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PROPANE EDUCATION AND RESEARCH ACT OF 1996

JUNE 27, 1996.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1646]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1646) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 13, line 7, insert the word "twice" after the word "is".

PURPOSE OF THE MEASURE

The purpose of S. 1646, the Propane Education and Research Act (PERA), is to provide the framework for propane producers and marketers to establish a self-help, non-federal program of research and development (R&D), training, safety and consumer education activities.

SUMMARY OF MAJOR PROVISIONS

S. 1646 allows, but does not require, the propane industry to establish a "check-off" (assessment) program that would initially collect a maximum 1/10 of one cent per gallon of odorized propane. These assessments cannot increase by more than 1/10 of one cent per year, and they cannot exceed ½ cent per gallon after five years without a special referendum.

Should the propane industry avail itself of the opportunity to establish the check-off program, a Propane Education and Research Council (PERC) would be established to undertake R&D, education

and safety programs using funds collected under the assessment program. the Council would be composed of 21 members, including 9 representing producers, 9 representing retail marketers, and 3 representing the public. Both industrial classes must include representatives of both large and small companies (including agricultural cooperatives). Members must be drawn from geographically diverse regions of the country.

There are provisions in S. 1646 to limit the administrative overhead of the program and to provide the federal government with reimbursements for the reasonable costs of program oversight.

In an effort to help protect consumers against any potential increases in propane fuel costs resulting from the legislation, S. 1646 contains provisions requiring the Department of Commerce, using Energy Information Administration data, to prepare an annual analysis of changes in the price of propane relative to other energy sources. S. 1646 also contains provisions restricting PERC activities to R&D, training and safety in the event that the 5-year rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of the other energy sources by 10.1% of greater. Also, in the interest of consumer protection, there is a provision in S. 1646 expressly stating that PERC may take no action, and the ACT may not be interpreted, as establishing an agreement to pass along to consumers the cost of the assessment. Moreover, S. 1646 contains a provision requiring the Secretary of Commerce to prepare a report every 2 years examining whether operations of PERC, in conjunction with the cumulative effects of market changes and Federal programs, have had an effect on propane consumers. If the Secretary of Commerce determines there has been an adverse effect, the Secretary shall recommend changes for correcting the situation.

BACKGROUND AND NEED

Propane is the fourth most used fuel in America. It is used in 7.7 million homes in the United States for cooking, heating and hot water. Traditionally, propane serves markets beyond the reach of natural gas transmission and distribution lines. In addition, it is used for agricultural purposes on half of all U.S. farms and in a variety of recreational applications. In addition to its use as a fuel, propane is also used as a feedstock in many petrochemical applications. However, unlike other energy sources such as coal, natural gas, solar and wind energy, oil, tidal and geothermal, there is no federal R&D program for propane.

To fund propane R&D, safety, training and consumer education, the Propane Education and Research Act provides the propane industry with the option of establishing a "check-off" (assessment) program similar to those widely used for agricultural commodities such as beef, pork and cotton. In a check-off program, a fraction of the wholesale cost of the product is set aside by the product producer and deposited into a common fund that can be employed to the benefit of commodity producers and consumers. While the focus of most agricultural check-off programs is marketing and promotion, the emphasis of the propane check-off program is research and development.

Under the provisions of S. 1646, a referendum may be held by the propane industry, composed of approximately 165 producers and 5,000 retail marketers. If the industry, by a two-thirds margin of producers and a two-thirds margin of retailers (in terms of volume), vote to establish the program, a Propane Education and Research Council would be established to undertake R&D, education and safety programs using funds collected under the assessment program. The Council would be composed of 21 members representing producers, retailers, agricultural cooperatives, and the public. Any petition of 35% of producers or retailers would force an industry referendum to suspend or terminate the program, and the program would be suspended if a simple majority of producers and retailers combined, or a two-thirds majority of either producers or retailers alone voted to do so.

S. 1646 initially limits the assessment to a maximum of 1/10 of one cent per gallon of odorized propane. (Because propane is odorless, virtually all propane sold for residential, farm, agricultural and commercial use is "odorized" to make it easier to detect potentially explosive leaks. Much of the propane sold as a chemical feedstock is not odorized, and is not directly affected by this bill.) The assessment is made at the time of odorization, or when odorized propane is imported.

Energy research and development activities generally require long lead times and a level of stable funding that are often beyond the reach of any one company. The widely distributed nature of propane marketers, which include a large number of very small retailers, has inhibited the creation of a voluntary effort to cooperate on research and development priorities. Fiscal realities make the creation of a new federal R&D program for propane highly unlikely. Indeed, industry witnesses at the Committee's hearing on S. 1646 did not ask for government grants or the creation of a government bureaucracy to perform propane R&D. Instead, they sought help in creating an organization to provide R&D, training, safety and consumer education that was not funded by tax dollars. S. 1646 creates the framework to accomplish this goal.

LEGISLATIVE HISTORY

S. 1646 was introduced by Senator Domenici and 21 original cosponsors on March 27, 1996. The original cosponsors included Senators Ford, Dole, Lott, Heflin, Shelby, Faircloth, Simpson, Cochran, Inhofe, Warner, Helms, McConnell, Thurmond, Burns, Johnston, Bingaman, Nickles, Lugar, Kassebaum, Coats, and Grams. Senators Kyl, Coverdell and Pryor were added as cosponsors on April 15, 1996. Senator Bond was added as a cosponsor on April 16, 1996. Senator Bumpers and Harkin were added as a cosponsors on May 2, 1996. Senator Thomas was added as a cosponsor on May 7, 1996. Senator Gregg was added as a cosponsor on May 8, 1996. Senator Smith was added as a cosponsor on May 15, 1996. Senator Hutchison was added as a cosponsor on May 20, 1996.

Executive branch comment on S. 1646 was requested on April 4, 1996, but has not yet been received.

A hearing on S. 1646 was held before the Energy Research and Development Subcommittee on April 16, 1996. At that hearing, the National Propane Gas Association, the Gas Processors Association,

and Farmland Industries (a large farmer-owned cooperative) testified in favor of the bill. The Propane Consumers Coalition, (a coalition of residential, agricultural and industrial propane users) expressed neutrality on S. 1646 while noting that it had been substantially improved from earlier House versions by the addition of the consumer protection measurers in S. 1646.

A markup was held June 19, 1996 on S. 1646, at which time the Committee adopted the amendment offered by Senator Domenici as set forth elsewhere in this report and ordered the bill reported with a favorable recommendation.

A companion measure, H.R. 1514 was introduced in the House on April 7, 1995 by Representative Tauzin. H.R. 1514 currently has 222 cosponsors.

In the 103d Congress, a similar measure was introduced in the House of Representatives as H.R. 3546 on November 19, 1993. The House Energy and Commerce Subcommittee on Energy and Power ordered the bill reported, but the measure was never acted on by the Full Committee.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 19, 1996, by majority vote of a quorum present recommends that the Senate pass S. 1646 if amended as described herein.

COMMITTEE AMENDMENTS

Section 5(j) of S. 1646 contains a provision to ensure that the reasonable costs of the Department of Energy's oversight of PERC activities can be reimbursed from the collected assessments. S. 1646 as introduced limits this reimbursement to the average annual salary of a Department of Energy (DOE) employee, or $58,061 in fiscal year 1996. The Committee adopted an amendment proposed by Senator Domenici to insert the word "twice" on page 13, line 7, the effect of which was to double the allowable reimbursement.

The Committee desires that DOE provide an appropriate level of oversight for the propane program that industry may choose to undertake, and the Committee desires that DOE's legitimate costs be reimbursed. However, the intent of the legislation as introduced, and the intent of the Committee, is to ensure that DOE does not create a bureaucratic empire to accomplish the task. The figure represented by the average annual salary of a DOE employee multiplied by a factor of two, or $116,122 in fiscal year 1996, represents a funding level that is sufficient for DOE to perform adequate oversight.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

The intent of the section is self-explanatory.

Section 2—Findings

The intent of the section is self-explanatory.

Section 3—Definitions

The intent of the section is self-explanatory.

Section 4—Referenda

Section 4 specifies the conditions that must be met by the industry referenda that are required to create, terminate or suspend the program.

Section 4(a) specifies that a two-third majority of producers and retailers will be required to establish the Propane Research and Education Council (PERC), and that voting is by producers and retailers and is based on volume of propane sold or produced in the previous calendar year. The provisions in section 4(a) related to reimbursement of costs incurred for the conduct of the referendum, voting rights, auditing, and volume certification and self-explanatory.

Section 4(b) specifies the procedures to be followed in the event a referendum is held to terminate or suspend the program. The Propane Research and Education Council may, on its own initiative, conduct a referendum to determine whether the industry favors termination or suspension of the Council. Alternatively, a termination or suspension referendum will be triggered by a petition to the Council by producers and retail marketers representing 35% of the volume of propane produced and sold, respectively, in the United States. The Council will be suspended or terminated if the suspension or termination is approved by persons representing more than one-half the total volume of odorized propane in the producer class *and* more than one-half of the total volume of propane in the retail marker class; or by persons representing more than two-thirds of the of the total volume of propane produced *or* sold in the United States. The provisions in section 4(b) related to the expenses and audit of the referendum are self-explanatory.

Section 5—Propane Education and Research Council (PERC)

Section 5(a) specifies the procedures governing the selection of the Propane Education and Research Council (PERC) members.

Section 5(b) specifies that PERC members shall include gas processors and oil refiners among producers, interstate and intrastate operators among retailers, large and small companies in both classes (including agricultural cooperatives), and shall represent geographically diverse regions of the country.

Section 5(c) specifies the composition of the PERC and the qualifications of its members. The Council's 21 members shall consist of 9 producers, 9 retailers, and 3 public members. PERC members may not be an employee of a qualified industry organization or industry trade association as defined in the Act, nor may a Council member serve concurrently as an officer or the Board of Directors of same. Only one person from any company or its affiliate may serve on the Council.

Section 5(d) specifies that Council members will not receive compensation for services or reimbursement for expenses with the exception that public members, upon request, be reimbursed for reasonable expenses related to PERC meetings.

Section 5(e) specifies the term length of PERC members. Council members shall serve 3 years terms, no more than 2 consecutive

terms, and no more than 7 consecutive years for members filling unexpired terms. Former members may return if they have not served for 2 years. Initial PERC appointments shall be made for terms of 1, 2, and 3 years, and shall be staggered so 7 members are selected each year.

Section 5(f) specifies the Council's functions; namely, to develop programs for safety and training, research and development of propane utilization equipment, public safety education and other issues associated with propane.

Section 5(g) specifies that at least 5% of funds collected shall be used to benefit the agriculture industry, and that the use of those funds shall be coordinated with organizations representative of the agriculture industry. In addition, this subsection specifies that the percentage of funds used for projects relating to propane as an over-the-road motor fuel shall not exceed the percentage of the total propane market currently used as a motor vehicle fuel, based on a 3 year average.

Section 5(h) specifies that the Council shall give priority to R&D, safety, education, and training in the development of programs and projects.

Section 5(i) relates to administrative matters including the selection of a chairman and officers, the creation of committees, the adoption of rules and bylaws, and the solicitation of industry comment and recommendations.

Section 5(j) specifies that the Council's administrative costs shall not exceed 10% of total funds collected in any fiscal year. Section 5(j) also provides for the reimbursement of the Secretary of Energy for Expenses related to the oversight of PERC activities, not to exceed an amount that is twice the average annual salary of DOE employees.

Section 5(k) requires that PERC publish a budget plan for public review and comment. Following that public review and comment, the PERC shall the provide its budget to the Secretary and Congress. The Secretary may recommend programs or activities to the PERC.

Section 5(l) outlines requirements for recordkeeping and public access to Council records. Section 5(l) also requires an audit to be conducted at least once each fiscal year, and specifies that copies of audits shall be made available to qualified industry groups, members of industry and members of the Council upon request. Section 5(l) also requires the Council to provide the Secretary of Energy with notice of meetings, and provides the Secretary of Energy with the authority to require the Council to report on its activities and on compliance, violations and complaints regarding the implementation of the Act.

Section 5(m) specifies that PERC meetings shall be open to the public and shall require 30 days advance public notice. Section 5(m) further specifies that all the Council's meeting minutes shall be made readily available to the public.

Section 5(n) requires PERC to submit an annual report of past and planned projects and programs, and the allocations and planned allocations of Council resources for each program and project.

Section 6—Assessments

Section 6 provides the general authority for the Council to levy an assessment on odorized propane. The initial assessment shall be no more than one mill (1/10 of one cent) per gallon of odorized propane sold and placed into commerce. The assessment may not be raised by more than 1/10 of one cent per year, and shall not exceed 5 mills (1/2 of one cent) after 5 years unless approved by a majority of those voting in a referendum in both classes.

Section 6 also specifies that the owner of odorized propane at the time of odorization, or at the time of import of odorized propane, pays the assessment at the time propane is sold or placed into commerce. Exports are not assessed.

Section 6 also provides that PERC may establish alternative means of collection and establish penalties for failure to pay.

Section 6(d) specifies that the Council may only invest undisbursed assessments in U.S. obligations, obligations of a state or political subdivision, accounts or Certificates of Deposit in Federal Reserve Member banks, or obligations fully guaranteed by the United States.

Section 6(e) specifies that PERC shall coordinate with State programs by joint or coordinated assessment, reduced assessment, or rebate. The reduction of rebate shall be no more than 20% of the regular assessment and shall be paid only to the State PERC or similar entity.

Section 7—Compliance

Section 7 specifies that the PERC may bring a civil action in a United States district court to compel compliance with assessments levied under the Act, and that a successful action to compel compliance may require the defendant in such actions to pay the costs of the compliance action.

Section 8—Lobbying Restrictions

Section 8 disallows the use of any funds collected by the Council for political activities or to influence legislation. However, the Council may recommend changes in the Act or other statutes that would further the purposes of the Act.

Section 9—Market Survey and Consumer Protection

Section 9(a) directs the Secretary of Commerce to prepare an annual analysis of changes in the price of propane relative to other energy sources using data from the Energy Information Administration and other public sources. The price analysis shall compare indexed prices of consumer grade propane against the price of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil on an annual national average basis.

Section 9(b) restricts PERC activities to R&D, training and safety programs if in any year the 5-year rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of other specified energy sources in an amount greater than 10.1%.

Section 10—Pricing

The intent of the section is self-explanatory.

Section 11—Relation to other programs

The intent of the section is self-explanatory.

Section 12—Reports

Section 12 requires the Secretary of Commerce to prepare a report every 2 years examining whether operations of PERC, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers. Section 12 also requires the Secretary of Commerce to consider whether there have been long-term and short-term effects, and changes in the proportion of propane demand attributable to various market segments. If the Secretary of Commerce determines there has been an adverse effect, the Secretary shall recommend changes for correcting the situation.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1646, the Propane Education and Research Act of 1996, as ordered reported by the Senate Committee on Energy and Natural Resources on June 19, 1996. Based on information from the Natural Gas Processors Association and the National Propane Gas Association, we estimate that enacting this bill would have no net impact on the federal budget. However, enacting this bill would affect both direct spending and receipts; therefore, pay-as-you-go procedures would apply.

The bill does not contain any intergovernmental mandates as defined by Public Law 104–4. The bill would impose a private-sector mandate on owners and importers of odorized propane sold for commercial use.

Bill Purpose: S. 1646 would authorize propane industry organizations to conduct a referendum among producers and retail marketers to determine if a Propane Education and Research Council should be established. If there is sufficient industry support, this Council would be established to promote enhanced safety, training, research and development, and safety education in the propane gas industry. The Council would initially be funded through an assessment of up to one-tenth of 1 cent per gallon of propane sold in the retail market, and the assessment could subsequently be increased to as much as one-half of 1 cent per gallon. Funds collected through this assessment would be available to fund the Council's programs without further appropriation by the Congress. The bill would allow the propane assessment to be changed or terminated if there is sufficient industry support.

Federal Budgetary Impact: For purposes of this estimate, we assume that the industry would vote to establish the Propane Education and Research Council, and that the propane assessment would initially be set at one-tenth of 1 cent per gallon of propane sold. CBO believes that the cash flows related to the Propane Education and Research Council should appear on budget as governmental receipts and direct spending because these transactions would stem from exercise of the sovereign power of the federal government. Based on recent industry data on the amount of propane sold in the United States retail market (about 9 billion gallons annually), we estimate that this assessment would result in governmental receipts of at least $9 million a year. (Receipts would be higher if and when the assessment is increased.) We assume the Council would expend whatever funds are raised each year, so that enactment of this bill would have no net budgetary impact.

Mandates Statement: The bill does not contain any intergovernmental mandates as defined in Public Law 104–4. It might result in increased funding for state propane education and research councils because the Council could opt to transfer a portion of the assessments it collects to these state-level councils.

This bill would impose a private-sector mandate on owners and importers of odorized propane sold for commercial use. The mandate would be imposed if the propane producers and retail marketers vote favorably in a referendum to establish a Propane Education and Research Council. Assuming the Council initially sets the assessment at one-tenth of 1 cent per gallon of propane sold, the annual direct cost of the mandate would be approximately $9 million, well below the annual $100 million threshold established by Public Law 104–4. Even if the assessment is subsequently increased to the maximum possible rate (one-half of 1 cent per gallon), the mandate cost would remain below the threshold.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for federal costs), Stephanie Weiner (for revenues), Pepper Santalucia (for the state and local impact), and Jean Wooster (for the private sector impact).

Sincerely,

JUNE E. O'NEIL, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1646.

This bill affords the propane industry with the opportunity, but not the obligation, to establish a self-help, non-federal program of research, development,, safety, training and consumer education activities. Thus, the bill is not a regulatory measure in the sense of imposing Government established standards of significant economic responsibilities on private individuals and businesses.

No personal information would be collecting in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 1646.

EXECUTIVE COMMUNICATIONS

Executive Branch comment was requested on April 4, 1996. No response has been received by the Committee.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1646, as ordered reported.

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