25 implementation of this Act.

1 (m) PUBLIC ACCESS TO COUNCIL PROCEEDINGS.—

2 (1) All meetings of the Council shall be open to the public
3 after at least 30 days advance public notice.

4 (2) The minutes of all meetings of the Council shall
5 be made available to and readily accessible by the public.

6 (n) ANNUAL REPORT.—Each year the Council shall
7 prepare and make publicly available a report which in-
8 cludes an identification and description of all programs
9 and projects undertaken by the Council during the pre-
10 vious year as well as those planned for the coming year.
11 Such report shall also detail the allocation or planned allo-
12 cation of Council resources for each such program and
13 project.

14 **SEC. 6. ASSESSMENTS.**

15 (a) AMOUNT.—The Council shall set the initial as-
16 sessment at no greater than one tenth of 1 cent per gallon
17 of odorized propane. Thereafter, annual assessments shall
18 be sufficient to cover the costs of the plans and programs
19 developed by the Council. The assessment shall not be
20 greater than one-half cent per gallon of odorized propane,
21 unless approved by a majority of those voting in a referen-
22 dum in both the producer and the retail marketer class.
23 In no case may the assessment be raised by more than
24 one tenth of 1 cent per gallon of odorized propane annu-
25 ally.

1 (b) OWNERSHIP.—The owner of odorized propane at
2 the time of odorization, or the time of import of odorized
3 propane, shall make the assessment based on the volume
4 of odorized propane sold and placed into commerce. As-
5 sessments collected are payable to the Council on a month-
6 ly basis by the 25th of the month following the month
7 of such collection. Propane exported from the United
8 States to another country is not subject to the assessment.

9 (c) ALTERNATIVE COLLECTION RULES.—The Coun-
10 cil may establish an alternative means of collecting the as-
11 sessment if another means is found to be more efficient
12 and effective. The Council may establish a late payment
13 charge and rate of interest to be imposed on any person
14 who fails to remit or pay to the Council any amount due
15 under this Act.

16 (d) INVESTMENT OF FUNDS.—Pending disbursement
17 pursuant to a program, plan, or project, the Council may
18 invest funds collected through assessments, and any other
19 funds received by the Council, only in obligations of the
20 United States or any agency thereof, in general obligations
21 of any State or any political subdivision thereof, in any
22 interest-bearing account or certificate of deposit of a bank
23 that is a member of the Federal Reserve System, or in
24 obligations fully guaranteed as to principal and interest
25 by the United States.

1 (e) STATE PROGRAMS.—The Council shall establish
2 a program coordinating the operation of the Council with
3 those of any State propane education and research council
4 created by State law or regulation, or similar entity. Such
5 coordination shall include a joint or coordinated assess-
6 ment collection process, a reduced assessment, or an as-
7 sessment rebate. A reduced assessment or rebate shall be
8 20 percent of the regular assessment collected in that
9 State under this section. Assessment rebates shall be paid
10 only to—

11 (1) a State propane education and research
12 council created by State law or regulation that meets
13 requirements established by the Council for specific
14 programs approved by the Council; or

15 (2) a similar entity, such as a foundation estab-
16 lished by the retail propane gas industry in that
17 State, that meets requirements established by the
18 Council for specific programs approved by the
19 Council.

20 **SEC. 7. COMPLIANCE.**

21 The Council may bring suit in Federal court to com-
22 pel compliance with an assessment levied by the Council
23 under this Act. A successful action for compliance under
24 this section may also require payment by the defendant

1 of the costs incurred by the Council in bringing such
2 action.

3 **SEC. 8. LOBBYING RESTRICTIONS.**

4 No funds collected by the Council shall be used in
5 any manner for influencing legislation or elections, except
6 that the Council may recommend to the Secretary changes
7 in this Act or other statutes that would further the pur-
8 poses of this Act.

9 **SEC. 9. MARKET SURVEY AND CONSUMER PROTECTION.**

10 (a) PRICE ANALYSIS.—Beginning 2 years after es-
11 tablishment of the Council and annually thereafter, the
12 Secretary of Commerce, using only data provided by the
13 Energy Information Administration and other public
14 sources, shall prepare and make available to the Council,
15 the Secretary of Energy, and the public an analysis of
16 changes in the price of propane relative to other energy
17 sources. The propane price analysis shall compare indexed
18 changes in the price of consumer grade propane to a com-
19 posite of indexed changes in the price of residential elec-
20 tricity, residential natural gas, and refiner price to end
21 users of No. 2 fuel oil on an annual national average basis.
22 For purposes of indexing changes in consumer grade pro-
23 pane, residential electricity, residential natural gas, and
24 end user No. 2 fuel oil prices, the Secretary of Commerce

1 shall use a 5-year rolling average price beginning with the
2 year 4 years prior to the establishment of the Council.

3 (b) **AUTHORITY TO RESTRICT ACTIVITIES.**—If in any
4 year the 5-year average rolling price index of consumer
5 grade propane exceeds the 5-year rolling average price
6 composite index of residential electricity, residential natu-
7 ral gas, and refiner price to end users of No. 2 fuel oil
8 in an amount greater than 10.1 percent, the activities of
9 the Council shall be restricted to research and develop-
10 ment, training, and safety matters. The Council shall in-
11 form the Secretary of Energy and the Congress of any
12 restriction of activities under this subsection. Upon expira-
13 tion of 180 days after the beginning of any such restric-
14 tion of activities, the Secretary of Commerce shall again
15 conduct the propane price analysis described in subsection
16 (a). Activities of the Council shall continue to be restricted
17 under this subsection until the price index excess is 10.1
18 percent or less.

19 **SEC. 10. PRICING.**

20 In all cases, the price of propane shall be determined
21 by market forces. Consistent with the antitrust laws, the
22 Council may take no action, nor may any provision of this
23 Act be interpreted as establishing an agreement to pass
24 along to consumers the cost of the assessment provided
25 for in section 6.

1 **SEC. 11. RELATION TO OTHER PROGRAMS.**

2 Nothing in this Act may be construed to preempt or
3 supersede any other program relating to propane edu-
4 cation and research organized and operated under the laws
5 of the United States or any State.

6 **SEC. 12. REPORTS.**

7 Within 2 years after the date of enactment of this
8 Act, and at least once every 2 years thereafter, the Sec-
9 retary of Commerce shall prepare and submit to the Con-
10 gress and the Secretary a report examining whether oper-
11 ation of the Council, in conjunction with the cumulative
12 effects of market changes and Federal programs, has had
13 an effect on propane consumers, including residential, ag-
14 riculture, process, and nonfuel users of propane. The Sec-
15 retary of Commerce shall consider and, to the extent prac-
16 ticable, shall include in the report submissions by propane
17 consumers, and shall consider whether there have been
18 long-term and short-term effects on propane prices as a
19 result of Council activities and Federal programs, and
20 whether there have been changes in the proportion of pro-
21 pane demand attributable to various market segments. To
22 the extent that the report demonstrates that there has
23 been an adverse effect, the Secretary of Commerce shall
24 include recommendations for correcting the situation.
25 Upon petition by affected parties or upon request by the
26 Secretary of Energy, the Secretary of Commerce may pre-

- 1 pare and submit the report required by this section at less
- 2 than 2-year intervals.

Passed the House of Representatives September 4,
1996.

Attest:

ROBIN H. CARLE,
Clerk.