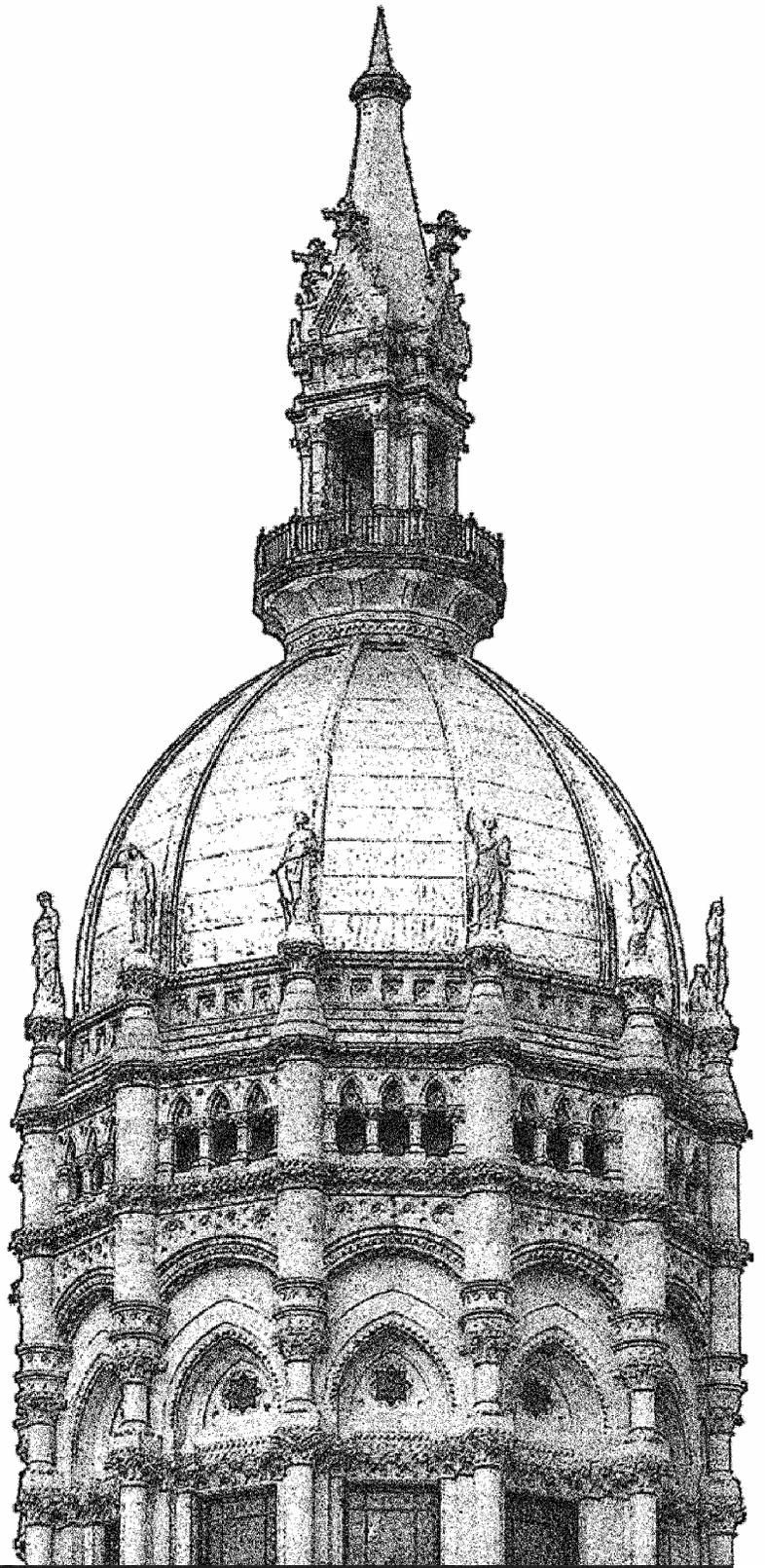


Connecticut's Regulation of Propane

MAY 2011



PRI

**Legislative Program Review and
Investigations Committee**

Connecticut General Assembly

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a bipartisan statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

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LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE

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Executive Summary

Connecticut's Regulation of Propane

According to the U.S. Census Bureau, there are approximately 36,355 households in Connecticut heating their homes with propane (2.7 percent of all Connecticut households), and an additional estimated 145,955 households using propane for cooking, water heating, fireplace logs, and other uses (11 percent of all Connecticut households). As the map in Figure 1 indicates, propane is more likely to be used for home heating in the rural areas of Connecticut.

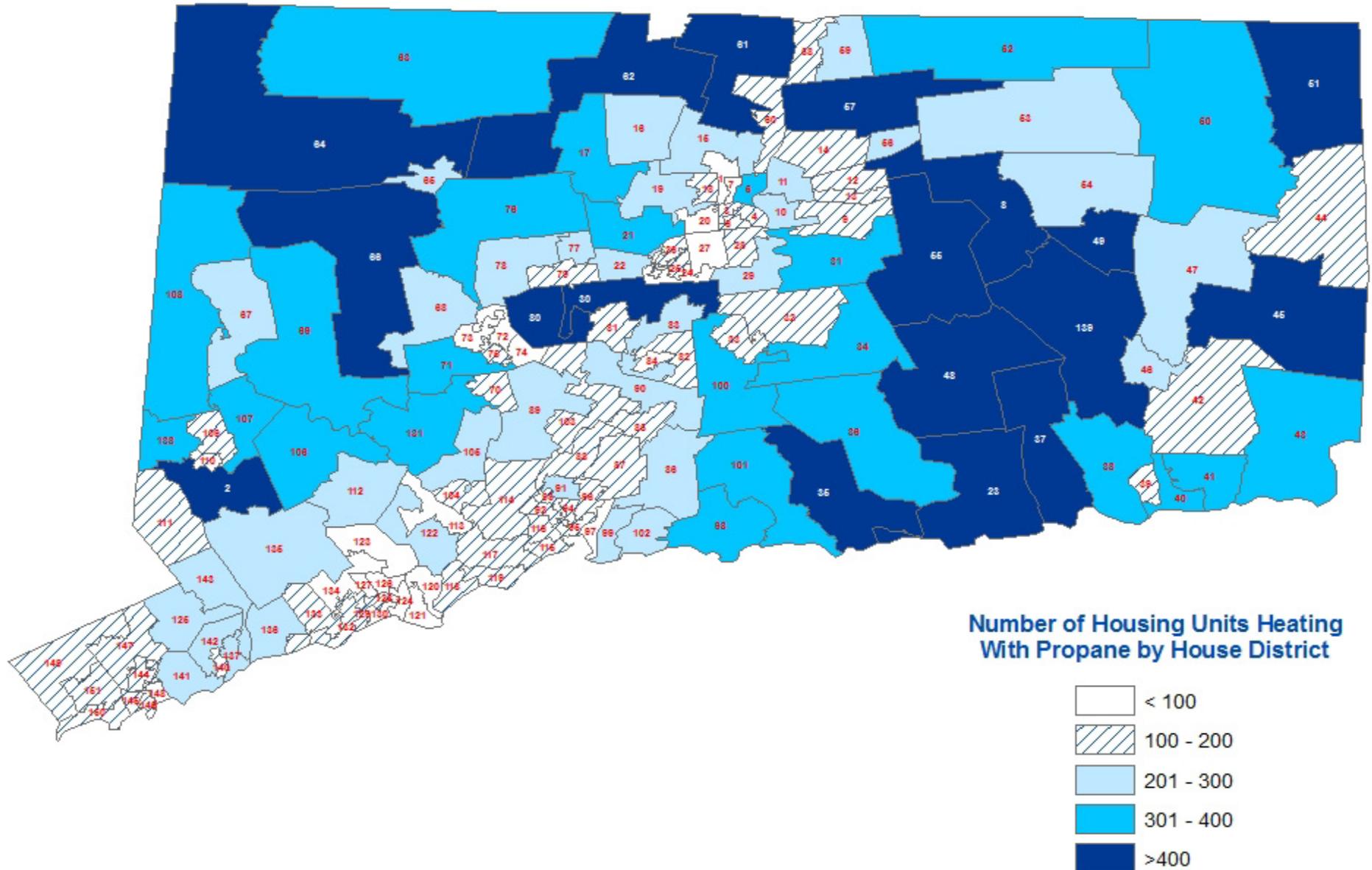
A 2009 Department of Consumer Protection (DCP) investigative report of propane complaints identified several major consumer concerns relating to pricing, contracting, safety and service. In general, DCP found consumers often do not realize or understand the contract terms and conditions which they have agreed to. In particular, there is a lack of transparency and disclosure regarding pricing and implications of tank ownership.

The Legislative Program Review and Investigations Committee (PRI) voted in March 2011 to conduct a study to assess Connecticut's regulation of propane and the propane industry and determine if the current rules best serve residents. As occurs in many other states, Connecticut fire prevention code limits who can fill a propane tank to either the owner of the tank or another "upon the owner's authorization." Other restrictions apply to connecting, disconnecting, and transporting tanks. These laws are commonly referred to as "container" laws. The rationale of maintaining the container law, regulating pricing, and expanding contract disclosure and other requirements were examined as part of this study.

Study Methodology

The sources of information for this PRI study were a combination of interviews, published reports, record reviews, and analysis of applicable national and Connecticut data. PRI interviewed staff from the state departments of Consumer Protection, Public Safety's Office of the State Fire Marshal, Public Utility Control (DPUC), the Office of Policy and Management's Energy Management Unit, and the Antitrust Division within the Office of the Attorney General. Committee staff also spoke to representatives of national, regional and state propane associations as well as the Independent Connecticut Petroleum Association, the National Fire Protection Association, propane companies, consumer advocates, insurance companies, consumers, and complainants. PRI staff conducted telephone interviews with staff in state fire marshal offices and energy authorities in Alaska, Idaho, Mississippi, Montana, New York, Rhode Island, Vermont, West Virginia, and Wyoming. Telephone conversations were also held with local fire marshals, tax assessors, and other local officials. PRI staff also reviewed industry literature and related studies. In addition, committee staff examined a random sample of 50 consumer complaints made against propane dealers since the conclusion of the 2009 DCP investigative report.

Figure 1. Number of Housing Units Heating With Propane by House District



Current Propane Regulation

The propane industry is guided by national safety standards (National Fire Protection Association NFPA 54 and NFPA 58) that are adopted and referenced by federal and state regulations. On the state level, four agencies are charged with roles and responsibilities for the propane industry: Department of Consumer Protection (oversees trade practices, fuel business operations, and handling of complaints), Department of Public Safety (establishes/enforces fire prevention code), Department of Public Utility Control (conducts safety inspections of select propane systems), and Office of Policy and Management (compiles and monitors/publishes propane prices).

Container Law

The container law limits who can fill a propane tank to either the owner of the tank or someone authorized by the owner. The vast majority of consumers rent or lease their tanks from propane dealers. Frequently, consumers do not fully understand the implications of tank rental/lease agreements including that it can limit who may fill the tank. The rationale given by the propane industry for the container law fall into three categories: safety, assignment of liability, and economic. While fire statistics seem to refute the safety reasons given by the propane industry for the container law, there is some evidence in support of the propane industry's arguments regarding the assignment of liability and economic rationale.

Should there be an accident, the container law makes it simpler to assign fault or liability. Unless the propane industry changes its current business model, the only way for dealers to recoup their financial outlay to purchase and install a tank for a customer is through the sale of propane to the customer. In examining the seven states that do not have a container law in statute or regulation, PRI found all to implement the container law in practice through contracts between propane dealers and customers, limiting customers to purchase of propane from the contracted propane dealer.

The most significant concern regarding the container law is its impact on consumer choice. Within the constraints of the container law, the following three questions relating to consumer choice need to be answered: 1) Are consumers prohibited from owning their own propane tanks? 2) Is there a lack of competition/only a single propane dealer available to consumers? 3) Are consumers unable to switch propane dealers? PRI found that, regardless of the container law, currently:

- 1) Consumers have the ability to own their propane tanks;
- 2) Competition seems to exist, with consumers able to choose from an average of 11 propane dealers serving each town or city; and
- 3) Consumers have the ability to switch propane dealers.

While PRI does not propose elimination of the container law, recommended changes to contract terms and conditions will make all these consumer options easier.

Propane Pricing

In general, the price of propane is determined by a number of market factors including the charge to retailers by the wholesalers, volume used by the customer, prices of competing fuels, and supply and demand. Connecticut has the lowest average price per gallon of propane when compared with the other New England and Eastern states. Within Connecticut, however, wide variation exists in the price per gallon charged by propane dealers.

Except for Hawaii, no other state currently regulates the price of propane for individual homeowners. Some states (e.g., Colorado, Michigan, Montana, Nevada), however, regulate price when there is a propane pipeline or common propane supply system serving 10 or more users.

Consumer Protections

In 2006, propane companies were made subject to the same consumer protections and statutory restrictions given to other heating fuel dealers. The addition of the statutory requirements as well as general discontent over fuel price spikes and media reports of consumer concerns surrounding the sale of propane fuel, tank ownership and rental appears to have generated an increasing number of complaints to DCP in recent years. As a result, the department conducted an investigation and issued a report in 2009 that uncovered a number of recurring issues.

Despite current restrictions on how propane is sold to customers, consumers often find terms and conditions of the contracts to be vague or allow dealers to make changes to various fees with little to no notice to the consumer. In other words, consumers may be agreeing to items in contracts without any awareness or full understanding of the implications. This is due in part to a lack of consumer information and knowledge of the business operations of the propane industry. Further transparency regarding the unit price and potential associated fees is needed. Additionally, state law is silent on consumer protections regarding propane tank rental/lease or options to buy, nor do current laws protect consumers in dispute with dealers having exclusive filling rights.

Based on its investigation, DCP submitted legislative and regulatory changes to address various complaint areas and otherwise clarify propane issues for the consumer. However, to date, neither process has successfully effected change. Consistent with several changes proposed by DCP, PRI recommends expanding contract disclosure and other requirements to promote clarification and transparency of contract terms and conditions—including contract length, options to rent or purchase a propane tank, and contract termination—as well as an establishment of a consumer bill of rights, and stronger enforcement tools for DCP.

Currently, some public information (via OPM's website) is available to consumers for comparison shopping. Because there is such variability in the price of propane across dealers, publishing the range (highest and lowest prices) in addition to the current average price, and publishing price information year-round instead of just during October-March, would provide consumers with information useful in the assessment of price per gallon charges.

PRI further concludes that given preliminary analyses and practical considerations, the regulatory role of DPUC over propane—including price regulation--should not be expanded at this time. However, the currently inactive Home Heating Oil Planning Council should be convened as intended, to examine the market conditions of the propane industry, including possible regulation of price for propane systems serving 10 or more customers.

RECOMMENDATIONS

- 1. The Connecticut statutes shall be amended to require that all contracts for the sale of heating fuel:**
 - **be in writing and contain all the terms and conditions for delivery and the amount of fees, charges, surcharges, or penalties allowed by law;**
 - **Not include any liquidated damages amount beyond the actual damages to the dealer because of a breach of the contract by the consumer.**

Any necessary data field that must be handwritten on such contract must be in clear and legible writing.

- 2. No written contract between a dealer and retail consumer for the fuel can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice.**
- 3. With respect to guaranteed price plans, the Connecticut General Statutes shall be amended to ensure:**
 - **Any guaranteed price plan that includes the terms such as “capped”, “maximum”, “not to exceed”, or any other similar terms or descriptions, must not increase above the specified price per gallon;**
 - **Each contract state in clear and specific language how and under what circumstances the price to customers may decrease during the contract period; and**
 - **Guaranteed price contracts may not include language that would allow automatic renewal.**
- 4. Statutory provisions shall be established for the use of electronic signature for heating fuel contracts as outlined in the proposed regulations and in compliance with the Connecticut Electronic Signatures Act and any pertinent federal provisions. Specifically, the written contracts requirements may be satisfied telephonically if the retail fuel seller:**
 - **has previously provided consumer with written notification of all the terms and conditions of the contract, except for the contract duration, the unit price, and the maximum number of units covered by the contract;**

- uses an interactive voice response system or similar technology that gives the consumer the contract duration, the unit price and the maximum number of units covered by the contract;
 - keeps a recording of the consumers agreement to each term and condition for the contract period;
 - provides the consumer with a confirmation letter and written copy of the consumer's agreement to terms and conditions; and
 - retains a copy of each confirmation letter.
5. **Contracts between propane dealers and consumers shall be for a period no greater than eighteen months.**
 6. **The Connecticut General Statutes shall be amended to require that the rent or lease of a propane tank must be in writing and contain all the terms and conditions and the amount of fees, charges, surcharges or penalties allowed by law. The tank rental or lease agreement must include written description of the tank, any installation charges, rental payments or fees, how contract may be terminated, and the amount of credit for unused fuel.**
 7. **No written contract between a dealer and retail consumer for the lease of equipment can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice.**
 8. **Each contract must include an assignable option to buy provision whereby the consumer may purchase the leased tank and associated equipment for a specified price as disclosed in the contract.**
 9. **The Connecticut statutes shall be amended to allow consumers, who are engaged in mediation efforts with a propane dealer who has exclusive fill requirements for its tank, the opportunity to make a cash purchase of fuel during the heating season.**
 10. **The Connecticut General Statutes shall be amended to include the establishment of a consumer bill of rights prepared by the DCP commissioner. The consumer bill of rights shall be made available by the registered propane dealer to consumers prior to entering into a contract. Disclosure notice of such bill of rights may be satisfied by written notice to consumers that the company's bill of rights is available on the internet website or by calling the company's local business office.**
 11. **DCP should continue to pursue efforts to streamline its statutory provisions and prepare any necessary statutory definitions with the purpose of providing clarifying language needed to facilitate enforcement activities. In addition, existing references to penalty violations found in C.G.S. §16a-21 and §16a-22k regarding sales of heating oil and unfair trade fuel practices shall be increased. Specifically, the change will include a fine of \$500 for first offense and no more than \$750 for second**
-

subsequent offense in a three-year period. Thereafter, there shall be a fine of not more than \$1,500 for each subsequent offense within the three year period of the prior offense.

In addition, these increased penalties shall be applied to violations of C.G.S. § 16a-22a regarding prohibition of requiring minimum deliveries and §16a-23r referencing various dealer business practices violations under CUTPA.

12. DCP may revoke or suspend the registration of any company that does not respond to consumer complaint per DCP request within 30 days.
13. The DCP commissioner may compel by subpoena, at the commissioner's discretion, the production of any documents from any dealer registered under C.G.S. §16a-23m regarding compliance with the DCP statutory provisions.
14. The statutory provisions relating to heating fuel dealer registration with DCP shall be amended to require registered companies, when applying for their annual DCP registration certificate, to disclose the names of all affiliated companies registered with DCP that are under common ownership or have interlocking board of directors. In addition, the statute will be clarified to require companies to obtain a separate registration for each company it does business as or advertises under.
15. The Home Heating Oil Planning Council shall be convened by OPM pursuant to C.G.S. §16a-23t to examine the market conditions of the propane industry for evidence of operational or infrastructure conditions that should be addressed to enhance the home heating fuel markets reliable, free, and fair operation. In addition, the council membership shall be statutorily amended to include the Department of Consumer Protection commissioner or his designee.
16. Any owner of propane systems serving either 10 or more customers, two or more customers located in a public place, or a single customer if the propane system is not located entirely on the customer's property, shall notify the DPUC of the existence of such a system.
17. Weekly surveying of propane dealer prices by OPM should be expanded to occur year-round within available appropriations. The average price for propane should be published year-round on the OPM website.
18. On a weekly basis, the highest and lowest prices for propane should be published on the OPM website in addition to the average price per gallon of propane.
19. OPM should include a more detailed explanation of the propane prices listed on their state heating oil and propane price survey website.

Introduction

Background

Propane, or liquefied petroleum (LP-gas), is a fossil fuel that can be either a liquid or a gas. At normal atmospheric pressure and temperature, it is a non-toxic, colorless, and odorless gas. Under moderate pressure, propane becomes a liquid that vaporizes into a clean burning gas when released from its storage container. Similar to natural gas, an identifying odor is added so it can be easily detected.

Propane is not produced for its own sake, but is a by-product of two other processes, natural gas processing and petroleum refining. Propane is extracted from the natural gas plant production, along with other materials such as butane, to prevent the liquids from condensing and causing operational problems in natural gas pipelines. Similarly, propane is also produced as a by-product when oil refineries make major products such as motor gasoline and heating oil.

Propane is an approved, alternate clean fuel listed in the 1990 Clean Air Act as well as the National Energy Policy Act of 1992. However, propane is also a hazardous material and must be handled properly. Tanks containing fuel under pressure may explode if tank integrity is altered.

Common uses. Propane is commonly used for heating and cooling homes, heating water, cooking, refrigeration, drying clothes, lighting, and in gas fireplaces. Recreational uses include: mobile home and RV appliances; generators; heaters for swimming pools, saunas, patios, whirlpools, and grills. Propane also has several industrial, commercial, and agricultural uses, and may provide an alternative fuel for vehicles.

According to the U.S. Census Bureau, there are approximately 36,355 households in Connecticut heating their homes with propane (2.7 percent of all Connecticut households).¹ Given the volume of propane sold in Connecticut in 2009, the Propane Gas Association of New England estimates an additional 145,955 households are using propane for cooking, water heating, fireplace logs, and other uses (11 percent of all Connecticut households). Combined, 182,310 households (13.7 percent) are estimated to use propane. (Appendix A provides an overview of the propane industry, including a map showing the location of households heating with propane.)

Study Focus

In March 2011, the Legislative Program Review and Investigations Committee launched an examination of Connecticut's regulation of the propane industry. In Connecticut, as in many other states, state fire safety laws limit who can fill a propane tank to either the owner of the tank or another "upon the owner's authorization."² Other restrictions apply to connecting, disconnecting, and transporting tanks. These laws are commonly referred to as "container" laws. The rationale of maintaining the container law, regulating pricing, and expanding contract disclosure and other requirements were examined as part of this study.³

¹ American Community Survey 2005-2009 Five Year Estimate

² RCSA Sec. 29-331-5

³ The container law applies only to larger containers, holding from 100 to 1,000 gallons of propane, not the smaller cylinders that are used for outdoor grilling or in recreational vehicles (those tanks tend to be 20 pound cylinders and hold approximately five gallons of propane gas).

Based on a 2009 Department of Consumer Protection (DCP) investigative report of propane complaints received by the department, several major consumer concerns were identified relating to pricing, contracting, safety and service. The committee investigated the areas of consumer concern and the potential need for greater regulation of propane.

Study Methodology

The Legislative Program Review and Investigations Committee traditionally conducts longer studies—often including interim briefings and public hearings. This two-month, shorter-term study followed an abbreviated process, concluding with committee report approval and adoption of recommendations on May 25, 2011.

The sources of information for this PRI study were a combination of interviews, published reports, record reviews, and analysis of applicable national and Connecticut specific data. PRI interviewed staff from the state departments of Consumer Protection (DCP), Public Safety's (DPS) Office of the State Fire Marshal, and Public Utility Control (DPUC), the Office of Policy and Management's (OPM) Energy Management Unit, and the Antitrust Division within the Office of the Attorney General. Committee staff also spoke to representatives of the national, regional, and state propane associations as well as the Independent Connecticut Petroleum Association, the National Fire Protection Association (NFPA), propane companies, consumer advocates, insurance companies, consumers, and complainants.

PRI staff conducted telephone interviews of staff in state fire marshal offices and energy authorities in Alaska, Idaho, Mississippi, Montana, New York, Rhode Island, Vermont, West Virginia, and Wyoming. Conversations were also held with local fire marshals, tax assessors, and other local officials. PRI staff also reviewed industry literature and related studies. In addition, committee staff examined a random sample of 50 consumer complaints made against propane dealers since the conclusion of the 2009 DCP investigation.

Report Format

This report has four chapters. Chapter I summarizes the existing regulatory structure for propane companies doing business in Connecticut. An explanation of propane pricing and comparison with other energy sources is provided in Chapter II. The particular issues and arguments surrounding the container law and related safety are presented in Chapter III. Finally, Chapter IV examines current consumer protections in the areas of contracts and enforcement by the Department of Consumer Protection (DCP). It also provides an overview of the many recurring issues revealed through the consumer complaints received DCP, and discusses the potential need for changes and expansion of state regulatory authority over the propane industry. Recommendations are also presented.

Agency Response

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies subject to a study with an opportunity to provide a written comment on the report and recommendations prior to publication of the final report. None of the affected agencies chose to exercise this option.

Chapter I: Propane Regulation

Who Regulates Propane?

Different aspects of the propane industry are regulated by various federal, state, and local governmental entities. Table I-1 provides a brief overview of the roles and responsibilities of each group. As the table shows, most of the oversight involves safety regulation. Further discussion of certain functions is detailed in subsequent chapters.

National Propane Safety Standards

A non-governmental entity, the National Fire Protection Association (NFPA),⁴ publishes national safety standards that are often adopted and referenced in federal and state regulations. The Connecticut Fire Prevention Code, including the Connecticut Liquefied Petroleum Gas and Liquefied Natural Gas Code (RCSA 29-331-1 through 29-331-5) and the Connecticut Gas Equipment and Piping Code (RCSA 29-329-1 through 29-329-4), are guided primarily by the following two NFPA national safety standards:

- The NFPA 54 standard (National Fuel Gas Code)⁵ covers installing gas (including propane) piping and appliances in residential and commercial buildings, beginning at the point of delivery (tank or pipeline) to connections with gas-powered appliances in the home.
- The NFPA 58 standard (Liquefied Petroleum Gas Code)⁶ covers the storage and handling of liquefied petroleum gases (propane). The code provides the industry standards governing the design, construction, installation, and operation of LP-gas systems (except those governed by NFPA 54). Safety areas covered under NFPA 58 include:
 - LP-Gas odorization;
 - notification of installations;
 - container specifications (e.g., design, pressure requirements, markings); and
 - container inspections/determination of container suitability for continued service prior to fill.

⁴ According to the NFPA website, the purpose of the association is “to promote the science and improve the methods of fire protection and prevention, electrical safety, and other related safety goals, to obtain and circulate information and promote education and research on these subjects, and to secure the cooperation of its members and the public in establishing proper safeguards against loss of life and property.”

⁵ NFPA 54 (1995 version) is included fully by reference in state regulation (Connecticut Gas Equipment and Piping Code) per RCSA 29-329-3.

⁶ Much of this standard (1995 version) is incorporated by reference in state regulation (Connecticut Liquefied Petroleum Gas and Liquefied Natural Gas Code) per RCSA 29-331-4, with several amendments and additions.

Table I-1. Overview of the Regulatory Structure for Propane

AGENCY		SAFETY	CONSUMER PROTECTION	PRICE
Federal	Department of Transportation	Oversees propane transportation vehicles		
	Department of Labor	Establishes employee safety requirements		
	Department of Homeland Security	Handles background for hazmat drivers		
	Department of Energy			Publishes energy statistics, prices, and other public energy information
State	Department of Public Safety	Establishes and enforces propane fire safety codes, including the container law		
	Department of Consumer Protection	Establishes licensing requirements and oversees weights and measures inspections	Regulates business operations, trade practices, and handles complaints	
	Department of Public Utility Control	Conducts safety inspections of select propane systems		
	Office of Policy and Management			Compiles and monitors market information and publishes regional average price
Local	Fire Marshal	Inspects and enforces state fire prevention code		

Source: PRI Analysis

NFPA code revisions. Versions of these national codes have been in existence since the 1930s. The NFPA codes are updated every few years with new versions expected soon. Connecticut is currently operating under the 1995 version and plans to adopt a more current code in 2013 when the Department of Public Safety (DPS) is required to make technical, conforming, and updating changes to the Fire Prevention Code (pursuant to PA 09-177 and PA 10-54).

FEDERAL REGULATION

On the federal level, there are several key agencies involved in propane industry oversight. The U.S. Department of Transportation (DOT) establishes requirements for the transportation of propane. The primary units within DOT that regulate the propane industry are the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Motor Carrier Safety Administration (FMCSA).

The U.S. Department of Homeland Security (DHS) handles the background checks for hazardous materials drivers--which includes propane truck drivers. In addition, the Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor along with the Environmental Protection Agency (EPA), set regulations for worker and workplace safety. Furthermore, the U.S. Department of Energy (DOE), through the Energy Information Administration (EIA), provides energy statistics, prices, and other public energy information.

STATE REGULATION

On the state level, four agencies are charged with roles and responsibilities for the propane industry: Department of Consumer Protection (DCP), Department of Public Safety (DPS), Department of Public Utility Control (DPUC), and the Office of Policy and Management (OPM).

Department of Consumer Protection (DCP)

The Department of Consumer Protection (DCP) generally is responsible for protecting citizens from marketplace fraud, unfair business practices, and physical injury from unsafe items. This is accomplished through: enforcement of many statutory provisions and regulations, including the Connecticut Unfair Trade Practices Act (CUTPA); investigation of consumer complaints; and mediation of disputes between consumers and businesses. (Any suspected antitrust violations would be referred to the Attorney General.)

In regard to propane, the department is responsible for overseeing weights and measures compliance for propane equipment and enforcing statutory provisions relating to propane sales and the operations of the fuel supply business dealers, as well as handling propane consumer complaints. DCP also regulates the licensing requirements applicable to certain propane service or repair personnel.

Law Highlights

Propane Dealer Registration:

Propane dealers must register with DCP to sell to residential customers. Applicants must apply annually and pay a \$200 registration fee. Registrants must show that they have general liability coverage and insurance of at least \$1 million to cover environmental damage due to propane gas leaks. They must notify DCP of insurance renewal or coverage changes. Insurers are required to notify DCP if they cancel a dealer's insurance coverage.

The statutes require the DCP commissioner to keep a list of registered propane gas dealers as well as registered home heating oil dealers. The lists must be made available to wholesalers, who may sell their products only to registered dealers. As of March 2011, DCP reports 78 propane dealers registered to do business in Connecticut with at least 15 companies located out of state, primarily in Massachusetts and New York.

Marketing and Advertising:

Dealers must display their registration numbers in all advertisements. All registered dealers that offer plumbing or heating work service must also show that they subcontract with or employ properly licensed individuals and attest that all such work will be performed by these individuals. Anyone who sells propane at retail or who services propane burners under a trade name must disclose the identity of the trade name certificate holder to current and potential customers on the invoices, other communications, and in any advertising. Dealers who advertise a price must offer that price for at least 24 hours or until the next price is advertised, whichever comes first.

Occupational Licensing:

DCP is responsible for licensing individuals performing heating, piping, and cooling work. This licensure includes the propane dealer employees responsible for installing, maintaining, and servicing propane tanks. While propane truck drivers must have commercial driver's licenses (CDLs), they are not required to have an occupational license to pump propane into the customer's tank. Appendix A contains the various occupational licenses required to perform work associated with propane.

Certain Contract Requirements:

State law makes securitization requirements for certain heating fuel contracts. Securitization is important because it demonstrates a company's ability to fulfill its delivery obligations. In the event a company becomes troubled or otherwise fails to perform its contractual responsibilities, the securitization requirements provide some sense of a consumer safety net.⁷

Propane dealers may not enter into, renew, or extend prepaid or capped price-per-gallon contracts with consumers unless the dealers have secured the contracts with either:

- (1) futures or forwards contracts or similar commitments that allow them to purchase at a fixed price at least 80 percent of the gallons they commit to providing under all of their prepaid contracts; or
- (2) surety bond for at least 50 percent of the total amount they received from consumers under prepaid contracts.

⁷ It is important to note that securitization requirements, while providing some assurance, are not an absolute warranty for consumer safety.

Dealers must maintain the secured amounts for as long as the prepaid or capped price plan contracts are in force, but are allowed to reduce their total secured amount to reflect deliveries made to and paid for by the consumer.

Dealers are required to inform DCP in writing of the entities from which the dealer has obtained futures or forwards contract(s) or a similar commitment. A dealer must notify the commissioner, on forms prescribed by DCP, at any time the total secured amount is less than 80 percent of: (1) the maximum number of gallons; or (2) the amount of fuel the dealer is committed to deliver under the prepaid or capped price contracts or that he estimates he is committed to deliver. Furthermore, any entity from whom a dealer has obtained a futures or forwards contract or a similar commitment must notify DCP in writing if a contract is cancelled within three business days.

Business Operations:

Current state law also imposes specific requirements on the information a fuel delivery ticket must contain, restrictions on certain surcharges including minimum delivery requirements and price advertisements.

DCP proposed changes. In 2009, after receiving a growing number of consumer complaints regarding confusing and alleged deceptive practices by home heating and propane dealers, the Department of Consumer Protection concluded that changes in the law were required to respond to these legitimate concerns and complaints.

Legislation did not succeed in 2009. In 2010, DCP decided to try to implement some changes through regulations, focusing on heating fuel contracts (the regulations cover home heating oil as well as propane gas). DCP submitted final proposed regulations to the legislature's Regulations Review Committee in March 2011. The regulations on heating fuel contracts were scheduled to be on the committee's April 26, 2011 agenda, but were withdrawn due to technical issues found by the Legislative Commissioner's Office before the meeting. It is anticipated that the regulations will be resubmitted in the near future. The program review committee analysis of these proposed regulations are further discussed in Chapter IV.

Department of Public Safety (DPS)

The propane industry is subject to safety regulations of various government agencies. In Connecticut, propane safety regulations are developed and overseen by the Department of Public Safety Office of the State Fire Marshal. Generally, this office is responsible for establishing and enforcing codes, standards, and regulations to reduce the harm associated with fires, explosions, and mechanical failures. However, local enforcement of these regulations typically falls to the local fire marshal.

Key Laws

Safety areas covered by state regulations include:

- LP-Gas odorization;
- notification of installations;
- container specifications (e.g., design, pressure requirements, markings); and
- container inspections/determination of container suitability for continued service prior to fill.

The container law, which limits the filling of a propane tank to the tank's owner, is found within DPS safety regulations. (This is examined in more detail in the next chapter).

The DPS regulations also impose additional requirements in situations where a tank is owned by a propane dealer. Any individual or entity (including another propane company) requesting disconnection must provide at least four days advance notice to dealers before disconnecting the tank or tank regulator. The written notice must provide the consumer's name and address; the name of the person, business, or propane supplier requesting the disconnection; and the scheduled date and time of disconnection. The owner of the tank or regulator must then remove their equipment from the customer's premises within 15 business days.

Training. The regulations also require all persons employed in handling propane to be trained in proper handling and operating procedures, and re-trained at least once every two years. The Office of State Fire Marshal develops and recommends changes to the Connecticut State Fire Prevention Code and provides support and training to the local fire marshal community in administration and enforcement of the state fire prevention code. It assists with investigations as needed and administers laws and regulations governing explosives, propane, and other flammable and combustible liquids.

The Office of State Fire Marshal maintains records relating to number of fires, cause of fires, and civilian injuries. The office also answers questions from local fire marshals regarding tank location, venting requirements, and assistance with bulk planning reviews. Over the last 15 years, the Office of State Fire Marshal has conducted many investigations relating to propane gas releases and explosions, with the cause usually human error and sometimes due to equipment failure. From a safety standpoint, the State Fire Marshal is concerned with who fills the tank and that the individuals are qualified to do so - the office does not associate tank ownership with safety. Chapter III provides more discussion of propane safety issues.

Office of Policy and Management (OPM)

The Energy Management Unit, within OPM, is the state's primary energy policy planning entity with general oversight regarding energy usage and management of energy costs in state facilities. It provides analytical support regarding general energy market activities and issues. Staff from this unit also oversees the implementation of federally-funded energy programs in Connecticut. Specifically, the unit is responsible for compiling various pieces of information to monitor and report on the fuel market in Connecticut.

Law Highlights

Price Survey:

The OPM secretary is statutorily required to collect, monitor, and distribute information that will provide transparency for home heating fuel market prices (including propane) to the public. In particular, OPM must collect information on wholesale and retail home heating oil prices. It must develop price indices to provide transparent market prices to the public and transmit them to the public in a cost-effective way that provides the greatest possible access to understandable and current information. As will be described further in Chapter II, OPM must update the information and post it weekly on OPM's website.

Registration of Large Petroleum Dealers:

State law requires dealers (including propane dealers) who sell at least 1 million gallons annually, to register with OPM. Registrants who sell more than 500,000 gallons of propane per year may also be required to report information on how much propane they have in storage.

OPM is required to maintain a public listing of registered petroleum products dealers including wholesalers and retail sellers and whether the registrant engages in the delivery or storage of petroleum products, makes sales to residential customers, and uses any other names and places to conduct business. (Appendix A provides an overview of the propane industry based on 2008 information compiled by OPM.)

Propane dealers who sell at least 500,000 gallons annually must submit a report to OPM by the fifteenth of each month on forms OPM prescribes. Each report must specify:

- number of gallons of fuel held in storage on the last day of the previous month;
- location of each storage facility;
- number of gallons of propane held for shipment out of state; and
- estimated number of days' supply represented by the gallons held in storage.

Propane dealers, who sell other than at retail, must report the number of gallons sold in the previous calendar month and the estimated amount to be sold during the current month. OPM may promulgate regulations to establish these reporting requirements.

Market Analysis:

OPM must also monitor and analyze the information for evidence of activities that harm the fair and free operations of the home heating oil market including propane. It must refer any such evidence, together with other information or recommendations, to agencies determined to have jurisdiction to provide remedies, including federal; state; or local administrative, regulatory, or law enforcement agencies.

The secretary of OPM may require anyone engaged in the sale or storage of petroleum products to provide information concerning the market as he directs if he determines that market conditions require additional sales, inventory, or price information for a complete analysis of this market. Registrants must notify OPM, in writing, within 30 days of the sale or acquisition of another registrant or of the change in a current business practice. These practices may include the sale or acquisition of petroleum storage facilities, entry into or withdrawal from a petroleum market, or any activity that would change any information in the registrant's most recent registration.

Fuel Shortages:

Any wholesalers of petroleum products (including propane) who have sufficient knowledge of impending fuel shortages must immediately notify in writing their retail dealer customers and OPM of their potential inability to supply them. Wholesalers are prohibited from discriminating against independent retail dealers during shortages.

Wholesalers must provide written notice to retail dealers, municipalities in which these dealers distribute fuel, and OPM, at least 14 days before terminating fuel supply. The AG, on behalf of OPM, may institute civil action against any entity believed to have illegally created a fuel shortage.

Department of Public Utility Control (DPUC)

DPUC has limited oversight of the propane industry. The department's regulatory scope is pipeline safety of certain propane systems. Pursuant to the Federal Code of Regulations (Title 49, Parts 191 and 192), which is adopted as state regulations, jurisdiction includes single or manifolded multi-tank systems serving:

- 10 or more customers located anywhere (receiving propane from a single tank or multiple tanks manifolded together);
- Two or more customers where a portion of the system is located in a public place (e.g., a strip mall such as Mystic Village); or
- A propane system with a single customer if the system is not located entirely on the customer's property.

These types of systems are regulated because they perform more like a natural gas system. The department follows federal code for inspections, which references the National Fire Protection Association standards. The primary focus is pipeline safety dealing with storage and distribution once the propane is delivered. (Transportation issues come under U.S. DOT federal motor carrier regulation).

Location of systems. Similar to non-DPUC jurisdiction tanks,⁸ these systems are also subject to the NFPA 58 standard. The regulations provide no restrictions pertaining to size of the tank or volume provided. There is also no requirement companies report system locations. Usually, DPUC is informed of the existence of such a system by the local fire marshal or occasionally through the report or complaint of one company on another company. To date, DPUC is aware of and regulates 110 systems involving six companies. DPUC estimates, on average, these systems are less than 20 years old.

Appendix B provides a map of the locations of the 110 systems. Approximately 15 of the 110 systems regulated serve 10 or more customers in different parts of the state. The remaining systems are serving 2 or more customers in public places, such as strip malls. DPUC is unaware of systems that have a single tank with a single customer on another's property.

Federal requirements. As mentioned earlier, DPUC's jurisdiction is pursuant to federal code of regulation and receives federal funds for its oversight. The agency must account for its staff resource time to obtain federal monies. DPUC estimates approximately 15 percent of staff time is related to propane regulation.

The federal code requires a number of compliance inspections that vary depending on if systems are underground or aboveground. Compliance activities include corrosion inspections, survey readings, records audits, and field work such as spot checks for new construction.

The propane companies are required to prepare and follow a manual of written procedures for conducting operations and maintenance activities and for emergency response. The code requires the propane company provide training to ensure that employees have the necessary knowledge and skills to ensure safe operation of the system. However, training is not specified. Propane companies are also required to report certain safety-related conditions that exists or any incident that occurs on the system. An "incident" as defined in the federal code includes death, inpatient hospitalization, more than \$50,000 loss, or if a significant amount of gas leaked. Incident statistics are maintained by the federal government.

LOCAL REGULATION

As noted earlier, the Office of State Fire Marshal oversees the local fire marshals responsible for fire safety in the 169 towns and cities throughout Connecticut. Depending on the municipality, the local fire marshal may be attached to the fire department, as is often the case in a large community. In smaller communities, the local fire marshal may work for the town five hours per week in this capacity, and spend the remainder of his/her time on other jobs or duties for the town. Adjacent small towns may share the same local fire marshal, while cities such as Stamford have as many as five local fire marshals.

Local fire marshals are required to be certified by the State Fire Marshal. Their primary duties pertaining to propane safety are outlined in Chapter 541 of the Connecticut General Statutes. The local fire marshal or building official is responsible for initially determining

⁸ The NFPA 58 is the standard used for design and construction, including provisions for corrosion protection.

compliance with the Connecticut Liquefied Petroleum Gas and Liquefied Natural Gas Code (R.C.S.A. § 29-331).

Additionally, local fire marshals inspect at least annually, all bulk storage tanks, equipment and cargo tank vehicles transporting propane, and issue certificates of approval to each vehicle. By 2013, these inspections will be covered under federal motor carrier association inspections, and local fire marshals will no longer be conducting these inspections. Also, in case of an emergency such as a fire, a public emergency response agency can direct a dealer to immediately empty or disconnect a tank.

The next chapter describes the current regulation of propane pricing in Connecticut and other states, and explains how the price of propane is determined. Propane dealer differences and price comparisons with other states and fuel types are analyzed followed by information on current price monitoring efforts.

Chapter II: Propane Pricing

Regulation of Propane Pricing

Propane prices, like home heating oil prices, are not regulated in Connecticut, but set by the marketplace. Historically, fuel oil prices have only been controlled by government during national crises. Under Connecticut law, propane companies are not public service companies and therefore, are not subject to price regulation by the Department of Public Utility Control (DPUC).⁹ Propane gas and its retail delivery systems do not have the same attributes as regulated utilities. In a rare instance more than a decade ago, DPUC regulated propane prices for the state's three natural gas companies that temporarily provided propane to customers where it was anticipated that natural gas pipelines would eventually become accessible. When pipeline installations did not occur after a number of years, however, the natural gas companies were required to leave the propane business in the 90s, ending DPUC price regulation.¹⁰

How the Price of Propane is Determined

In general, the price of propane is determined by a number of market factors including the charge to retailers by the wholesalers, volume used by the customer, prices of competing fuels, and supply and demand. Additionally, the propane dealer may offer various types of contractual price plans including incentives to attract new customers, which are not available to existing customers. Propane dealers also differ in their overall prices.

Charge by wholesaler. Propane dealers obtain their gas from wholesalers, and this is the source from which propane dealer prices for customers are set. Connecticut's nine major propane supply points are:

1. Amerigas Rail Terminal (Southington, CT)
2. DCP Rail Terminal (Albany, NY)
3. TEPPCO Pipeline Terminal (Selkirk, NY)
4. DCP Sea Terminal (Providence, RI)
5. Sea3 Sea Terminal (Newington, NH)
6. Bayway New Jersey Refinery
7. Private rail car shipments from Canada
8. Connecticut Natural Gas and Yankee Gas Reserves
9. Non-regional supply points from as far away as Texas and other points in the deep South, Mid-Atlantic, and Midwest

⁹ One exception, as described in Chapter I, primarily pertains to DPUC regulation of safety (but not pricing) aspects of propane systems serving 10 or more customers, or two or more customers where a portion of the system is located in a public place.

¹⁰ OLR Research Report (2002-R-0814), "Price Controls on Heating Fuels."

Pricing from the supply sources can be affected by many factors. For example, recent supply disruption due to pipeline failure in a Houston, Texas pipeline has been linked with price increases. In the past, wholesale price increases have also been associated with severe weather events such as Hurricane Katrina and related damage to oil refineries and gas processing plants that supply propane.

Volume used by the customer. Propane prices that dealers charge their customers are also based on the volume used by the customer. *A dealer may charge more per gallon for deliveries to smaller tanks/low-usage customers than to larger tanks/high-usage customers.* A propane dealer may also have a delivery surcharge or a minimum fee to fill smaller tanks (low-usage fee). *The Department of Consumer Protection¹¹ noted that a low-usage customer can pay two to four times the amount per gallon compared with a higher usage customer.*

Based on PRI interviews, there may be as many as 24 price points for propane. Table II-1 is an example of pricing differences depending on the number of gallons used and tank ownership. The cost this co-op is charging its members, for example, is based on the current wholesale price per gallon (\$1.54 as of 3/14/2011) plus the following additional fee:

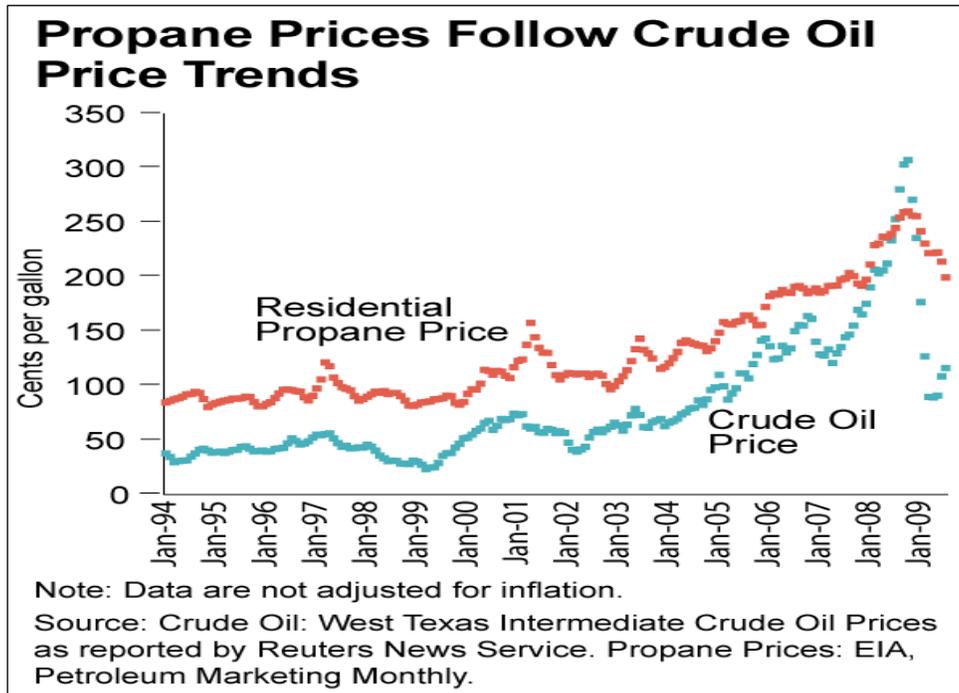
Yearly Usage in Gallons	Customer Owned Tank	Propane Dealer Owned Tank
1-200 gal.	+ \$2.50 per gal.	+ \$2.80 per gal.
201-400 gal.	+ \$1.20 per gal.	+ \$1.50 per gal.
401-700 gal.	+ \$.65 per gal.	+ \$.95 per gal.
701-1,500 gal.	+ \$.55 per gal.	+ \$.85 per gal.
1,501-2,999 gal.	+ \$.35 per gal.	+ \$.65 per gal.
3,000 gal. +	+ \$.35 per gal.	+ \$.45 per gal.
Source: Galway Co-op (www.fuels4less.com/propane.htm)		

Prices of competing fuels. Another factor influencing the price propane dealers charge their customers is the price of competing fuels. *Although propane is produced from both crude oil refining and natural gas processing, propane competes mainly with crude oil-based fuels, and conversely, the price is impacted primarily by the cost of crude oil.* Figure II-1 shows data collected by the U.S. Energy Information Administration and the nearly parallel trends over 15 years in the cost of propane and oil.

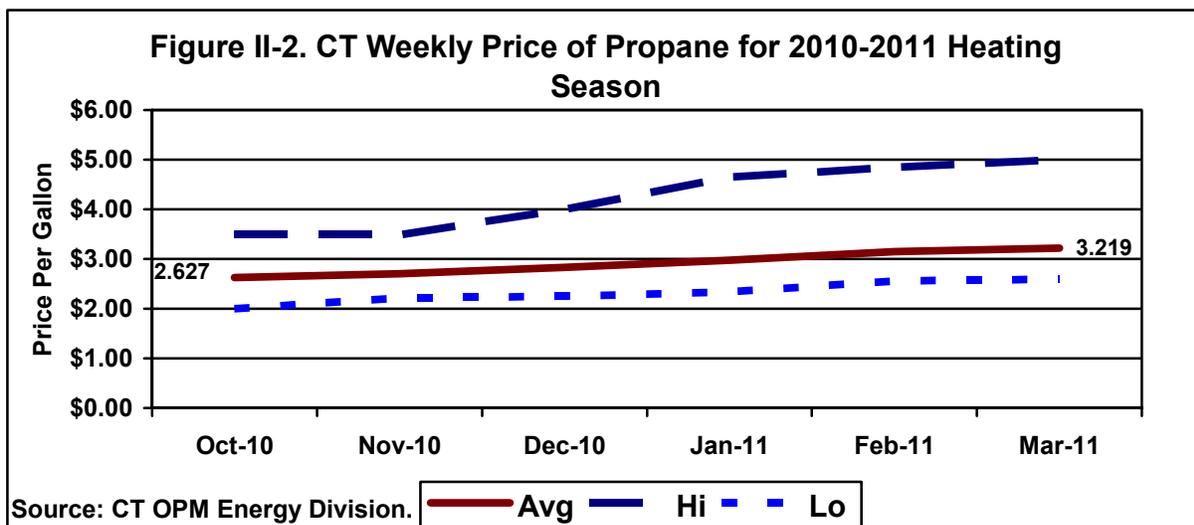
Supply and demand. Propane prices that dealers charge their customers are also influenced by supply and demand. Propane is produced at a steady rate throughout the year, regardless of seasonal residential demand. During the summer months, propane stocks are built and are drawn down in the winter months. Thus, the supply and demand can get out of balance during the winter months when there may be colder-than-normal weather early in the season causing higher than anticipated residential demand, and during the summer months when residential demand is low. Because propane is a byproduct from oil refineries and gas processing plants, a “propane” source is not readily available when supplies run low. Propane wholesalers

¹¹ Department of Consumer Protection Fact Sheet, “Heating with Propane in CT” (March 2009).

and retailers then must pay higher prices for the reduced supply, passing the increase on to consumers.



Supply may also be influenced by an unanticipated demand from the agricultural sector, which uses propane to dry crops, or from the petrochemical producers, who use propane to make products such as plastics, alcohols, fibers, and cosmetics. Figure II-2 shows the price changes that occurred during the most recent heating season. As can be seen, prices were lowest at the beginning of the heating season.



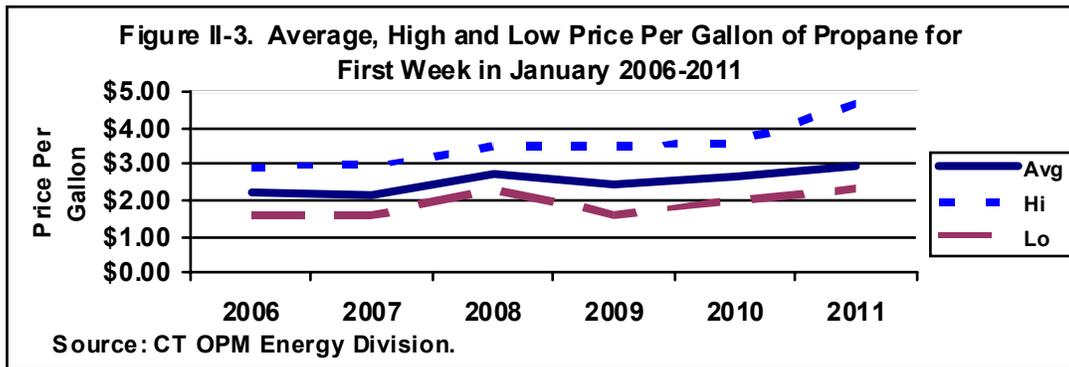
Cash or credit. Prices can also vary depending on whether cash or a credit card is used to purchase the propane. Customers may be charged less if the propane is paid for in cash at the time of delivery. Several dealers located in the Midwest, for example, discount propane prices \$.15-\$.25 per gallon when cash is used to pay for propane.

Costs associated with propane use. *Beyond the price of propane itself, there are additional charges or fees associated with use of propane: propane tank rental fee or purchase price, deposit, maintenance fee, hazmat fee, low-usage fee, delivery charges (after hours, temporary or seasonal use), tank pump-out/pick-up charges, meter service, fuel surcharge, and service work charges.* Table II-2 provides a sample of fees and charges customers may be required to pay to two of the larger propane dealers serving Connecticut.

Table II-2. Possible Fees and Charges Incurred by Propane Customers	
Fee/Charge	Company A/Explanation by Propane Dealer
Fuel Recovery Fee	<ul style="list-style-type: none"> • \$7.58 per delivery • Helps to offset expenses
HazMat & Safety Compliance Fee	<ul style="list-style-type: none"> • \$9.69 per delivery • Fee helps offset costs incurred in complying with federal, state and local government regulations concerning hazardous materials. • Fee is not government imposed, nor is any portion paid to any government agency
Service Termination Charge	<ul style="list-style-type: none"> • \$60 (for customers of < 3 years) • Charge defrays a portion of the costs associated with removing leased equipment
Pump-Out/Restocking Charge	<ul style="list-style-type: none"> • \$75 (for tanks > 5% full)
Special Trip Charge	<ul style="list-style-type: none"> • Charge Varies • Occurs when customer requests immediate delivery or non-emergency service outside of regular business hours
Tank Rental	<ul style="list-style-type: none"> • Charge Varies
Meter Service Fee	<ul style="list-style-type: none"> • \$8 per delivery • Fee incurred by customers on meters • Helps defray meter read, maintenance and related administrative costs
Fee/Charge	Company B/Explanation by Propane Dealer
Administrative Delivery Fee	<ul style="list-style-type: none"> • \$18 per delivery
Service Trip Charge	<ul style="list-style-type: none"> • \$85 per delivery during regular business hours • \$200 per delivery outside of regular business hours
Special Trip Charge	<ul style="list-style-type: none"> • \$185 per delivery during regular business hours • \$275 per delivery outside of regular business hours
Tank Rental	<ul style="list-style-type: none"> • Varies, depending on tank capacity and annual usage • Ranges from \$12-\$50 (unclear if monthly or annual fee)
Tank Pump-Out Fee	<ul style="list-style-type: none"> • \$200 for 250 gallon or larger tank
Tank Removal Fee	<ul style="list-style-type: none"> • Fees are for empty tanks • Fees vary, depending on size of tank • Ranges from \$200-\$500
Sources: Connecticut Department of Consumer Protection and company website.	

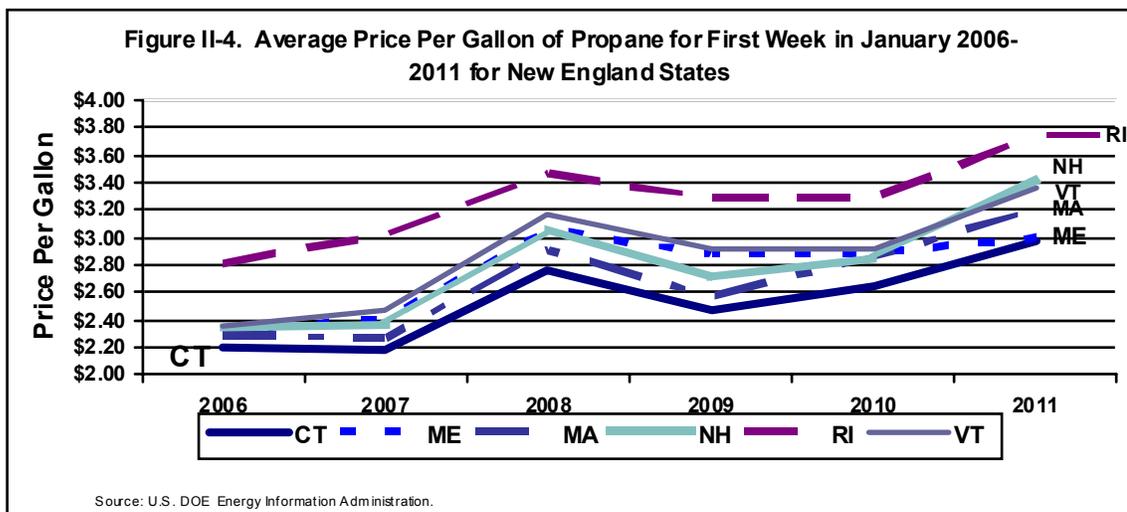
As discussed in Chapter III, a customer who has leased a tank and wants to purchase the tank from the propane dealer is often charged the price of a new tank (despite worth of tanks reported as significantly lower to municipal tax assessors).

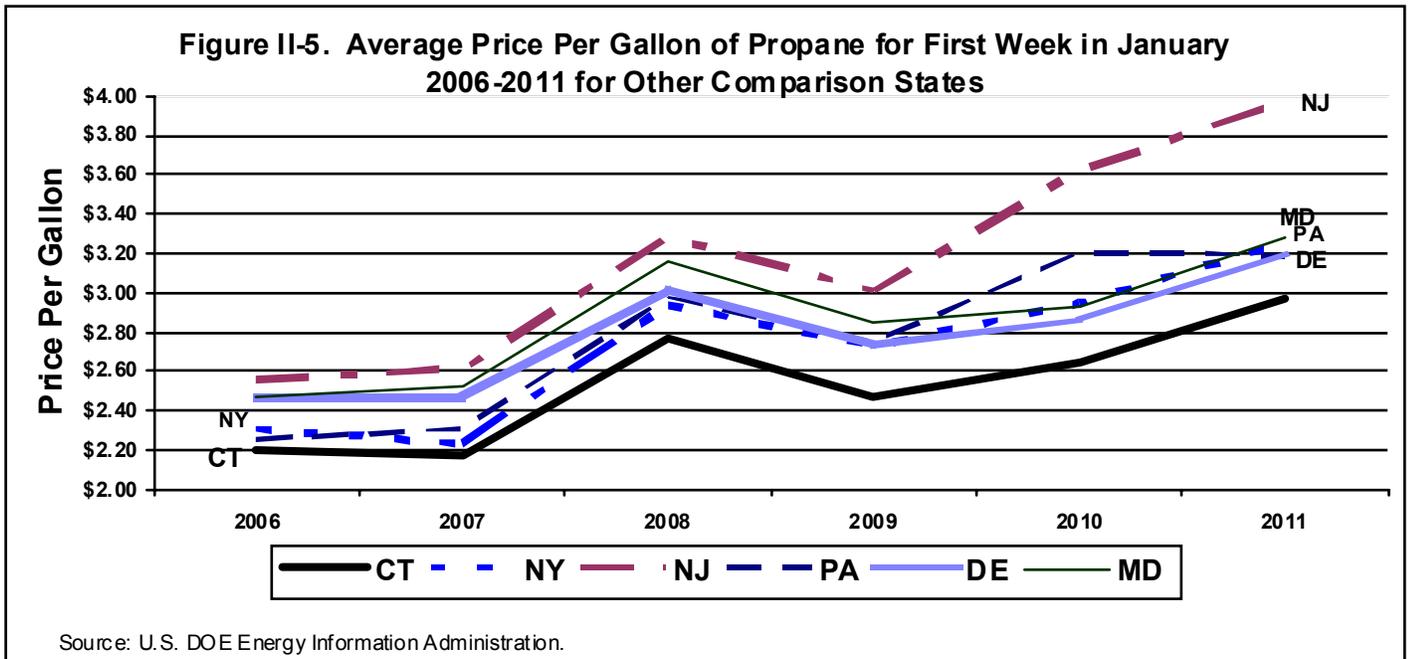
Propane dealer pricing differences. Beyond variability in propane service fees charged by propane dealers, Figure II-3 shows consistently *wide variation around the average price per gallon charged by propane dealers for Connecticut home heating customers*. In the first week of January 2011, for example, the average price per gallon was \$2.97, with one propane dealer charging as low as \$2.34 per gallon and another charging as much as \$4.65 per gallon (56 percent higher than the average price). In the past five years, the average price per gallon at this time of year has risen 77 cents (35 percent) from \$2.20 per gallon in 2006.



Comparing Price of Propane in Other States and With Other Fuel Types

Price comparison with other states. Figure II-4 shows *Connecticut has the lowest average price per gallon of propane when compared with the other New England states*. Figure II-5 shows a similar pattern when compared with other Eastern states. Compared with the 35 percent increase in Connecticut, for example, there was a 55 percent increase in propane price in New Jersey during the same five-year period.





Comparison of Price of Propane With Other Fuel Types

The U.S. Department of Energy Energy Information Administration (EIA) publishes national data on the price of propane and other fuel types. Fuel prices are converted to a common unit of energy (MMBtu) that allows for comparison across the different types of fuel. Table II-3 shows prices for propane, natural gas, oil, and electric. Compared with these other fuel types, *propane is more expensive than natural gas and oil, but less expensive than electricity.*

Fuel Type	Price per Fuel Unit	Fuel Price per MMBtu	Approx. Efficiency (%)	Fuel Cost per MMBtu
Natural Gas	\$1.05 per therm	\$10.54	78%	\$13.52
Oil	\$2.65 per gal.	\$19.08	78%	\$24.46
Propane	\$2.11 per gal.	\$23.07	78%	\$29.58
Electric	\$0.111 per KiloWatt-hour	\$32.55	98%	\$33.21

Source: U.S. DOE Energy Information Administration (EIA) Heating Fuel Comparison Calculator.

The Independent Connecticut Petroleum Association also publishes prices for its members. Table II-4 is a sample from a recent price comparison (March 2011) converted to a common unit (i.e., the BTU equivalent of heating oil). *The Connecticut price comparison is consistent with the national trend of propane being more expensive than all energy types except electricity.*

Table II-4. Price Comparison of Types of Fuel in Connecticut	
Energy Source	Price Corrected to the BTU Equivalent of Heating Oil
DPUC/Connecticut Natural Gas	\$1.51
DPUC/Southern Connecticut Natural Gas	\$1.69
DPUC/Yankee Natural Gas	\$1.99
Wood Pellets*	\$2.71
OPM/Heating Oil Statewide Average	\$3.89
OPM/ Propane Statewide Average	\$4.81
DPUC/Connecticut Light & Power (electric)	\$6.38
* At \$315 per ton, delivered, premium pellets with less than 5% moisture content.	
Source: Weekly ICPA Newsletter (March 21,2011).	

Regulation of Propane Pricing in Other States

Hawaii is the only state currently regulating the price of propane for individual homeowners. In that state, propane is treated as both a utility (regulated) and nonutility (non-regulated). The state’s public utility commission regulates all aspects of propane, including price. Under the jurisdiction of the utility company (“The Gas Company”), the propane tank is almost always owned by the utility. Regardless of who owns the tank, only propane from The Gas Company may be used by The Gas Company customers. In some cases, AmeriGas or another propane dealer provides propane to customers. In those instances, the price of propane is not regulated (and only the tank owner—usually the propane dealer—may fill the tank).

Beyond the uniqueness of Hawaii, *another exception to the general rule that propane prices are not regulated occurs in situations where propane gas systems serve 10 or more users from a common propane supply.* (Federal regulation requires adherence to safety standards (49 CFR §192.1(b)(5)) when: underground propane systems serve 10 or more customers; or when any part of a system is located in a public place). In addition to requiring adherence to safety standards, *several states regulate propane prices in these 10+ shared propane system situations (e.g., Michigan, Montana, Nevada, Colorado).*

In Nevada, for example, the state’s Public Utilities Commission has jurisdiction over propane gas systems that service 10 or more users from a common supply, and the commission regulates both price and safety issues including the price the propane dealer charges customers at these installations. Similarly, the Colorado Public Utilities Commission regulates the rates and safety standards of underground propane systems that serve 10 or more customers, or when any part of the system is located in a public place.

In some states, the rate schedules are approved by the state public utility commission. The commission may approve a price ceiling during the heating season or a specific rate for a particular time period. In Montana, for example, there is a propane pipeline serving a small town, and rates are determined by the state’s Public Service Commission.

Price Monitoring

The pricing information reviewed in this chapter is required to be collected by the U.S. Department of Energy Information Administration (EIA). The EIA provides analytical and statistical information on state heating oil and propane prices in a number of states. It is mandatory for approximately 26 states to participate in the State Heating Oil and Propane Program (SHOPP) (per section 13(b) of the Federal Energy Administration Act of 1974). *During the heating season (October 1st through March 15th), staff from the Connecticut Office of Policy and Management Energy Division survey approximately 20 propane companies (selected by EIA) and all heating oil companies on a weekly basis to determine heating oil and propane prices.* Propane dealers are asked for the credit price without any discounts for central heating (higher volume) residential propane customers.

The data is submitted to EIA, and EIA sends a weighted average price back to the state (EIA has never explained how it determines the weights used to arrive at the average). While participation in SHOPP is mandatory, publication of the resulting average prices is optional. The Office of Policy and Management has chosen to publish weekly on the OPM website the average prices for propane and heating oil. The OPM website includes a price range (the highest and lowest prices) for the more frequently used heating oil; however, only the average price is published for the less commonly used propane. In addition, OPM has expanded the heating oil survey to be conducted weekly on a year-round basis.

The container law is a key element of the regulation of propane in Connecticut. Chapter III describes the container law and the major issues associated with this regulation.

Chapter III: Container Law

What is the Container Law?

This chapter explains the container law, the industry's rationale for the law, and describes how states without propane container laws operate. Most significantly, the chapter describes barriers potentially created by the container law in preventing consumers from choosing their propane suppliers.

Description of the container law. The container law is captured in Connecticut regulation (R.C.S.A. § 29-331-5). Adopted in 1997, the regulation specifies that “*cylinders or tanks shall be filled, evacuated, disconnected or transported and regulator(s) disconnected only by the owner or upon owner’s authorization.*” (This means that a propane dealer can only fill a tank rented from another dealer with that dealer’s consent.).

There is a distinction between the smaller cylinders or tanks that are used for outdoor barbeque grilling or in recreational vehicles. The smaller tanks tend to be 20 pound cylinders and hold approximately five gallons of propane gas. The larger tanks, holding from 100 to 1,000 gallons of propane, are typically used for home heating, cooking, water heating, etc. The container law applies only to these larger containers, which must be built according to the rules of either the American Society of Mechanical Engineers (ASME) or the Department of Transportation (DOT). The DOT tanks must be recertified for safe operation by qualified personnel no less than 12 years after manufacture. The inspection must subsequently be repeated every 5 years. ASME tanks do not require recertification.

Only trained personnel may fill a propane tank. As described in the safety section of this chapter, *the training provided to personnel is not specific, and varies across propane companies.*

Tank rental. The vast majority of homeowners rent or lease their tanks from propane dealers. Propane dealers install the tanks, which may have occurred prior to the new homeowner occupying the property. Proposed regulations address the disclosure of this situation to consumers purchasing homes with propane tanks.

On average, it can cost approximately \$6.95 per month to rent or lease a propane tank. Apart from any additional rental fees, the price per gallon of propane is often higher for tank renters compared with the price per gallon for tank owners. However, consumers owning their own tanks may choose which qualified propane dealer will fill their tanks (from among the propane dealers servicing their geographic area). These homeowners are able to shop around and compare prices. It is generally believed that consumers owning tanks pay a lower price per gallon than those who rent or lease tanks from propane dealers.

Changes to container law. According to the National Propane Gas Association,¹² the container law first appeared as early as 1938.¹³ The National Fire Protection Association

¹² Propane Container Filling Laws, Regulations and Standards: The Safety Reasons Supporting Accountability, National Propane Gas Association, March 2010.

removed the container law in its 1992 edition (NFPA-58) as will be discussed later in this chapter.

According to the National Fire Protection Association, the organization has not received any proposals to reinstate the container law in its standards. Further, NFPA noted that the 2011 edition of the standard was issued with an effective date of August 25, 2010, and does not contain the ownership filling restriction or any similar requirements. Any proposed changes to be included in the 2014 edition of NFPA-58 are due by November 25, 2011. To date, no proposals related to the container law have been received. The association believes that, given the removal of the container law provision in the 1992 edition occurred due to legal action, it is unlikely any such proposal would be included in subsequent editions.

Rationale for Container Law

The rationale often given by the propane industry for the container law falls into three categories: safety, assignment of liability, and economic. Each of these reasons for the container law will now be explored.

Safety Reasons

Safety is one reason often given for why a container law is necessary. Given the flammable nature of propane, the gas must be handled carefully by qualified persons. The propane industry argues that only the owner of a propane tank (or designated agents) knows how the container has been used and has a vested interest in properly using and maintaining the tank. It is further argued that ownership fosters accountability, which is an element of safety.

Examination of national propane safety data. The National Fire Protection Association (NFPA) Fire Analysis and Research Division produces propane safety data reports based on information from the National Fire Incident Reporting System¹⁴ and the annual NFPA fire experience survey. *In general, NFPA reports a decrease of 62 percent from 1980-2007 in the nationwide number of home structure fires caused by propane gas.*

Table III-1 shows annual average national figures (2003-2007) on home structure fires caused by propane gas, natural gas, and also the more commonly occurring “cooking materials,” and “electrical wire or cable insulation.” The number of households using propane and natural gas puts the incidents into perspective. In 2005, there were 12.6 million U.S. households using propane, and 69.4 million using natural gas,¹⁵ with these fires representing a very small fraction (0.009 percent and 0.003 percent, respectively) of these households.

Fires and associated injuries or deaths due to propane are extremely rare. Propane 101, a website sponsored by the propane industry, makes a point of showing the safeness of propane,

¹³ Title 49 CFR § 80.172(d): “Cylinders, charged by owner. Cylinders containing compressed gas must not be shipped unless they were charged by or with the consent of the owner of the cylinders.”

¹⁴ A U.S. Fire Administration national standard reporting system used by U.S. fire departments to report fires and other incidents.

¹⁵ U.S. Energy Information Administration 2005 Residential Energy Consumption Survey, Table US2. Total Households by Fuels Used.

by contrasting annual deaths due to propane gas-initiated fires (34 deaths) with annual deaths due to lightning strikes (100 deaths) and bee or wasp stings (90-100 deaths).¹⁶

Material first ignited in home structure fire	Estimated annual # of home structure fires caused by this material	Civilian Deaths	Civilian Injuries	Direct Property Damage
Propane Gas	1,170	34	135	\$48 million
Natural Gas	2,110	43	152	\$59 million
Cooking materials, including food	101,200	130	3,330	\$368 million
Electrical wire or cable insulation	18,200	100	420	\$346 million

Figures are annual averages for 2003-2007.
Source: Natural Gas and LP-Gas Home Structure Fires, Jennifer D. Flynn, NFPA, Quincy, MA, January 2010.

The NFPA compares risks associated with different types of fuel or power for central heating. *Compared with propane and natural gas heating combined, Table III-2 shows fires associated with electric heat are more than four times as likely, and fires associated with fuel oil heat, more than 10 times as likely to occur.*

Natural and propane gas are combined in NFPA analyses. However, in an email from John R. Hall, the report’s author, based on usage tables and fire statistics work sheets, he found: “Among gas-fueled central heating units, natural gas users far outnumber LP gas users, but fires involving natural-gas-fueled furnaces also far outnumber fires involving LP-gas-fueled furnaces. The numbers for LP gas are small enough that I’m not comfortable publishing separate risk statistics for the two types of gas, but don’t think the combined statistics are hiding big differences between the two.”¹⁷

Risk Measure (per million user households)	Fuel Oil	Electric-Powered	Gas-Fueled (Natural or LP)
Fires	633	230	57
Civilian Deaths	0	0.2	0.4
Civilian Injuries	2.1	2.4	1.6
Direct property damage	\$1.5	\$1.1	\$0.7

Statistics based on 2005 usage estimates and average 2003-2007 reported fires.
Source: Home Fires Involving Heating Equipment, John R. Hall, Jr., NFPA, Quincy, MA, September 2010.

Examination of statewide propane safety data. The State Fire Marshal maintains information on the cause of fires in Connecticut. Table III-3 shows less than one percent of fires were caused by propane.

¹⁶ Propane Statistics, www.propane101.com/propanestaistics.htm. (Accessed April 1, 2011)

¹⁷ March 4, 2011 e-mail from NFPA Fire Analysis and Research Division.

Year	# of Fires	# Caused by Propane	# Civilian Injuries
2010	8,094	38	2
2009	6,422	40	2
2008	8,030	49	4
2007	8,234	28	5
Totals	30,780	155	13

Source: CT DPS State Fire Marshal's Office.

Safety data is also found within the DPUC. At one time, Connecticut Natural Gas, Yankee Gas, and Southern Connecticut Natural Gas supplied propane to customers where it was anticipated that natural gas pipelines would eventually be accessible in the area. When pipeline installation did not occur after a number of years, the natural gas companies were required to leave the propane business due to unfair practice considerations. During the process of leaving the propane business, DPUC held a series of public hearings (Docket No. 94-06-52),¹⁸ with approximately 450 customers in attendance. One public safety concern arose related to the adequacy of servicing customer-owned equipment for use with propane. There were two instances of carbon monoxide problems, perhaps due to improper service by the propane company assuming the account formerly serviced by the natural gas company. As a result of these problems, the DPUC Gas Pipeline Safety Unit (GPSU) and the DPS State Fire Marshal conducted a joint investigation to explore all safety-related issues. The GPSU report filed on October 27, 1994 concluded: “There is no discernable safety problem either with respect to the retail propane customers or the general operation of the service department. Therefore, no recommendations are warranted and no further action is needed in regard to the safety issues raised.”

Safety data from the propane industry. Established by passage of the federal Propane Education and Research Act of 1996 (P.L. 104-284), the Propane Education and Research Council (PERC) is charged with promoting the safe and efficient use of odorized propane gas. PERC is also the current owner of the Certified Employee Training Program (CETP), a nationally recognized training program for people involved in the handling of propane as well as propane equipment and appliances.

On its website, PERC lists the following propane safety information in its module on What is Propane?:

- Propane is a safe and widely used fuel. It is sometimes called liquefied petroleum gas, LP gas, or LPG.
- Propane will not ignite when combined with air unless the source of ignition reaches 920 degrees Fahrenheit.
- Propane gas is nontoxic and produces minimal emissions.
- Propane is not harmful to soil or ground water.

¹⁸ Department of Public Utility Control Docket No. 94-06-52: Application of the Connecticut Natural Gas Corporation for Approval of Sale of Vas Roots Properties.

Inconsistency between container law and safety data. Despite evidence to the contrary, the industry continues to argue that a container law is needed because of the dangers associated with propane. Inconsistency about the level of danger associated with propane is highlighted in the following examples:

- While propane truck drivers must have commercial driver’s licenses (CDLs), they are not required to have an occupational license to pump propane into the customer’s tank—if safety was a significant issue, wouldn’t the personnel directly handling the propane and filling of the tanks be required to have an occupational license?
- If propane is dangerous, why does Connecticut allow 16-yr-old attendants to fill propane tanks at propane filling stations and hardware stores?
- Personnel in the Office of State Fire Marshal do not find a greater likelihood of fires or accidents for homeowners who own their tanks versus homeowners who rent their tanks—if homeowners are not maintaining their tanks as well as propane retailers would, wouldn’t there be a relatively higher incidence of fires or accidents for homeowners who own their tanks?
- Personnel at the Department of Consumer Protection find no anecdotal evidence that the four percent who own their own tanks had any problems, suggesting that customers owning their tanks are properly using and maintaining their tanks.
- The national safety standards published by the National Fire Protection Association (NFPA 58) eliminated the container law nearly two decades ago, making it questionable that the container law is needed for safety reasons.

Table III-4 summarizes the propane safety information as it relates to justification for the container law.

Safety training. The State Fire Marshal administers the State Fire Prevention Code that specifies, in the interest of safety, all persons involved in the transfer, operation or maintenance of propane systems must be “trained by the employer in the physical hazards of LP-Gas...”, and the employer must document this training. Retraining is required at least once every two years. There is currently no uniformity to the training, and degree of thoroughness in training is unknown.

Table III-4. Is the Container Law (only owner can fill or authorize filling of propane tank) Necessary for Safety Reasons?	
Related Questions	Related Answers
How dangerous is propane?	<p>⇒ National standards and state fire safety codes support the notion that propane is a flammable gas that must be handled carefully by qualified persons</p> <p>⇒ In 1992, the National Fire Protection Association removed reference to the container law from its Liquefied Petroleum Gas Code</p> <p>⇒ However, the handling of propane including qualifications/training of such persons, and required tank inspections, is not part of the container law—it is part of the Connecticut Liquefied Petroleum Gas and Liquefied Natural Gas Code</p> <p>⇒ Also, fires and associated injuries or deaths due to propane are extremely rare</p> <ul style="list-style-type: none"> ○ Fires from electric heat are more than 4X as likely, and from oil heat more than 10X as likely, compared with propane
Are there discrepancies in use of propane safety data?	<p>⇒ The <i>dangers of propane</i> may be emphasized to discourage consumers from buying tanks, and <i>the safety of propane</i> may be emphasized when marketing to potential customers considering whether to use propane at all</p>
What are the potential safety consequences of eliminating container law?	<p>⇒ Probably none; however, can't say for sure because the container law or its concept is almost universal (either through statute, regulation or contract), and so comparisons of safety data between states with vs. without container laws is not possible</p> <p>⇒ Other than anecdotal stories, no data exists on number of fires/accidents occurring in instances where an unauthorized person filled the tank</p>
<p>Conclusion: <i>The data does not support safety as a strong reason for having the container law; however, can't say with certainty since the container law or its concept is nearly universal.</i></p>	

The Connecticut Liquefied Petroleum Gas and Liquefied Natural Gas Code (which incorporates by reference NFPA 58 (1995 version) with several amendments and additions), makes the following references to personnel storing and handling propane:

- regarding the qualification of personnel, all persons employed in handling LP-Gases "...shall be trained by the employer in the physical hazards of LP-Gases; system and equipment operation and maintenance requirements; and emergency procedures, which the employer shall document. Retraining shall be required at least once every two years.";
- regarding transfer personnel at transfer operations, "...shall be conducted by qualified personnel...At least one qualified person shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected"; and

- transfer personnel are also required to “...exercise precaution to assure that the LP-Gases transferred are those for which the transfer system and the containers to be filled are designed”.

Some states have specific training requirements spelled out in regulation. In Vermont, for example, since 1991, the LP Gas Certified Employee Training Program (CETP)¹⁹ has been mandatory for propane employees in Vermont. For example:

- *Delivery of propane* requires successful completion of CETP books 1.0, 2.1, 2.2 and 2.4;
- *Plant operations for propane* requires successful completion of CETP books 1.0, 3.1, 3.2, 3.3 and 3.4;
- *Design, selection, preparing and installing of LP gas vapor distribution components and systems* requires successful completion of CETP books 1.0, 4.1 and 4.2; and
- *Propane gas transfer systems operations* requires successful completion of CETP books 1.0 and 5.0.

In 2004, at the request of the state propane industry, Kansas passed a Propane Safety and Licensing Act.²⁰ The act specifies required CETP training for each of eight classes of licenses. For example:

- Class 1 - Dealers License (required for the retail distribution of liquefied petroleum gas) requires completion of the CETP course *Basic Principles and Practices*;
- Class 3 - Cylinder Transport License (required to operate a cylinder delivery service) requires completion of the CETP course *Propane Delivery Basics*;
- Class 4 - Cylinder Filling License (required to operate a cylinder filling facility) requires completion of the CETP course *Dispensing Propane Safely*; and
- Class 8 - Installation and Service of LPG License (required to install, maintain, or modify a residential or commercial liquefied petroleum gas distribution and utilization system) requires completion of the CETP courses *Basic Principles and Practices* and at least one of the following CETP courses: a) *Appliance Installation*, b) *Layout, Design and Selection of Vapor Distribution Systems*, or c) *System Testing Training*.

Since the propane training requirements in Connecticut are not specific, Vermont and Kansas are presented as alternative models of specific training requirements. However, *the safety data presented in this section does not indicate that the current non-specific training*

¹⁹ In 1988, the National Propane Gas Association launched the comprehensive, nationwide training program now known as CETP (Certified Employee Training Program). CETP is a nationally recognized training program for people involved in the handling of propane as well as propane equipment and appliances.

²⁰ Kansas State Fire Marshal-Fire Prevention Division, Fire Fact 035-Propane.

requirements have resulted in problems, and so, PRI does not believe safety concerns warrant changes to training at this time.

Assignment of Liability

In addition to safety, assignment of liability reasons are also given by the propane industry as a rationale for the container law. The National Propane Association points out that the container is an integral part of a pressurized fuel system and improper filling could lead to damage and possible accident. Some point out that, *unlike natural gas and electricity which have limited liability up to the meters on homes, propane companies are responsible for the gas-delivery system from the tank through the entire home including propane-powered appliances.* Thus, propane dealers argue they can better maintain the tanks and reduce chance of accidents by retaining ownership of the tanks.

Limited liability. Liability involves legal accountability for damages in the event something goes wrong with the propane container. Propane is considered to have a low frequency/high severity liability associated with it, meaning that propane accidents are unlikely to occur; however, when they do occur, the consequences are usually quite severe. As noted in Table III-7, *Mississippi recently enacted a container law due, in part, to liability issues.* Mississippi found when a propane accident occurred, the larger of multiple propane dealers involved would be sued, regardless of their role in the accident.

The tank owner is responsible for maintaining, repairing, and replacing the tank. Through tank rental/leases, propane dealers retain responsibility for the maintenance and inspection of the tanks. Inspection and repair requirements in Connecticut are outlined in the Connecticut Liquefied Petroleum Gas and Liquefied Natural Gas Code. Containers are required to be inspected prior to any filling, a code that all propane dealers must follow. There are many risks for both parties should a homeowner purchase his/her used tank from the propane dealer. Despite their long lives, propane tanks--especially underground tanks--are prone to rusting and pitting, undermining structural integrity. Propane dealers are therefore reluctant to assume liability in the sale of a used tank.

The National Propane Gas Association believes that, without a restriction on who may fill a tank, there would be no incentive for the propane retailer to continue to carry the responsibility for tank maintenance. On the other hand, if an accident were to occur, the company that owned the tank could be held liable, regardless of who filled the tank.

Insurance premiums. *Insurance companies reportedly voiced concerns about the abolishment of the container law.* When the idea of removing the container law from the national standard (NFPA 58) was first raised, four of the industry's major insurers wrote letters in opposition to this change.²¹ The insurers claimed that the increased risk exposure would require them to raise premiums on propane gas retailers, potentially adversely affecting some of the smaller retailers. PRI spoke with insurers of propane retailers and was told premiums would not increase should the container law be eliminated. In a telephone interview with one risk manager

²¹ The four insurers are: Continental Insurance, LPG Risk Retention Group Insurance Company, Ranger Insurance Company, and Underwriters Management Associates.

for an insurer of propane dealers, *PRI was told that premiums would be unlikely to increase should the container law be eliminated unless the insurers saw large increases in losses.*²²

PRI also contacted several companies providing homeowner’s insurance in Connecticut, and found that *there is no increase to premiums when heating with propane or by adding propane for fireplace logs or appliances.* Reportedly, when preparing a policy, insurance companies ask about the type of heating a home has because there is some potential exposure with an underground oil storage tank and leakage—but there is no adjustment made to the cost of insuring a home due to heating with propane as there are not the same potential environmental concerns with underground propane tanks.

Table III-5 summarizes the propane assignment of liability information as it relates to justification for the container law.

Table III-5. Is the Container Law Necessary for Assigning of Liability Reasons?	
Related Questions	Related Answers
Is liability more complicated for propane than for other types of energy?	⇒ Yes, at least for natural gas and electricity, which have limited liability up to the meters on homes, propane dealers are responsible for the gas-delivery system from the tank through the entire home including propane-powered appliances
What concerns do insurers of propane dealers have about the elimination of the container law?	⇒ When the idea of removing the container law from the national standard (NFPA 58) was first raised approximately two decades ago, four of the industry’s major insurers wrote letters opposing the change ⇒ More recently, a risk manager for an insurer of propane dealers predicted premiums would be unlikely to increase should the container law be eliminated unless they saw large increases in losses
What concerns do insurance companies providing homeowner’s insurance have about propane?	⇒ There is no increase to premiums when heating with propane or by adding propane for fireplace logs or appliances
What are the potential consequences to assignment of liability if the container law was eliminated?	⇒ Possible difficulty determining who is responsible for accidents with multiple propane dealers filling tank ⇒ Mississippi recently added the container law because they thought it might help with clarifying assignment of liability issues (e.g., where multiple dealers are filling the same tank and there’s a problem).
Conclusion: <i>There is some evidence the container law helps with assignment of liability. At least one state, for example, recently added the container law to help address problems they had experienced with the assignment of liability. However, while several insurance companies expressed opposition to elimination of the container law nearly two decades ago, more recently, insurers of propane dealers did not have the same concerns.</i>	

²² Federated Insurance operates in almost every state, and specializes in business insurance for selected industries including petroleum marketers.

Economic Reasons

Another reason given by the propane industry for why a container law is necessary relates to the business model employed by the propane dealers. They argue *a significant investment is made by the propane dealer in equipment and tank installation*. The customer is not charged for this expense initially with the agreement (contract) that in return for this significant outlay, *the propane dealer will recoup his/her costs through propane sales to the customer*. Up front, for example, propane dealers purchase and install a tank costing anywhere from \$1,600 to \$3,500.²³ Should the homeowner shop around and purchase their propane from the dealer with the best price, however, then the company that installed that tank would be unable to recover their investment. There would be no incentive for propane dealers to install tanks.

There is some evidence in support of the propane industry's arguments from an economic standpoint. As the business currently operates, propane dealers realize almost all their income from the sales of propane (and associated surcharges and fees). If, on the other hand, a significant proportion of propane customers purchased tanks from propane dealers, then income for the dealers would shift from sole reliance on propane tank filling (and selling of propane gas) to installation fees and the sales of marked-up propane tanks.

Although there may be an option to purchase a tank, the initial cost may be prohibitive for the homeowner, who would prefer to pay a monthly or annual lease or rental fee instead. Thus, from an economic standpoint, the container law makes sense for the propane dealer as well as for the consumer, although it is generally believed that consumers renting tanks pay a higher per-gallon propane price than consumers who own their own tanks.

Table III-6 summarizes the economic information as it relates to justification for the container law. In summary, *fire statistics seem to refute the safety reasons* given by the propane industry for the container law. *There is some evidence in support of the propane industry's arguments regarding the assignment of liability and economic rationale*. Should there be an accident, the container law may make it simpler to assign fault or liability. Unless the propane industry changes its current business model, the only way for dealers to recoup their financial outlay to purchase and install a tank for a customer is through the sale of propane to the customer.

States Without Propane Container Laws

While not part of the national fire protection safety standards, states often include container laws in state statutes or regulations. According to a report by the National Propane Gas Association,²⁴ at least 42 states currently have container laws (or administrative code provisions). A brief description of states without container laws is provided in Table III-7. As can be seen, the container law, while not in state statute or regulation, is often implemented in practice through contracts between propane dealers and customers, limiting customers to purchase of

²³ Estimates based on unconfirmed reports by consumers in articles and blogs, with lower prices for 500-gallon tanks and higher prices for 1,000-gallon tanks. Green Bay Gas of Maine is one of the few propane dealers who publishes costs to purchase and install tanks, and these costs are consistent with self-reported prices by consumers.

²⁴ "Propane Container Filling Laws, Regulations and Standards: The Safety Reasons Supporting Accountability," March 2010, National Propane Gas Association.

Table III-6. Is the Container Law Necessary for Economic Reasons?	
Related Questions	Related Answers
Do propane dealers make a significant investment in advance of earning profit?	<p>⇒ Propane dealers typically invest \$1,600-\$3,500 in equipment and tank installation</p> <p>⇒ As the business model currently operates, propane dealers recoup much of their costs and make their profits through the sale of propane gas</p>
How is the current business model (linking tank rental with sole source propane filling) advantageous for the consumer?	<p>⇒ While the purchase of a \$1,600-\$3,500 tank can be cost-prohibitive, the customer can choose to pay a much smaller rental fee (estimated \$6.95 per month)</p> <p>⇒ Customers who do not want the bother of maintaining/replacing their tanks, may prefer the option of the propane dealer owning the tank and having this responsibility</p>
What are the potential economic consequences of eliminating container law?	<p>⇒ The container law applies to both propane dealers who own tanks, and homeowners who own tanks: as the owner—regardless of whether it is a propane dealer or homeowner—he/she will decide who may fill the tank</p> <p>⇒ Propane dealers would be unlikely to install their tanks for minimal rental fees without assurance of recouping costs through propane sales—this would result in an imbalance of return on investment</p> <p>⇒ Therefore, as occurs in other states without container laws, contracts would likely tie tank rental to propane gas purchase</p>
<p>Conclusion. <i>There is evidence in support of the economic rationale for the container law. There are financial benefits for both consumers and propane dealers: consumers not wanting the responsibility, or financially unable to purchase a tank, have the option of tank rental; and propane dealers rely on the container law to recoup up front costs and eventual profits to continue in business, providing competition and choice to consumers.</i></p>	

propane from the contracted propane dealer. Thus, *elimination of the container law in Connecticut alone would be unlikely to impact propane dealer practice, as states without a container law operate as if there is such a statute or regulation.*

Potential Barriers Preventing Consumers from Choosing Their Propane Retailers

The most significant concern regarding the container law is its impact on consumer choice. *If consumers have choices in who provides their propane either by owning their own tanks or renting tanks and being able to readily switch/choose from among multiple propane dealers, then consumers do have choices, regardless of the container law. Therefore, within the constraints of the container law, the following three questions relating to consumer choice need to be answered:*

1. Are consumers prohibited from owning their own propane tanks?
2. Is there a lack of competition/only a single propane dealer available to consumers?
3. Are consumers unable to switch propane dealers?

Table III-7. How Propane Dealers Operate in States Without Container Laws	
State	How Propane Dealers Operate in the State
Alaska	<ul style="list-style-type: none"> Alaska operates under International Fire Code regulations (Chapter 38) There is no container law at the state level; however, local areas may adopt more stringent regulations Propane dealers, however, have contracts with customers to rent the tank and fill it only with propane from that company
Hawaii	<ul style="list-style-type: none"> Propane is both a utility (fully regulated including price) and a non-utility Utility propane customers have either metered pipelines or tanks owned by the utility; if a tank, only the utility may fill it (operates as if there is a container law) Non-utility propane customers receive propane from propane dealers (AmeriGas is the major propane dealer), and whoever owns the tank fills the tank (operates as if there is a container law)
Idaho	<ul style="list-style-type: none"> There is not currently, nor has there ever been, a container law in Idaho The legislature and citizens of Idaho would be opposed to a container law because they do not want government regulating propane However, dealers are very proprietary about their tanks, and contracts will not allow other propane dealers to fill them (they operate as if there is a container law)
Mississippi	<ul style="list-style-type: none"> Up until March 31, 2011, there was no container law in Mississippi According to the Mississippi state fire marshal's office, due to safety and liability issues, there will be a container law beginning April 1, 2011 There had been a couple of accidents and with more than one propane dealer filling the tank, the larger company--with the larger liability policy--ended up being sued
New York	<ul style="list-style-type: none"> NY State Uniform Fire Prevention and Building Code requires adherence to NFPA standards (which does not include the container law) NY Office of Fire Prevention and Control is not aware of any restrictions on propane tank filling For at least the past five years, failed legislation has been proposed in New York to institute a container law New York Propane Gas Association is concerned about "gypsy dealers" going around filling tanks owned by other propane dealers However, written contracts between propane dealers and customers often limit propane filling to the tank owner/propane dealer
Rhode Island	<ul style="list-style-type: none"> RI follows NFPA 58 (which does not include the container law) The State Fire Marshal's Office is not aware of any time when there was a container law in Rhode Island Although not written in state statute or regulation, Rhode Island propane dealers cannot fill another propane dealer's tank based on written contracts between propane dealers and customers (they operate as if there is a container law)
West Virginia	<ul style="list-style-type: none"> There is no container law in West Virginia As long as the person is certified and trained, they can fill a tank, regardless of who owns the tank Dealers, however, have contracts with customers allowing only that company to fill the tank
Wyoming	<ul style="list-style-type: none"> There are no statutory or regulatory restrictions on who can fill a tank There are also no licensure or certification requirements on who may pump propane into a tank Many customers have contracts requiring the propane dealer under contract to be the only one who may fill the tank (they operate as if there is a container law) Propane dealers provide the option of leasing or buying the tank
Source: Telephone communication with state fire marshals and other personnel.	

1. Are consumers prohibited from owning their own propane tanks? It is currently estimated that approximately 96 percent of Connecticut propane customers rent their propane tanks from propane dealers. In the Midwest and western states, more people own their own tanks.²⁵ In Mississippi, for example, tank ownership by homeowners is estimated at 20-25 percent.²⁶ *Neither the Connecticut container law, or any other state law, bar consumers from owning propane tanks.* Indeed, a smaller, 100 pound tank (holds 23.6 gallons) is available at major retail stores for approximately \$150. Purchase of the larger aboveground and belowground propane tanks, however, are almost always bought directly from propane dealers. In a DCP investigation of a complaint from a Connecticut resident prevented from directly purchasing a large tank from a wholesaler, it was found that the wholesaler's policy of only selling large tanks to utility or propane dealers is consistent with policies held by wholesalers in other states, such as Massachusetts and Mississippi. Wholesalers purportedly maintain these policies due to their insurance companies wanting tank purchases limited for liability reasons, and therefore, only allowing sales to dealers and wholesalers.

Assessing used tank value. It is not unusual for the price quoted by propane dealers to homeowners to purchase a tank directly from their propane dealer--a tank they have had for many years—to be at the original price, as if the tank was brand new. The standard practice of not depreciating the price to consumers, particularly for ASME tanks, may be justified in part because the tanks do not have to be periodically requalified.²⁷ A DOT tank, on the other hand, must be requalified within 12 years, and is clearly *not* considered to be in brand new condition with each passing year. However, according to an engineer at the National Fire Protection Association, *there is no way to predict how long an ASME tank will last.* The engineer interviewed further noted that 60 year old tanks have been dug up and looked brand new. On the other hand, if an ASME container is damaged, it is not allowed to be repaired, and becomes scrap metal.

Depreciation of assets is a business practice permitted under federal tax code, and is not directly related to the value of a tank. The Department of Consumer Protection is currently investigating a concern regarding whether propane dealers are properly and/or accurately reporting ownership and location of their propane tanks to local tax assessors. Some propane dealers have not listed the market value of their tanks with the municipal property tax assessor, while others have listed a single estimate of the value of all the tanks in the municipality. Yet others have listed the value of tanks at a significantly lower value than the original cost being charged to homeowners who inquire about purchasing their tank from the propane dealer. Consumer advocates believe homeowners would be in a better position to negotiate with their propane dealers for the sale price of their used tanks if propane dealers listed the value of each individual propane tank located in the municipality with the tax assessor.

Some towns have changed their process for assessing propane tanks owned by propane dealers. In Old Saybrook, for example, the personal property appraiser is soliciting much more

²⁵ Propane Marketing and Distribution University, March 15, 2011, "Connecticut General Assembly to Look at Propane Tank Ownership."

²⁶ Communication with Mississippi State Fire Marshal's Office.

²⁷ To ensure consumer safety, all large propane tanks must be built according to the rules of either the American Society of Mechanical Engineers (ASME) or the Department of Transportation (DOT).

detailed information from each propane dealer, requiring a list containing each tank, tank size, location, and who owns the tank. Additionally, some towns are beginning to cross-reference tank information with building permits, obtaining information on tank installs and who owns the tank. Previously, the town would take the propane company's word for the overall market value of their tanks; now, they are requiring a detailed declaration. Such changes by municipalities may result in additional revenue for towns and cities as well as impact the price propane dealers charge homeowners wishing to purchase their tanks. *Pending the outcome of the DCP investigation into the reporting of tank ownership, individual municipalities are free to replicate the actions of Old Saybrook, and require detailed tank information from the propane dealers, quite possibly leading to additional tax revenue for the town or city.*

2. Is there a lack of competition/only a single propane dealer available to consumers? Another potential barrier preventing consumers from choosing their propane suppliers might be a lack of competition or availability of multiple propane dealers. Availability of competition and choice for propane customers is at the heart of questions raised regarding antitrust issues.

Are there antitrust concerns in the propane industry? The question of antitrust violations in the propane industry was examined by the federal courts in the state of Utah. In 1991, the Utah Attorney General issued a legal opinion that the container law was a violation of the antitrust laws.²⁸ The Utah rule, similar to Connecticut's current container law, was based on language contained in an earlier version of the NFPA standard for storage and handling propane gas (NFPA-58-1989).

The Utah Attorney General's opinion was overturned when a U.S. District Court declared there was no antitrust violation because of the state action immunity doctrine²⁹. Under the state action immunity doctrine, state and municipal authorities are immune from antitrust lawsuits for actions taken pursuant to a clearly expressed state policy that, when legislated, had foreseeable anticompetitive effects. Because the immunity doctrine applied, the federal court never needed to examine the actual impact of the container law in practice.

Concerned with potential legal implications after the Utah ruling, NFPA subsequently removed the owner fill requirement and replaced it with the requirement that container filling be performed by "qualified persons." Further, the Utah state legislature acted to amend the Utah state propane law later that year to place a specific requirement in state statutes that a container could only be filled by the owner or his designee.

As noted earlier, Connecticut's DCP asked the Attorney General to review a number of propane complaints for potential antitrust violations. The complaints reviewed pertained to price variations and a spike in overall price. The Attorney General's office found supply disruption due to events overseas had contributed to price volatility. *The Attorney General determined that*

²⁸ Letter of March 5, 1991, from Arthur M. Strong, Utah Assistant Attorney General, and R. Paul Van Dam, Utah Attorney General, to D. Douglas Bodrero, Commissioner, Utah Department of Safety, in re: Request for Legal Opinion: Antitrust Considerations and NFPA 58 sec. 4-2.2.1

²⁹ Declaratory Judgment in Civil Case No. 91-C-382G, April 15, 1992, Suburban Propane Division of Quantum Chemical Corporation, et al, vs. D. Douglas Bodrero and R. Paul Van Dam, Judge J. Thomas Greene, United States District Court, District of Utah, Central Division.

the referred complaints did not present any antitrust violations. (Appendix D provides a brief overview of Connecticut’s antitrust law.)

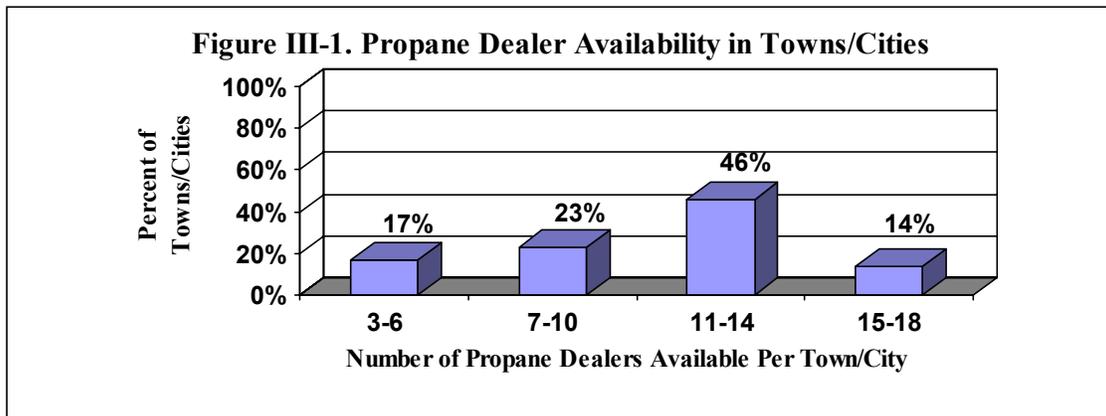
Program review staff discussions with staff of the Attorney General’s antitrust division suggest that the container law itself may present as a barrier to competition in the industry. However, the fact that the container law is codified in public safety regulations makes it sanctioned by the state. Therefore, the container law would be subject to the antitrust exemption under the state action immunity doctrine, similar to the court decision in Utah.

Market competition. Entry of new propane dealers into the market requires capital to purchase the propane delivery truck (estimated to cost \$125,000-\$135,000 per truck), necessary equipment, and outlay for the tanks to be installed at customers’ homes.

While entry into the market requires sizable investment, the Propane Gas Association of New England estimates *there are approximately 18 newer propane dealers located in Connecticut that entered the market within the last five years.* Of the 18 newer propane dealers, it was further estimated that at least 16 of them (89 percent) are fuel oil companies that have diversified into propane. In Connecticut and other New England states, the association estimates 80 percent of those who sell propane also sell fuel oil. Thus, there appears to be growth in the number of propane dealers, potentially translating into greater choice for consumers.

There are currently 78 propane dealers registered with the Connecticut Department of Consumer Protection. This represents 13 percent of the 616 propane/heating oil dealers (HODs) registered in Connecticut. Several of the 78 registered propane dealers operate under multiple names. In Connecticut, the national propane company Inergy, for example, does business under multiple names such as Arrow Gas, Propane Gas Service, and Modern Gas. Amerigas has 12 locations, and Hocon Gas has five locations in Connecticut. *When the multiple propane dealer names for the same company are combined, there are 68 distinct companies selling propane in Connecticut.* Of those 68 companies, 15 of them (22 percent) are out-of-state owned companies. Many of these companies are from Massachusetts (six companies) and New York (five companies), with the remainder from Rhode Island (two companies), Pennsylvania (one company), and New Jersey (one company).

Using the Propane Gas Association of New England website (www.pgane.org) and the “Find a propane retailer that services your zip code” tool, PRI analyzed the number of propane retailers available in each of the zip codes in Connecticut. Propane retailers owned by the same company were combined for this analysis. Staff was also cautioned by the association that many, but not all, propane retailers participated in this free marketing tool. Thus, results are to be interpreted as conservative estimates of the number of propane dealers available in the town or city. *Staff found an average of 11 propane dealers available per town or city in Connecticut,* with a range from three propane dealers (e.g., Hartford, Stratford, Windsor) to as many as 18 propane dealers (e.g., Bristol and Woodbury). *Several of the larger, multistate propane dealers (e.g., AmeriGas, Ferrell, Suburban) offered nearly statewide availability.* Figure III-1 shows how many propane retailers are available in Connecticut’s towns and cities.



Co-operatives. In addition to receiving propane service directly from propane dealers, another option for some may be participation in a co-operative (or co-op). Co-op membership may range from a group of neighbors informally getting together and negotiating a reduced price with a propane dealer, to a formal co-op requiring annual membership (and membership fee) in order to receive a negotiated reduced propane price. For several years, the Citizen’s Oil Co-Op, for example, has been offering purchase of propane to its members. While no prices are publicly disclosed, the co-op’s website reports that its members pay less for propane due to group purchasing power. This particular co-op contracts with several companies to offer propane at a discounted price. Homeowners joining in the co-op switch out their existing tanks for tanks owned by the propane-delivering company (thus, adhering to the container law). Each propane company under contract with the co-op offers 24-hour service and automatic delivery to much of Connecticut.³⁰

3. Are consumers unable to switch propane dealers? Another potential barrier preventing consumers from choosing their propane suppliers might be consumer belief they are unable to switch propane suppliers. Most propane customers have contracts with propane dealers that require them to purchase propane for a given period of time and, depending on the contract, for a guaranteed or maximum price per gallon. *At the end of the contract, the homeowner has the option of renewing the contract or switching to a different propane dealer.* If the tank is owned by the propane dealer, then the switch in propane suppliers requires the replacement of the current propane tank with a propane tank owned by the new propane supplier. Depending on the relationship between the two companies, they may opt to exchange (“swap out”) tanks with one another, avoiding physical replacement of the existing tank. Alternatively, one company may purchase the tank from the other company.

It is considerably easier physically to swap out above-ground tanks, which apparently are the vast majority of propane tanks. Reportedly, half of underground tanks are owned by the homeowner, so the tank swap issue is less likely to arise for homeowners with belowground tanks.

³⁰ Map of coverage area available on Citizen’s Co-Op website (www.oilco-op.com/Towns/PropaneTowns/)

Summary. In summary, regardless of the container law:

- consumers **do** have the ability to own their own tanks;
- competition **does** exist, with consumers able to choose from an average of 11 propane dealers serving each town or city; and
- consumers have the ability **now** to switch propane suppliers, although recommended changes to contract terms/conditions will make switching easier.

Certainly, a propane supplier can make it more or less difficult for a consumer to change propane dealers by imposing excessively high fees for the change, including tank removal fees and pump-out fees. Also, the length of a contract can restrict when a consumer may switch propane suppliers. Recommended changes to contract terms and conditions, including contract length limitations, are proposed in Chapter IV.

Chapter IV: Consumer Protections

What Rights Do Consumer Have?

Although there are current restrictions on how propane is sold to customers, consumers often find terms and conditions of the contracts to be vague or allow dealers to make changes to various fees with little to no notice. In other words, consumers may be agreeing to items in contracts without any awareness or full understanding of the implications. This is due in part to a lack of consumer information and knowledge of the business operations of the propane industry. Further transparency regarding the unit price and potential associated fees is needed for consumer awareness.

This chapter describes the current restrictions on how propane is sold to consumers and the different types of contracts available to propane customers, including various terms and conditions. The chapter concludes with an examination of recent consumer complaints regarding propane and a discussion of whether further consumer protections or regulations are needed.

Current restrictions on how propane is sold to consumers. State law currently places several mandates on the sale of heating fuel. For instance, dealers are prohibited from billing residential customers for charges not listed on delivery tickets. Delivery tickets for the residential sales of propane gas must clearly list the unit price of fuel, the total number of units sold, and the amount of any delivery surcharge. Dealers are prohibited from collecting or billing any amount exceeding the total charge derived from the amounts shown on the ticket; that is, the unit price multiplied by the number of units sold plus the delivery surcharge. The unit price is the price per gallon computed to the nearest tenth of a whole cent. The ticket must be given to the purchaser or his agent at the time of delivery.

In addition, dealers are prohibited from requiring their regular customers to accept deliveries of a minimum of 100 gallons or 75 percent of the size of the primary tank, whichever is less, as a condition of delivery. Dealers are also prohibited from assessing a surcharge on delivery of more than 100 gallons, unless the delivery is outside the dealer's normal service area, takes place outside of normal business hours, or involves extraordinary labor costs to make delivery. Dealers may not impose a minimum delivery surcharge on a residential customer of any delivery the dealer initiates, including one made under an automatic delivery plan.

However, as discussed later in the issues regarding the consumer complaints, often terms and conditions of the heating fuel contract may be vague or allow the company to make changes to various fees with little to no notice to the consumer. Simply stated, consumers may be agreeing to items in contracts without awareness or full understanding of the implications.

Types of contracts. Whether a consumer selects a new propane supplier or if the consumer resides at a location that already has a tank installed, there are a couple of methods for retail transactions of propane. If the consumer owns the tank, it is possible that the consumer may not have a contract with a propane dealer and pay cash or credit on delivery. Otherwise, propane dealers may offer a variety of contractual price plans, including introductory

(temporary) offers to attract new customers, guaranteed price plans, capped price plans, and/or prepaid contracts.

Introductory offers. As an incentive to attract new customers, propane dealers may offer a low, introductory rate. The price per gallon may be significantly less than the price per gallon for continuing customers.

Guaranteed prices. Guaranteed price contracts are a way for consumers to control their fuel costs. The dealer and the customer sign a contract to provide fuel at a specified price for a specified period of time. It is a way for the consumer to estimate how much he or she will be paying for fuel through the upcoming heating season.

Capped price contracts. Capped-price plans are agreements where the propane price per gallon can be no higher than a specified price per gallon under circumstances specified in the contract.

Prepaid or pre-buy contracts. Prepaid or pre-buy contracts require the customer to purchase propane in advance of usage up to a maximum quantity at a set per gallon price. In Connecticut, this type of contract cannot be in effect for a period of more than 18 months. Following the end of the contract date, any undelivered propane is reimbursed.

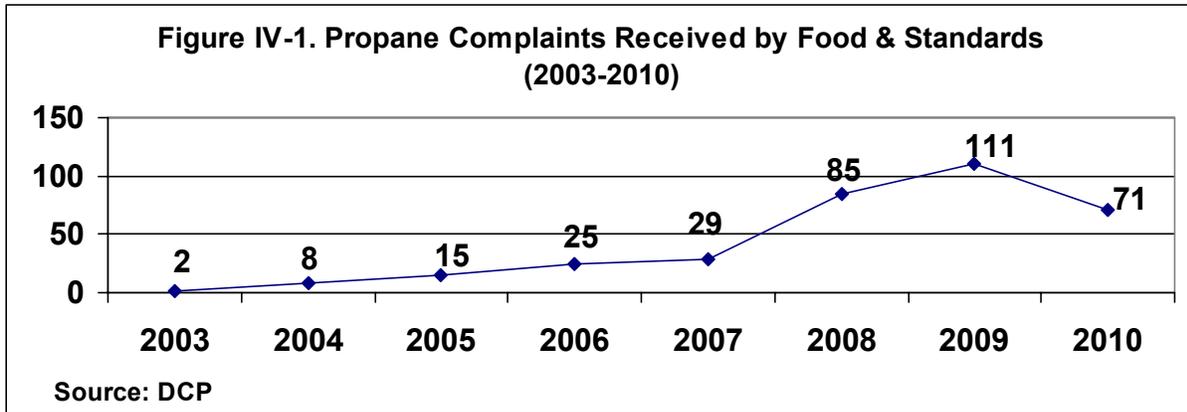
Such contracts have a risk for consumers who may be locked into paying a higher price per gallon should the cost of propane go down. Some propane dealers may honor lower prices if the propane falls below the pre-buy contract price.

Once a customer locks-in to the price, the propane company must purchase futures contracts or other similar security instruments to back up the fuel commitment to the customer. This is a statutory requirement and provides some security to the consumer while not exposing the company to potentially catastrophic risk.³¹

Consumer Complaints About Propane

The number of propane consumer complaints received by the DCP Food and Standards Division between 2003 and 2010 is illustrated in Figure IV-1. *As the figure shows, the number of propane complaints has greatly increased over the years.* In 2003, only two consumer complaints involving propane were received. A substantial increase is seen in the subsequent years with a significant climb beginning in 2008 and 2009 when there were 85 and 111 complaints, respectively. There was a 36 percent decrease in 2010 when 71 complaints were submitted.

³¹ In 2008, a Waterbury-based heating oil dealer, F&S Oil Co., closed abruptly, leaving behind thousands of customers with long-term contracts.



Interviews with DCP staff and propane industry representatives suggest that the growing numbers of complaints may be the result of several factors including:

- more consumer awareness of propane issues due to media reports,
- general public outrage regarding increases in all fuel prices in recent years, and
- propane dealers being subjected to additional requirements as those governing heating oil dealers beginning in 2006.

Findings from DCP investigation of propane. In fall 2008, the former DCP Commissioner Jerry Farrell, Jr. initiated an agency investigation into the propane industry following numerous consumer complaints received by the department. The investigation was conducted by the staff within the DCP Food and Standards division. The department reviewed 93 complaints submitted to DCP between November 1, 2007 and January 15, 2009. The DCP investigation identified several recurring themes (see Table IV-2) and determined that some issues could be addressed directly by DCP rewriting or clarifying existing laws and regulations. DCP also concluded that some complaints should be reviewed by the Office of the Attorney General for antitrust issues. (See Chapter III regarding antitrust issues.)

Analysis of propane complaints. Since the 2009 DCP investigation, the department has received an additional 168 propane complaints as of April 13, 2011. DCP staff reports that many of the same complaint issues continue. As part of its study, the program review staff examined a random sample of 50 complaints submitted to DCP since the 2009 investigation. Table IV-2 summarizes the primary issues found in the DCP report as well as the PRI random sample.

Table IV-2 categorizes the primary issues into three areas: contract terms and conditions; sales of propane; and tank ownership. The categories are not mutually exclusive; some overlap or interrelationships exist among the issues in different categories. It is also important to acknowledge that the issues evident in these complaints were against 19 out of 78 DCP registered companies (24%). However, given the potential of subsidiary or affiliate relationships among some dealers, any questionable or alleged business practices may be more pervasive than the 24 percent of companies complained about indicates. This point will be further examined later in the chapter.

Table IV-2. Summary of the Primary Issues Identified by DCP & PRI Review of Propane Consumer Complaints

CONTRACT TERMS & CONDITIONS	<ul style="list-style-type: none"> • Consumers are unaware of what they are signing • Many contracts are signed for 5 to 7 years • Contracts have language that allows the company to change terms of the contract at company discretion and without notice • Post-introductory rate not disclosed in the contract or has a vague description such as “competitive price” • Rate often increases gradually over contract to well above the rate the company charges new customers or people who own their own tanks • Additional charges/fees are not disclosed at contract signing • Long-term contracts are amended or renewed on invoices or delivery tickets
TANK OWNERSHIP	<ul style="list-style-type: none"> • Fire regulations prevent a customer from getting delivery from any company other than the one that owns the propane tank • Consumer ownership of tanks is often cost prohibitive because companies can charge whatever they want for tanks, installation charges, and maintenance fees • Safety and costs of a homeowner owning a propane tank may be exaggerated by company to get customer to sign up for a contract and tank rental • Consumers not aware of implications of tank lease/rental including: <ul style="list-style-type: none"> – Lease/rental fees – Removal fees – Termination of service fees – Refund for unused/prepaid gas • Company does not remove tank in a timely manner when customer terminates contract • Home buyers not made aware that tank on property is owned by company that then tries to enforce the contract and fees on the new homeowner
SALE OF PROPANE	<ul style="list-style-type: none"> • Significant variation of price over the life of the contract • Dealers can charge different prices to different customers: <ul style="list-style-type: none"> – High volume/low volume – Tank renter/tank owner • Various fees and surcharges (e.g., hazmat, administrative, low usage fee, restocking) are added to delivery price • Low introductory rate is often below the average CT retail price • After introductory rate expires, the company raises rate above average retail price • Customer who complains about delivery price often has it dropped by \$0.70/gallon or more from the charged rate

Source: 2009 DCP Investigative Report & PRI Analysis

Recurring Complaint Issues

The following provides a discussion and examples of the recurring issues found in the consumer complaints examined by DCP and the random sample reviewed by the committee staff.

Contract terms and conditions. *The most prevalent issue noted in the review of complaints is consumers often do not realize or understand the contract terms and conditions which they have agreed to.* This is in part due to lack of consumer awareness or knowledge of how the propane industry operates. As discussed later in this chapter, a common resolution for many consumer complaints is providing information so consumers can make educated decisions.

Examples of issues/complaints:

- use of vague contract terms or conditions that are not fully explained
- contract language that allows the company to change the terms and conditions of the contract at their discretion with limited or no notice to the consumer
- contract modifications or renewals informally done on delivery tickets, invoices, or bills
- additional fees or surcharges not disclosed at contract signing
- long contract periods with automatic renewals

The complaint file review suggests that many contracts are signed for five to seven years. Often the initial introductory rate gradually increases over the contract period to well above the rate the company charges new customers or the average retail price for the market. The DCP investigation found cases where the introductory rate offered is below the average Connecticut retail price and the new rate is then increased by \$1 or substantially more per gallon.

Sale of propane. There is some overlap on the consumer issues relating to contract terms and conditions and the sale of propane. *The consumer concerns voiced in complaints in this category involve transparency of price including unit price and additional fees and surcharges.*

Examples of issues/complaints:

- significant variation of price over the life of the contract
- price variation consumers find when comparison shopping
- consumers questioning why their propane delivery price is different from their neighbor who has the same company, another offer by a different company, or in comparison to information posted on the OPM website for weekly averages

The complaint file review indicates propane dealers routinely charge different prices to different customers. These different price points are typically seen between high volume (e.g., home heating) and low volume (e.g., cooking, fireplace, or swimming pool heaters) users as well as prices charged to consumers who rent/lease their tanks and those who own their tanks. DCP's report found that consumers who own their tanks can buy propane from any company at a

significant savings, and usually below the average retail price. In addition, as discussed previously, companies may change the unit price and fees agreed to in the contract. Consumer complaints frequently note additional and sometimes arbitrary fees and surcharges such as hazmat or “environmental” fees, administration fees, rental fees, or low usage fees. At times, these fees bear no relationship to any additional costs incurred by the dealer. In some instances, dealers claim that the fees were explained or agreed to over the phone without any written contract containing those provisions.

As mentioned earlier, the DCP investigation revealed instances where the introductory price is significantly increased by \$1 or more per gallon. The department’s investigation also found that customers who complain about the delivery price can often have the price dropped by \$0.70 or more per gallon from the charged rate.

Tank ownership. *The issues involving tank ownership are the most complex and crucial.* Current state fire marshal regulations prohibit any person, other than the tank owner or upon the tank owner’s authorization, to fill, connect, disconnect, or transport a propane tank. The primary complaint issues surrounding this area include: transparency of the terms and conditions of tank lease/rental including when consumers are seeking to terminate an agreement as well as the cost and associated fees to purchase a tank.

Examples of issues/complaints:

- absence of good consumer information for tank rental/lease agreements
- consumers are not aware or fully understand the implications of propane tank rental/lease agreements
- lease/rental fees added to delivery charges
- fees charged for tank removal or terminating service with the tank owner
- difficulties in getting refund or credit for unused/prepaid gas

The DCP investigative report indicated safety concerns and costs of a consumer owning a propane tank may be exaggerated by a company to get a customer to sign a contract and tank rental agreement. When a customer eventually wants to terminate an agreement, some consumer complaints suggest companies do not remove the tank in a timely manner.

Other complaints suggest tank ownership is often cost prohibitive because the companies may charge as they please for the tank, installation fee, and service maintenance. Complaints reviewed as part of the investigative report indicate some companies do not depreciate the cost of an installed tank when a customer tries to buy a leased tank. Some propane companies attempt to charge customers what it would cost to buy and install a new tank. Finally, another issue noted in a few complaints is home buyers are not made aware in real estate transactions that the tank on the premises is owned by a company who may attempt to enforce the contract or fees on the new homeowner.

DCP Complaint Resolution

The resolution to DCP consumer complaints (Table IV-3) typically results in one of three basic outcomes: 1) provide information, 2) mediate, or 3) withdraw complaint. According to DCP, the most common outcome is to provide consumer information (occurs 50 percent of time). *Frequently, consumers are not aware of, nor fully understand, the basic terms and conditions of the contracts or agreements they sign.* They also do not understand the issues surrounding propane pricing or the proper measures to use for comparative shopping. Another typical consumer complaint outcome is DCP mediation of a solution between the consumer and the propane company (38 percent). DCP is usually successful at reaching a mediation result that is satisfactory to the complainant. However, at times parties may be referred to other entities, such as small claims court, to resolve contract disputes or disagreements. Finally, there are situations where there is not sufficient evidence to investigate or the complainant decides not to pursue the matter further.

DCP is still in the process of converting its complaint process to an electronic tracking database. As such, the electronic database can indicate the complaint resolution status (i.e., open or closed). However, the details as to resolution can be found in the inspector’s narrative notes either in the paper case file or for more recent complaints on their internal computer system.

The final resolution of the random complaints reviewed by program review staff is provided in Table IV-3. As the table shows, the most frequent resolution of the complaints was mediation to customer satisfaction (19 complaints). On a couple of occasions, DCP attempted mediation but ultimately the complainant decided to pursue resolution in another venue such as small claims court. The second most common result (16) was DCP staff providing information and explanation of issue to the consumer. In a few complaints, DCP provided the consumers information and referred them to other enforcement entities such as the occupational and professional license division within DCP, the State Fire Marshal, or the Attorney General. Three cases revealed that DCP did not have jurisdiction or enforcement authority on the issue. In two instances the complainant either did not have sufficient evidence or chose not to pursue matter further.

Final Resolution by DCP	Number of Complaints
Provided information	16
Provided information & Referred to other enforcement jurisdiction	6
Provided information & lack of jurisdiction	3
Mediated to customer satisfaction	19
Mediated & Referred to other venue	4
Withdrawn – lack of evidence or complainant did not pursue	2
Total	50
Source: PRI Analysis	

Proposed Changes

As mentioned in Chapter I, DCP submitted legislative proposals attempting to address some of the concerns uncovered by its investigative report with the goal of providing more transparency and disclosure from companies. However, the legislative proposals did not pass and DCP subsequently decided to implement some of the changes through regulations in 2010. The regulations were drafted with input from the industry. Pursuant to state law, a public hearing was held by DCP on March 12, 2010. Representatives from the propane industry testified in support of the regulations. The proposed regulations are pending.

The following discussion identifies the consumer complaints issues and the program review staff analysis of the potential remedy suggested by DCP either through prior legislative proposals or the recent proposed regulations, as negotiated and supported by representatives of the propane industry.

Contract terms and conditions. State law currently provides certain requirements for the various price plans offered by heating fuel dealers including guaranteed price or prepaid contracts. All contracts for the retail sale of propane gas under a guaranteed price plan (including fixed price and any other similar terms) must be printed in at least twelve-point boldface uniform font and disclose in plain language the terms and conditions of the plan. The disclosure must immediately follow the contract language concerning the price or service. In addition, prepaid propane gas contracts may not commit consumers to purchase propane gas for longer than 18 months.

To promote transparency and address many of the issues surrounding heating fuel contracts, DCP has proposed the following changes:

- All contracts for the sale of fuel must be in writing and contain all the terms and conditions for delivery and the amount of fees, charges, surcharges, or penalties allowed by law.
- Written contract period for guaranteed plans cannot exceed 18 months.
- Any data field that is handwritten on a contract must be in clear and legible writing.
- Any liquidated damages for a consumer breach of contract cannot exceed the actual damages to the dealer caused by the breach.
- Any guaranteed price plan that includes the terms such as “capped”, “maximum”, “not to exceed”, or any other similar terms or descriptions must not increase above the specified price per gallon.
- The guaranteed plan contract must state in clear and specific language how and under what circumstances the price to customers may decrease during the contract period.
- Guaranteed price contracts may not include language that would allow automatic renewal.

The program review committee believes these changes are essential to ensure transparency and allow the consumer to be aware and clearly understand the terms and conditions they agree to be subjected to. However, the committee believes that these changes should be made to the existing statutory language on the issues rather than in proposed regulation. The department contends, and PRI agrees, that the original statutory provisions need to be streamlined and language in various statutory sections reconciled. Therefore, **the program review committee recommends:**

The Connecticut statutes shall be amended to require that all contracts for the sale of heating fuel:

- **be in writing and contain all the terms and conditions for delivery and the amount of fees, charges, surcharges, or penalties allowed by law; and**
- **not include any liquidated damages amount beyond the actual damages to the dealer because of a breach of the contract by the consumer.**

Any necessary data field that must be handwritten on such contract must be in clear and legible writing.

No written contract between a dealer and retail consumer for the fuel can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice.

Under this recommendation, all retail propane (and heating oil) contracts will be required to be in writing, as opposed to just those related to certain types of payment plans,. This recommendation will ensure all consumers have a written legible document outlining all permissible terms and conditions, including a new mandatory term providing notice of automatic renewals.

With respect to guaranteed price plans, the committee recommends the Connecticut General Statutes shall be amended to ensure:

- **any guaranteed price plan that includes the terms such as “capped”, “maximum”, “not to exceed”, or any other similar terms or descriptions, must not increase above the specified price per gallon;**
 - **each contract state in clear and specific language how and under what circumstances the price to customers may decrease during the contract period; and**
 - **guaranteed price contracts may not include language that would allow automatic renewal.**
-

The specific recommended changes for guaranteed plans clarify the statutory definition for any agreement using terms or other descriptive language limiting or otherwise guaranteeing price. The recommendation clarifies what information must be disclosed to customers and prohibits automatic renewal of these types of plans.

The concern over the informal methods of contract modifications (e.g., notations on delivery tickets, invoices, bills) may be alleviated by DCP's proposal to clarify the use of electronic signatures for contract provisions. Specifically, the written contracts requirements may be satisfied telephonically if the retail fuel seller:

1. has previously provided consumer with written notification of all the terms and conditions of the contract, except for the contract duration, the unit price, and the maximum number of units covered by the contract;
2. uses an interactive voice response system or similar technology that gives the consumer the contract duration, the unit price and the maximum number of units covered by the contract;
3. keeps a recording of the consumers agreement to each term and condition for the contract period;
4. provides the consumer with a confirmation letter and written copy of the consumer's agreement to terms and conditions; and
5. retains a copy of each confirmation letter.

Therefore, PRI recommends that:

Statutory provisions shall be established for the use of electronic signature for heating fuel contracts as outlined in the proposed regulations and in compliance with the Connecticut Electronic Signatures Act and any pertinent federal provisions. Specifically, the written contracts requirements may be satisfied telephonically if the retail fuel seller:

- **has previously provided consumer with written notification of all the terms and conditions of the contract, except for the contract duration, the unit price, and the maximum number of units covered by the contract;**
 - **uses an interactive voice response system or similar technology that gives the consumer the contract duration, the unit price and the maximum number of units covered by the contract;**
 - **keeps a recording of the consumers agreement to each term and condition for the contract period;**
 - **provides the consumer with a confirmation letter and written copy of the consumer's agreement to terms and conditions; and**
-

- **retains a copy of each confirmation letter.**

This recommendation gives propane companies added flexibility to use different technology for transactions with customers while still affording certain consumer protections. The program review committee finds that *clarification and transparency of contract terms and conditions should address some of the issues found in the consumer complaints regarding the sale of propane*. For example, the requirement that contract agreements clearly outline all possible fees and surcharges separate from the unit price should provide better transparency and allow the consumer to make better market comparisons. (Recommendations made at the end of this chapter regarding public information available on OPM's website will also assist with consumer awareness.)

Contract length. Current statute and DCP regulations only address the length of prepaid contracts, limiting them to no more than 18 months. (This limit is consistent with the industry's ability to secure futures contracts which can be for no longer than 18 months.) In the 2009 DCP investigative report of propane complaints, the report identified instances where customers signed up with a propane company for delivery of propane and tank rental fees for contracts lasting five to seven years. PRI believes maximum contract length should be limited in statute for all contracts to give consumers the ability to readily switch or comparison shop for propane suppliers. Remaining consistent with the maximum length of 18 months for prepaid contracts and given the fact that companies can not secure deliveries for more than 18 months, **PRI recommends:**

Contracts between propane dealers and consumers shall be for a period no greater than eighteen months.

Conditions to rent or purchase propane tank. One step DCP has already taken is to publish a brochure and post information on its website explaining some points regarding tank ownership. In 2009, legislation was also enacted that would require disclosure of certain items, including propane tanks, as part of any real estate transaction. This provision is currently being developed through DCP's regulation of real estate.

Outside of the fire marshal regulations, state law is silent on consumer protections regarding propane tank rental/lease or options to buy. DCP made several legislative proposals on this topic; however, as noted earlier, they were not adopted.

The proposed regulations, which are a negotiated product with the propane industry, present limited provisions regarding tank agreements. Specifically, the proposed regulations state that any contract for the lease of an *underground* propane storage tank and associated equipment must include an option for the consumer to purchase the tank and associated equipment for a specific price at the end of the first term of the contract, no later than 5 years after the start of the contract, or at other times as provided by the contract. The option may be conditioned upon the consumer executing a mutually acceptable equipment sales agreement.

Given the current lack of statutory reference to propane tank lease or rental agreements, the program review committee believes proposed changes in this area are critical to consumer

awareness and protection. In addition to the option to buy, the **committee** supports the original DCP proposed legislation and **recommends that**:

The Connecticut General Statutes shall be amended to require that the rent or lease of a propane tank must be in writing and contain all the terms and conditions and the amount of fees, charges, surcharges, or penalties allowed by law. The tank rental or lease agreement must include written description of the tank, any installation charges, rental payments or fees, how the contract may be terminated, and the amount of credit for unused fuel.

No written contract between a dealer and retail consumer for the lease of equipment can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice.

Each contract must include an assignable option to buy provision whereby the consumer may purchase the leased tank and associated equipment for a specified price as disclosed in the contract.

Similar to the recommendations for the general contract provisions for the retail sale of fuel, the program review committee recommendations would promote consumer understanding and awareness of tank rental/lease agreements. Unlike the proposed regulations, the program review committee recommendation would further promote tank ownership by adding an option to buy on all tank rental agreements not just underground tanks.

Terminations. Current state law establishes when propane dealers can terminate service to eligible residential customers for nonpayment of their bills. These limits are similar to those that apply to electric and natural gas utilities under current law.

Termination restrictions apply to service to eligible residential propane customers who live at a location served by 10 or more vapor meters for central heating purposes. Under the statute, an eligible customer is a propane customer: (1) who receives local, state, or federal public assistance; (2) whose sole source of financial support is Social Security, Veterans' Administration, or unemployment compensation benefits; (3) who is an unemployed head of household whose household income³² is less than 300 percent, and any individual whose income is below 300 percent of the federal poverty level; (4) who is seriously ill or who has a household member who is seriously ill; or (5) whose circumstances threaten a deprivation of food and the necessities of life for himself or herself or dependent children if payment of a delinquent bill is required. In addition, terminations are prohibited between November 1 and May 1 for customers who provide documentation that they have applied for energy assistance.

State law prohibits terminations for all of these customers: (1) on a Friday, Saturday, Sunday, legal holiday, the day before a legal holiday, or less than one hour before the supplier's

³² Household income is defined as the combined income over a 12-month period of the customer and all adults, except the customer's children, who are and have been members of the household for six months or more.

offices close for the day; and (2) without 14 days' written notice of the termination, including the date of termination, and steps a customer can take to reinstate service. The notice must go to the customer and the property owner of record. However, a supplier may terminate any service at any time without notice if it determines that a dangerous condition exists.

As further protections of consumers threatened with service termination, DCP regulations propose that when the department and/or the Attorney General is mediating a consumer complaint against a propane dealer who owns the tank and has exclusive fill requirements, the dealer may not refuse to deliver fuel to the consumer during the heating season (Oct 1 through March 31st) if the consumer is prepared to pay cash upon delivery.

The **program review committee** agrees with these additional termination protections and **recommends:**

The Connecticut statutes shall be amended to allow consumers, who are engaged in mediation efforts with a propane dealer who has exclusive fill requirements for its tank, the opportunity to make a cash purchase of fuel during the heating season.

This recommendation is aimed at assisting consumers who are leasing/renting a propane tank by prohibiting companies from denying cash fuel deliveries during the heating season if a dispute is being mediated.

Examination of Need for Additional Consumer Protections

As discussed throughout this report, several changes to the regulation of the propane industry in Connecticut have been contemplated in recent years. (Appendix C provides a table summary of the various legislative proposals offered since 2008 regarding the regulation of propane.) The last major system-wide changes were made in 2006 when propane was added to many of the statutory provisions that apply to home heating oil dealers and contracts. The following describes the history and current status of some recently proposed changes including additional DCP legislative and regulatory proposals and others, such as expanding the Department of Public Utility Control's (DPUC) regulatory authority over propane.

Do Consumers Need a Bill of Rights?

One DCP regulatory proposal is the creation of a Consumer Bill of Rights that must be provided to consumers prior to entering into a contract. Dealers would be required to provide each consumer a written notice of consumer bill of rights or disclosure of consumer rights and company policies. The notice must be printed in at least twelve-point boldface uniform font.

Beginning with the first anniversary of the contract, each dealer would have to provide the DCP commissioner with a copy of its consumer bill of rights at least on an annual basis. The annual consumer rights disclosure requirement may be satisfied by providing written notice to consumers that the company's consumer bill of rights is available on internet website or that a copy may be obtained by calling the dealer's local business office. This alternative notice would also have to be printed in at least a twelve-point boldface uniform font.

Given the ongoing confusion evident in the consumer complaints as well as frequent mediation attempts by DCP to assist consumers with contract issues, the program review committee concurs with the proposal to create a consumer bill of rights. However, unlike the proposed regulations, the program review committee believes the consumer bill of rights language should be prepared by DCP instead of the companies themselves. Therefore, **the program review committee recommends:**

The Connecticut General Statutes shall be amended to include the establishment of a consumer bill of rights prepared by the DCP commissioner. The consumer bill of rights shall be made available by the registered propane dealer to consumers prior to entering into a contract. Disclosure notice of such bill of rights may be satisfied by written notice to consumers that the company's bill of rights is available on the internet website or by calling the company's local business office.

Does DCP Need Stronger Enforcement Tools?

As noted earlier, DCP may use the Connecticut Unfair Trade Practices Act (CUTPA) as part of its enforcement authority. The department may also refer any suspected antitrust violations to the Attorney General. Below is a brief description of the authority available under both these approaches and the department's use of them.

Connecticut Unfair Trade Practices Act (CUTPA). Under the CUTPA provisions, businesses are prohibited from engaging in unfair and deceptive acts or practices. The DCP commissioner may promulgate regulations defining what constitutes an unfair trade practice. Many of the statutory provisions relating to propane sales and fuel business operations, including violations regarding registration, contracts, or advertisements, are deemed violations of CUTPA.

CUTPA provisions allow the DCP commissioner to issue subpoenas, administer oaths, and conduct hearings. In addition, the commissioner or his representatives may:

- enter and investigate any establishment at reasonable times;
- check invoices and records;
- have access to and copy documents; and
- undertake other investigatory actions.

If CUTPA violations are suspected, the commissioner may conduct a hearing after providing notice of the charges. Testimony must be taken under oath. The commissioner has the power to issue subpoenas to compel the appearance of witnesses or the production of documents.

If the commissioner concludes a CUTPA violation has occurred, written findings of fact and a cease and desist order must be issued. Restitution may also be ordered if the case involves less than \$5,000. Other options include accepting voluntary statements of compliance or to ask the Attorney General seek judicial enforcement of his orders. The commissioner's order may be appealed to the Superior Court in accordance with the Uniform Administrative Procedure Act.

DCP enforcement activity. *According to DCP, the department has not initiated CUTPA proceedings against any propane company in the last five years.* Given the time and resource-laden commitment involved with these proceedings, the agency believes its limited resources are needed to assist with consumer mediation or pursuing voluntary compliance from the propane companies. Another reason for this approach is that the department believes additional clarification is needed for several of the existing statutory provisions. As such, the department has proposed reorganizing, streamlining, and clarifying definitions for the heating fuel statutes as well as seeking increases for penalties and fines for violations.

Table IV-4 lists the current DCP statutory sections relating to propane dealers that are subject to penalties. As the table shows, the monetary penalties for the various statutory provisions range from none to a fine of \$100 for the first offense but no more than \$500 for each subsequent offense. Although the industry negotiated regulations no longer address penalty increases, the failed DCP proposed legislation did include penalty increases.

By increasing the potential fines and applying them to additional provisions, the program review committee believes that stricter enforcement and penalties for statutory violations would provide further incentive for industry compliance. Therefore, **the committee recommends that:**

DCP should continue to pursue efforts to streamline its statutory provisions and prepare any necessary statutory definitions with the purpose of providing clarifying language needed to facilitate enforcement activities. In addition, existing references to penalty violations found in C.G.S. §16a-21 and §16a-22k regarding sales of heating oil and unfair trade fuel practices shall be increased. Specifically, the change will include a fine of \$500 for first offense and no more than \$750 for second subsequent offense in a three-year period. Thereafter, there shall be a fine of not more than \$1,500 for each subsequent offense within the three-year period of the prior offense.

In addition, these increased penalties shall be applied to violations of C.G.S. §16a-22a regarding prohibition of requiring minimum deliveries and §16a-23r referencing various dealer business practices violations under CUTPA.

To further assist the department in its enforcement activities without initiating full CUTPA proceedings, **the program review committee also makes the following recommendations:**

DCP may revoke or suspend the registration of any company that does not respond to a consumer complaint per DCP request within 30 days.

The DCP commissioner may compel by subpoena, at the commissioner's discretion, the production of any documents from any dealer registered under C.G.S. §16a-23m regarding compliance with the DCP statutory provisions.

Table IV-4. Penalties for Violations of DCP Statutory Provisions	
Statutory Reference	Existing Penalty
<p>C.G.S. §16a-21 <i>Sales of heating oil</i></p> <p>Dealers are prohibited from billing residential customers for charges not listed on delivery tickets</p>	<ul style="list-style-type: none"> • Fine of \$100 for the first, and no more than \$500 for each subsequent offense.
<p>C.G.S. §16a-22a <i>Minimum delivery</i></p> <p>Dealers are prohibited from requiring their regular customers to accept deliveries of a minimum of 100 gallons or 75 percent of the size of the primary tank, whichever is less, as a condition of delivery.</p>	<ul style="list-style-type: none"> • None
<p>C.G.S. §16a-22k <i>Unfair trade practices for fuel</i></p> <p>If a customer cancels future deliveries under payment plan, the dealer must, within 10 days of receiving the cancellation notice, return any money collected from the customer in excess of the retail price for the fuel actually delivered.</p> <p>Dealers must disclose the identity of the trade name certificate holder to current and potential customers on the invoices, other communications, and in any advertising.</p>	<ul style="list-style-type: none"> • Violations of any of these provisions are an unfair trade practice.
<p>C.G.S. §16a-23r <i>Violations & penalties</i></p> <p>Dealer violations of the following provisions are deemed an unfair trade practice under Connecticut Unfair Trade Practice Act:</p> <ul style="list-style-type: none"> • 16a-23m - registration provisions • 16a-23n - failure to use written contracts when offering a guaranteed price plan; failure to offer advertised prices for a minimum period; violate the prohibition against consumer contracts longer than 18 months; failure to include the required provisions in consumer contracts; failure to comply with securitization requirements • 16a-23o - plumbing or heating work service & display 	<ul style="list-style-type: none"> • Violations of any of these provisions are an unfair trade practice. • A dealer who knowingly violates the requirement to obtain and maintain futures or forwards contracts or a security bond commits a Class A misdemeanor. Class A misdemeanors carry a fine of up to \$2,000 and/or imprisonment for up to one year.
Source: PRI Analysis	

Affiliations. A complication that arises when examining a company's business practices or operations is that the company may, in fact, be affiliated or otherwise associated with various other companies. As such, it is likely the business practices or conduct of one company may also be occurring at, and/or at the direction of, another company. Therefore, it is important that enforcement officials are aware of such relationships for investigation and compliance activities.

Current state law requires certain affiliate information be reported to OPM, however, this information is somewhat limited as it only pertains to companies who sell at least a million gallons of fuel annually. However, DCP requires all HOD companies to register with their agency regardless of number of gallons of fuel sold. Therefore, **the program review committee recommends that:**

The statutory provisions relating to heating fuel dealer registration with DCP shall be amended to require registered companies, when applying for their annual DCP registration certificate, to disclose the names of all affiliated companies registered with DCP that are under common ownership or have interlocking board of directors. In addition, the statute will be clarified to require companies to obtain a separate registration for each company it does business as or advertises under.

Should the DPUC Regulatory Role be Expanded?

One proposal has been to treat propane as a public utility and expand the authority of the Department of Public Utility Control (DPUC) to regulate all aspects of the propane industry, including price. Currently, DPUC is statutorily charged with regulating the rates and services of Connecticut's investor-owned, electricity, natural gas, water, and telecommunication companies. The department is also the franchising authority for the state's cable television companies. One of the department's primary objectives is to balance the public's right to safe, adequate, and reliable utility service at reasonable rates with the provider's right to a reasonable return on its investment.

It is common for states to regulate the price, terms, and conditions of service provided by public utility companies. Regulation typically occurs when the government believes that the operator, left to his own devices, would behave in a way that is contrary to the government's objectives. Government regulation allows for control of market power, facilitates competition, promotes system expansion, or stabilizes markets.

Certain basic characteristics are found in public utilities that necessitate regulatory control of the entities' prices and services. Typically, the providers of regulated public utility services deliver their services by way of a permanent physical connection (e.g., pipelines) and are authorized by the state to operate as monopolies exclusively within a given service territory. In return, the utilities agree to serve all customers that seek service at specified rates.

The state grants the monopoly because it has determined that it is a more efficient, economical, and practical method for one, rather than many entities, to provide a service that is in the public interest. According to the propane association representatives, several propane dealers can efficiently and economically operate in the same area at the same time, and can

compete directly on the basis of price and service. The association claims the Connecticut propane companies do not have the attributes of a public service company: they do not deliver propane to consumers by way of permanent physical connections; and they do not have an exclusive service territory, so they are not operating as monopolies.

Although the program review committee's conservative analysis of the propane service market in Connecticut suggests competition (seen in Chapter II), the limited information available regarding the industry's proprietary practices makes it difficult to definitively make such a statement about the propane industry. However, there are other practical implications that should be considered when determining whether to expand DPUC's regulatory authority. If propane dealers are deemed public utility companies, the department's workload may increase significantly. Given the current industry configuration, it would be time and resource intensive for DPUC to apportion propane dealers' service territories, set rates, and apply other traditional regulatory measures to the sale and delivery of propane.

The agency would be required to determine which of the several propane dealers that may be in business in the same general geographic area would be selected as the single dealer for that specific area. This would likely bring ongoing legal conflicts regarding which supplier is to be designated as the sole provider of propane within a given area and how the unselected dealers would be compensated for their business loss. At a minimum, hearings would be required to insure individual property rights are not infringed upon and each propane dealer is afforded the opportunity to be heard.

Under DPUC regulations, the selected dealers would have to make application to the agency to increase or decrease rates, or to change services, which would involve the production of data, preparation of testimony, and participation in hearings, all of which may add significantly to the cost of providing propane service.

In 2010 and 2011, legislative proposals were made through Senate Bills 465 and 1080, respectively, subjecting propane storage tanks to regulation by DPUC as public service companies. The fiscal notes prepared by the Office of Fiscal Analysis indicated a substantial initial cost to the state. According to DPUC, the department would have to create a new regulatory division within the agency. The department would have to hire three additional permanent, full-time staff, as well as two consultants for the first year to help create the new division. The most current fiscal note suggests a \$500,000 cost in the first year with a potential of up to \$2 million in subsequent years.

In the program review committee interviews, the DPUC has maintained its position regarding the administrative cost for regulating the propane industry. Another consideration is that entities subject to public utility regulation usually are allowed to pass along the administrative regulatory costs to the consumers. Given the price of propane is already notably high compared to other fuels, additional regulatory fees may be excessive. Therefore, the program review committee finds that *the sale and delivery of propane by propane dealers to consumers should not be subject to regulation by DPUC at this time.*

Nevertheless, the program review committee believes this issue must be further explored. In 2005, state law established a Home Heating Oil Planning Council to address issues involving the supply, delivery, and cost of home heating oil, and state policies regarding the future of the state's oil supply. The council consists of the OPM secretary, DSS commissioner, and the chairperson of the Public Utilities Control Authority, or their designees, and the chairperson of the Connecticut Energy Advisory Board.

The council's role is to monitor and analyze OPM's pricing and supply information and other information it considers appropriate for evidence of operational or infrastructure conditions that should be addressed to enhance the home heating oil markets' reliable, free, and fair operation. Periodically, it is to report to the Energy and Technology Committee on the status of the home heating oil market. The report is to include any negative conditions in the market and recommendations for legislation. *According to OPM, the Home Heating Oil Planning Council has never been convened.*

OPM states this council was initially created to guard against potential price gouging activities. The council has not convened because, according to OPM, there has never been a situation where the council was deemed necessary. Given the council is already statutorily established and the legislature believed it important enough to create, **the program review committee recommends:**

The Home Heating Oil Planning Council shall be convened by OPM pursuant to C.G.S. §16a-23t to examine the market conditions of the propane industry for evidence of operational or infrastructure conditions that should be addressed to enhance the home heating fuel markets reliable, free, and fair operation. In addition, the council membership shall be statutorily amended to include the Department of Consumer Protection commissioner or his designee.

The committee believes this recommendation provides the opportunity for continued monitoring of a market for which there is limited information because of proprietary concerns. Existing law authorizes OPM to collect certain market information and activating this council will put this information in a useful and valuable context.

Pricing. One issue the Home Heating Oil Planning Council could examine would be the regulation of price for propane systems serving 10 or more customers. Currently, DPUC has oversight for the safety of these propane systems. As described in Chapter III, other states have chosen to regulate both safety and price for such systems, as individual customers do not have the same options available that single home customers have to readily change propane dealers. In both Nevada and Colorado, for example, the state public utilities commissions regulate the rates and safety standards of propane systems serving 10 or more customers. Commissions may approve a price ceiling during the heating season or a specific rate for a particular time period. The Home Heating Oil Planning Council would be well-positioned to assess whether Connecticut should regulate pricing for these multi-customer propane systems.

Notification of system locations. An area where DPUC oversight can be improved is the notification of system locations. As noted in Chapter I, DPUC has jurisdiction over a select group of 110 propane systems statewide. However, there is no requirement mandating the reporting of these locations to the department. The department relies on local fire marshals for such information. DPUC believes there are more systems, beyond the known 110 locations, that may come under their jurisdiction. In addition to working with the local fire marshals, the department is actively searching for other systems.

Because DPUC can only regulate the safety of these systems if the department is aware of the existence of these systems, **PRI recommends:**

Any owner of propane systems serving either 10 or more customers, two or more customers located in a public place, or a single customer if the propane system is not located entirely on the customer's property, shall notify the DPUC of the existence of such a system.

The importance of this recommendation is to have an accurate measure of the scope of regulation needed. At the moment, the count of propane systems subject to DPUC regulation is at least 110. However, a full inventory must be made to ensure these locations are properly regulated. The inventory results may assist the planning council to determine whether there is a need to regulate price for these systems.

How Can OPM Price Monitoring be Enhanced?

As described in Chapter III, OPM staff weekly surveys approximately 20 propane companies during the heating season and all heating oil companies year-round to determine heating oil and propane prices. *Consumers select propane dealers on a year-round basis, not just during the October-March heating season. Pricing information, therefore, could be helpful in judging quoted prices within the context of average prices during all 52 weeks of the year.* **Therefore, PRI recommends:**

Weekly surveying of propane dealer prices by OPM should be expanded to occur year-round within available appropriations. The average price for propane should be published year-round on the OPM website.

As was also shown in Chapter III, *because there is such variability in the price of propane across dealers, publishing the range (highest and lowest prices) in addition to the average price would provide consumers with information useful in the assessment of price per gallon charges.* This information is already available to OPM and is consistent with the information provided on heating oil prices. **Therefore, PRI recommends:**

On a weekly basis, the highest and lowest prices for propane should be published on the OPM website in addition to the average price per gallon of propane.

Lastly, *consumers who view the propane pricing information on the OPM website may not be aware that the prices are only for higher volume residential customers.* The OPM website

directs consumers via hyperlink to the state heating oil and propane price survey. At that site, weekly prices for propane are listed. Above the propane prices and in parentheses, there is a notation: “Prices for Home Heating Only.” PRI believes a more detailed definition or explanation of the prices is needed as specified by the U.S. Department of Energy, such as: “Prices for local residential customers who use propane to heat their residences (storage tanks of approximately 275 gallons), pay by credit card, and excludes discounts or surcharges.” Consumers will then understand whether the prices published on the OPM website apply to their specific propane situation. **Therefore, PRI recommends:**

OPM should include a more detailed explanation of the propane prices listed on their state heating oil and propane price survey website.

These additional recommendations will clarify information available to the public and present it in a more useful format to propane consumers. Together with the previous recommendations, these changes will address many of the consumer concerns and complaints and provides clear and flexible options to prospective and current customers.

APPENDICES

Appendix A: Overview of Propane Industry

What is Propane?

The following describes the properties of propane, who uses propane, and how propane is delivered to the customer. The chapter also provides an overview of how propane tanks work, and a profile of the Connecticut propane industry.

Propane, or liquefied petroleum (LP-gas), is a fossil fuel that can be either a liquid or a gas. At normal atmospheric pressure and temperature, it is a non-toxic, colorless, and odorless gas. Under moderate pressure, propane becomes a liquid that vaporizes into a clean burning gas when released from its storage container. Similar to natural gas, an identifying odor is added so it can be easily detected.

Propane is not produced for its own sake, but is a by-product of two other processes, natural gas processing and petroleum refining. Propane is extracted from the natural gas plant production, along with other materials such as butane, to prevent the liquids from condensing and causing operational problems in natural gas pipelines. Similarly, propane is also produced as a by-product when oil refineries make major products such as motor gasoline and heating oil.

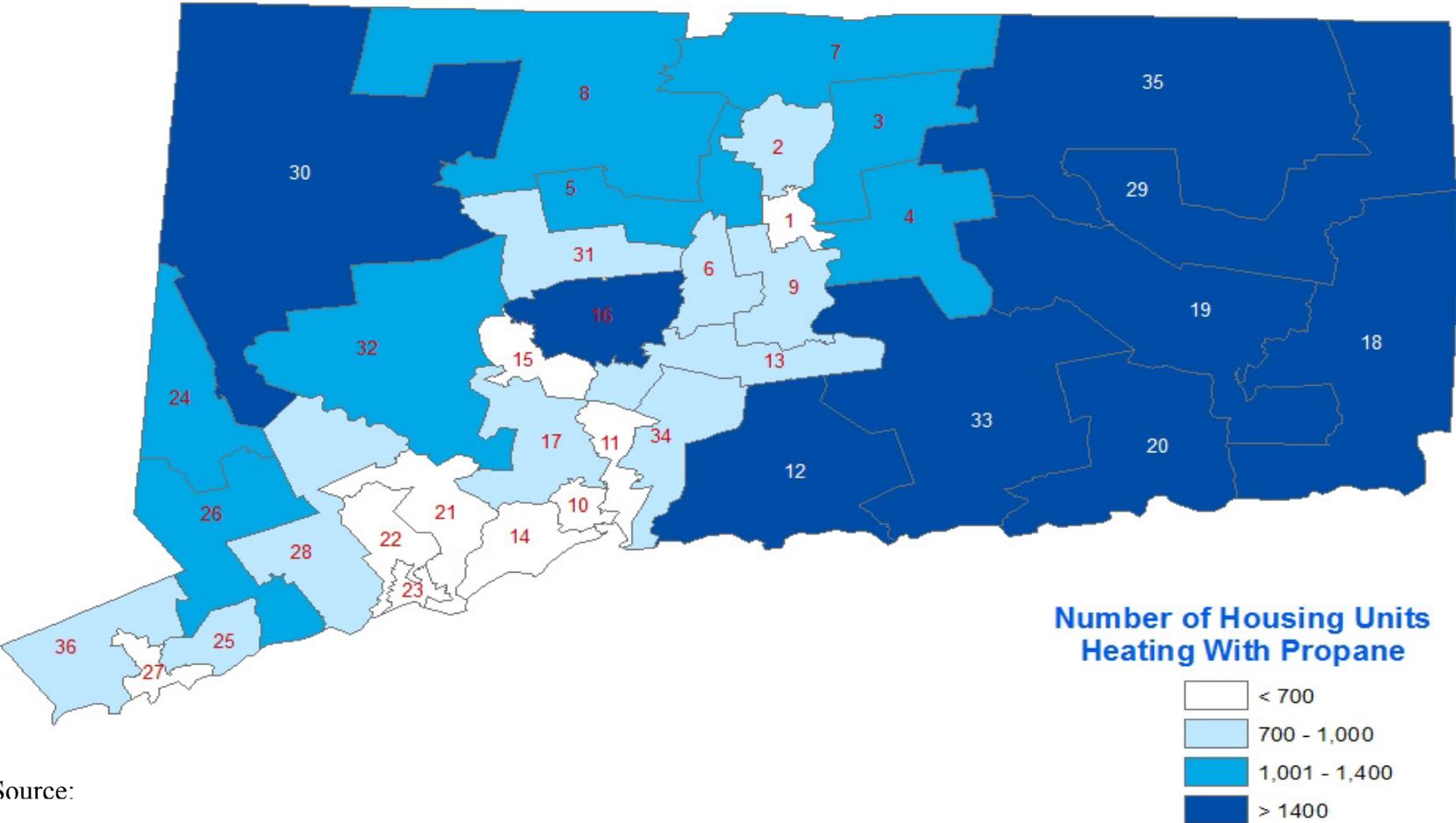
Propane is an approved, alternate clean fuel listed in the 1990 Clean Air Act as well as the National Energy Policy Act of 1992. However, propane is also a hazardous material and must be handled properly. Tanks containing fuel under pressure may explode if tank integrity is altered.

Common uses. Propane is commonly used for heating and cooling homes, heating water, cooking, refrigeration, drying clothes, lighting, and in gas fireplaces. There are several recreational uses for mobile home and RV appliances, generators, and heaters for swimming pools, saunas, patios, whirlpools, and grills. Propane also has several industrial, commercial, agricultural uses, and may provide an alternative fuel for vehicles.

Residential and commercial use accounts for 40 percent of all propane used in the United States. Propane is typically used to provide energy to areas not serviced by the natural gas distribution system. Thus, it competes mainly with heating oil for space heating purposes. It is used in the Midwest predominantly for heating, while the Northeast relies on propane more for cooking.

Using available census information, the program review committee prepared a map showing the distribution of propane heating use in Connecticut by Senate districts (Figure A-1).

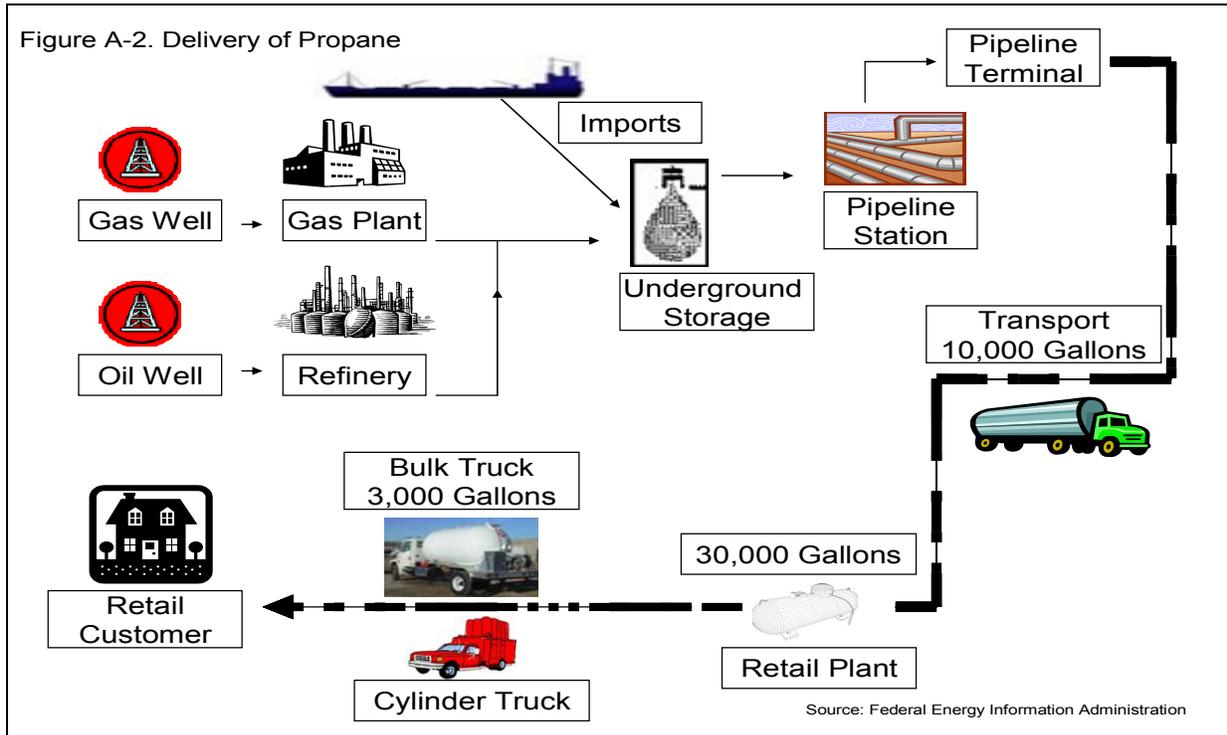
Number of Housing Units Heating With Propane by Senate District



Source:

How is Propane Delivered?

Figure A-2 illustrates the basic transportation and delivery of propane. Demand for propane is met by three primary sources: 1) domestic production from gas processing plants and oil refineries, 2) imports from other countries, and 3) when necessary during the heating season, by withdrawals from inventory.



The largest source of propane is the domestic production from natural gas plants and oil refineries. From the refinery or processing plant, propane is shipped to an intermediate terminal and then transported to the local propane supplier for delivery to the consumer.

Inventory withdrawals from storage provide the second largest source of propane during the winter heating season. During the summer months propane stocks are built and are drawn down in the winter months. Imports provide the smallest (about 10 percent) portion of U.S. propane supply. Canada is the largest exporter of propane to the United States, accounting for almost half of all U.S. imports. Propane is imported by land (via pipeline and rail car from Canada) and by sea (in tankers from countries such as Algeria, Saudi Arabia, Nigeria, and Norway).

Propane is primarily transported within the United States by approximately 70,000 miles of interstate pipelines. Most of the developed pipeline system in the U.S. exists along the Gulf Coast and the agricultural-industrial areas in the Midwest. The Northeast and South Atlantic states are served by a single pipeline. The TEPPCO pipeline system runs from Mont Belvieu, Texas to Selkirk, New York and is the primary source of propane to customers in the Northeast. Local markets are serviced by the numerous distribution terminals located along the pipeline.

Other means of transport include rail tank cars, highway bulk transports, local delivery trucks, inland waterway barges, and ocean-going tankers.

Propane imports to the Northeast are primarily of three origins: 1) by pipeline from Texas, 2) by rail car from Canada, and 3) by tanker from Algeria, Norway, Venezuela, Nigeria, and Saudi Arabia. The Northeast relies most heavily on inventories and imports to meet winter heating demand because it is the furthest region from the major U.S. propane supply centers.

Although imports comprise the smallest portion of U.S. propane supply, they provide a critical supply of propane when domestic production and inventories cannot meet demand. However, the arrival of imports may take several weeks making unexpected propane demands or shortages difficult. In particular, the New England area is dependent on waterborne imports, truck transports, and rail car shipments. This makes New England vulnerable when severe weather-related supply disruptions occur due to its dependence on non-pipeline supplies of propane.

Transporting tanks. Propane is transported under pressure in its more compact liquid form. There are two types of trucks used for propane transportation: a highway transport (which typically carries 7,000 to 12,000 gallons) and a smaller bulk delivery truck, called a "bobtail" (which carries between 1,000 to more than 5,000 gallons). All propane transportation is regulated by the U.S. Department of Transportation (DOT).

Tanks must be secured on a flat surface or in racks, and in an upright position to minimize movement to each other or the vehicle. Each tank must be determined leak free before loading into a vehicle. DOT requires that all shipping papers contain a 24-hour-a-day telephone number where emergency assistance and information can be obtained.

In addition to the DOT requirements, propane transporters must also follow the National Fire Protection Association code 58. The maximum number of tanks that can be transported without special licensing or placarding the transporting vehicle is 25 standard grill tanks. The regulations state that vehicles transporting more than 1,000 pounds of LP-Gas, including the weight of the tanks, must be placarded as required by Department of Transportation regulations or state law. All placarded vehicles must be driven by an individual who holds a commercial drivers license with a hazardous materials (Hazmat) endorsement.

Retail propane storage facilities are known in the propane industry as bulk plants. Bulk stations or storage plants serve as distribution points. Propane is pumped from bulk storage tanks into bulk delivery trucks for subsequent delivery into permanent, stationary containers located on the customer's premises.

How Do Propane Tanks Work?

Propane tanks may be portable or stationary. Small portable tanks are commonly used with gas grills and similar appliances. Stationary tanks are typically either mounted in location in the backyard of a home or business or buried underground. Unlike the smaller portable tanks, the stationary liquid propane tanks require more care in installation, filling, and maintenance.

To ensure consumer safety, all large propane tanks must be built according to the rules of either the American Society of Mechanical Engineers (ASME) or the Department of Transportation (DOT). They must be painted a reflective color, placed level and display a manufacturer's nameplate.

Propane is stored and transported in its compressed liquid form, but by opening a valve to release propane from a pressurized storage container, it is vaporized into a gas for use. In other words, propane is always a liquid until it is used.

Transferring propane from truck to tank. Pumps are used to transfer propane from a tank truck to the consumer storage tank. Various valves and accessories are required by NFPA 58 and the U.S. Department of Transportation to enhance the safety of the transfer operation. All propane tanks approved for use must be equipped with a standard series of valves. These include:

- a fill valve for attaching a delivery hose from a truck;
- a vapor return valve to keep pressure within limits during delivery;
- a service valve, which converts the liquid gas to vapor;
- a relief valve to bleed off excess pressure in emergency situations; and
- a liquid withdrawal valve, which governs the amount of LP gas withdrawn from the tank.

There must also be two types of gauges: a float gauge that shows the amount of propane in the tank and a fixed liquid level gauge that warns when the level is about to exceed the maximum allowable 80-percent fill.

Installation. Pursuant to public safety regulations, a licensed propane supplier may install a liquid propane storage tank. The company determines the proper size tank for the planned application and is responsible for compliance with all regulations regarding permits and required clearances. The place of installation is chosen so as to minimize the chances of banging, flooding or denting the cylinder over the years. For above-ground tanks, a concrete pad of level concrete blocks must be in place before installation and local codes must be followed for the gas line to the house or building. Larger tanks, usually used to fuel homes, may be buried underground as propane is nontoxic fuel that doesn't contaminate aquifers or soil. Underground installations must follow codes for size of trench and proximity to septic tanks or other holes. After installation is completed and safety checked by the local fire marshal, the tank may be filled.

Refilling and maintenance. The driver of the propane supplier typically fills the tank as needed. The delivery driver hooks up the hose from the truck to the propane fill valve. After connecting the nozzle to the tank, the driver opens the bleeder valve which should be venting vapor. If it does not, the tank is empty and the service valve must be shut off and the system checked for leaks before any more gas is delivered to the premises. If there is vapor, the driver opens the nozzle to begin filling the tank.

Containers are normally filled to only 80 percent to allow for vapor expansion due to temperature increase. The bleeder valve is designed so that during the filling process, when the

propane going into the tank reaches 80%, liquid will come out of the opened valve. This lets the delivery driver know that the tank has reached its maximum filling capacity. The fill nozzle then needs to be immediately shut off and the bleeder valve closed.

If the driver is not attentive and does not shutoff the nozzle quickly, a hydrostatic condition may occur where there is no longer any vapor space left in the tank. As the propane warms to ambient temperature an insufficient vapor space can lead to this condition hours, days, or even months later if there is no use by the consumer. The pressure relief valve is very likely to release liquid propane that will vaporize instantly looking for a source of ignition. Another potential exposure is if the driver forgets to close the bleeder valve.

Although the driver fills the tank, only licensed professionals may actually service the tank. Table A-1 lists the DCP occupational licenses that may be used in the propane service field. The DOT tanks must be recertified for safe operation by qualified personnel no less than 12 years after manufacture. The inspection must subsequently be repeated every 5 years. ASME tanks do not require recertification.

How are Propane Sales Measured and Billed?

Propane tank gallon consumption is measured by liquid meters and gauges, located on either the installed tank system or the bulk delivery truck. Consumption may also be measured by vapor meters located in the system, which provide a method for usage measurement.

Delivery tickets. Connecticut law establishes the specifications for meter devices and provisions for recording gallons and tenths on fuel delivery tickets. Each fuel delivery must be made through a meter equipped with a numeral reset counter, a register with a zero start or an accumulative ticket printer and prints an accurate record of the meter before and after the delivery is made. Each ticket must be locked in the meter between reading to prevent fraud. Tickets for delivery of heating fuel must be numbered sequentially and include the name or identification number of the seller's driver. The seller must keep copies of the delivery tickets for one year and the tickets must be available to inspection during normal business hours. Sellers may not possess delivery ticket that records a delivery that has not occurred.

Billing. Dealers are prohibited from billing residential customers for charges not listed on delivery tickets. Delivery tickets for the residential sales of propane gas must clearly list the unit price of fuel, the total number of units sold, and the amount of any delivery surcharge. Dealers are prohibited from collecting or billing any amount exceeding the total charge derived from the amounts shown on the ticket; that is, the unit price multiplied by the number of units sold plus the delivery surcharge. The unit price is the price per gallon computed to the nearest tenth of a whole cent. The ticket must be given to the purchaser or his agent at the time of delivery.

Table A-2 provides an overview summary of general propane regulation by state agency.

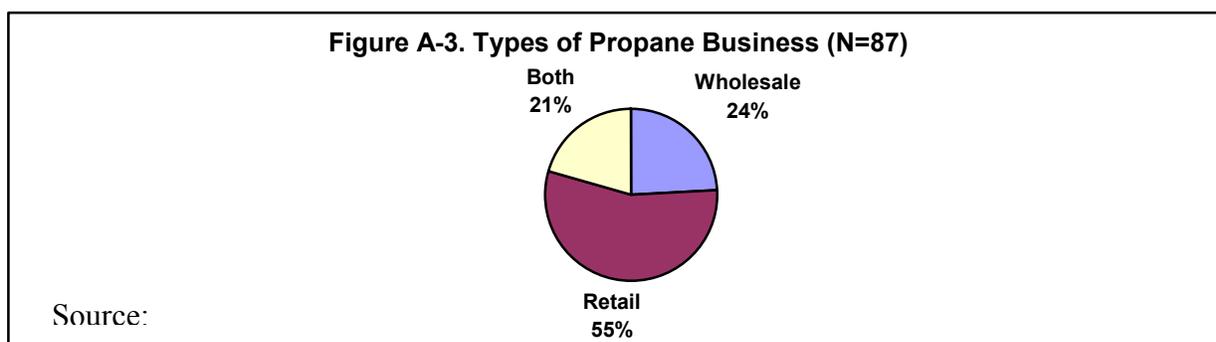
Table A-1. Licenses Required to Perform Work Associated with Propane			
Type of License		Work Permitted	Requirements
Heating, Piping and Cooling Licenses			
S-1	Unlimited Contractor (includes oil co)	May do all heating, piping and cooling work as defined in Section 20-330 of the General Statutes	The requirements to qualify for this license are two years as S-2 or equivalent experience and training.
S-2	Unlimited Journeyman	May do the same work as the S-1 licensee, but only while in the employ of a contractor licensed for such work	The requirements to qualify for this license examination are completion of a registered apprenticeship program or equivalent experience and training.
G-1	Limited Contractor (for pressurized gas)	May perform only work limited to the installation, repair, replacement, alteration, or maintenance of gas piping systems and approved gas appliances, gas utilization equipment and accessories for use with LP gas supplied by gas containers and/or natural gas	The requirements to qualify for this license examination are two years as G-2 or equivalent experience and training.
G-2	Limited Journeyman	May perform the same work as the G-1 licensee, but only while in the employ of a contractor licensed for such work	The requirements to qualify for this license examination are completion of a registered apprenticeship program or equivalent experience and training.
Plumbing Licenses			
P-1	Contractor Unlimited (master plumber)	May perform all plumbing and piping work as defined in Section 20-330 of the General Statutes	The requirements to qualify for this license examination are two years as P-2 or equivalent experience and training.
P-2	Unlimited Journeyman	May do the same work as the P-1 licensee, but only while in the employ of a contractor licensed for such work	The requirements to qualify for this license examination are completion of a registered apprenticeship program or equivalent experience and training.
Source: Connecticut Department of Consumer Protection Licenses and Scope of Work.			

Table A-2. State Regulation for Propane Companies Engaging in Residential Fuel Sales	
PROPANE COMPANY	<p>Department of Consumer Protection</p> <ul style="list-style-type: none"> • Annual registration, \$200 fee, \$1 million insurance requirement <p>Office of Policy and Management</p> <ul style="list-style-type: none"> • Annual registration for certain market analysis (if over 1 million gallons sold) • Weekly price survey (during heating season)
EMPLOYEES	
Tank Installation and/or Service Maintenance	<p>Department of Consumer Protection</p> <ul style="list-style-type: none"> • Issues occupational licenses (e.g., plumbing)
Delivery Driver/Tank Filler	<p>Department of Public Safety</p> <ul style="list-style-type: none"> • Requires unspecified training
EQUIPMENT	
Delivery Trucks	<p>Department of Public Safety</p> <ul style="list-style-type: none"> • Conducts safety inspections
Tanks and propane related equipment (weights & measures)	<p>Department of Public Safety</p> <ul style="list-style-type: none"> • Enforces codes for storage and connections <p>Department of Consumer Protection</p> <ul style="list-style-type: none"> • Weights & measure inspections <p>Department of Public Utility Control</p> <ul style="list-style-type: none"> • Safety inspections of select systems (e.g., serving 10+ or in public place)
BUSINESS OPERATIONS	
Contracts	<p>Department of Consumer Protection</p> <ul style="list-style-type: none"> • Securitization requirements • Format, terms, conditions requirements • Complaint handling
Business Practices	<p>Department of Consumer Protection</p> <ul style="list-style-type: none"> • Governs marketing and advertising
Source: PRI analysis	

Profile of Propane Industry in Connecticut

The following profile information is based on 2008 data compiled by the Office of Policy and Management (OPM) pursuant to statutory mandates. According to OPM, the 2008 reported figures reflect the most comprehensive information available at this time. These figures represent businesses who sell at least 50,000 gallons of petroleum in the state that are statutorily required to report information to OPM. (In 2008, five vendors reported selling less than one million gallons.)

Figure A-3 illustrates the percentage of businesses registered with OPM to engage in the wholesale or retail sale (or both) of propane. As the figure shows, more than half of the 87 businesses are registered as retailers, about a quarter wholesalers, and approximately 20 percent are registered as both. Sixteen companies reported having at least one propane storage facility while six businesses reported having more than one.



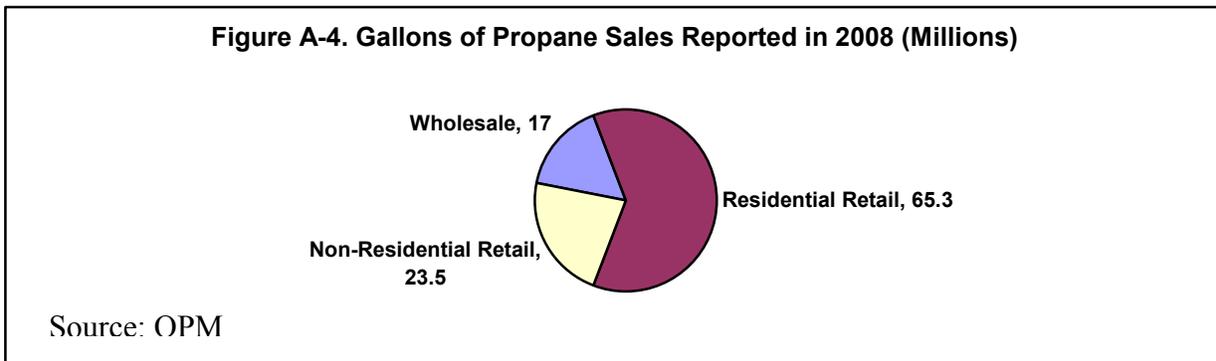
Pursuant to state law, each registrant must report to OPM whether it has an affiliate relationship with other business entities that sell petroleum products or engage in the operation of a petroleum product terminal in Connecticut. Affiliate information that must be reported includes whether the registrant:

- owns or is owned, in whole or in part, by another company,
- has one or more officers and/or owners in common with another,
- owns facilities and/or equipment in common with another company,
- engages in common operations and/or joint ventures with another company, or
- has activities that are controlled by another company.

Table A-3 provides the number of registrants that listed affiliation information and/or reported having different “doing business as” (DBAs), trade names or branch offices. As the table shows, with the exception of eight businesses, most companies in 2008 reported no affiliation to other propane companies. However, it is important to note that a single company can have multiple types of affiliate relationships with another company. With respect to having various company trades names, doing business as (DBAs), or branch offices, at least 30 companies reported having at least one or more.

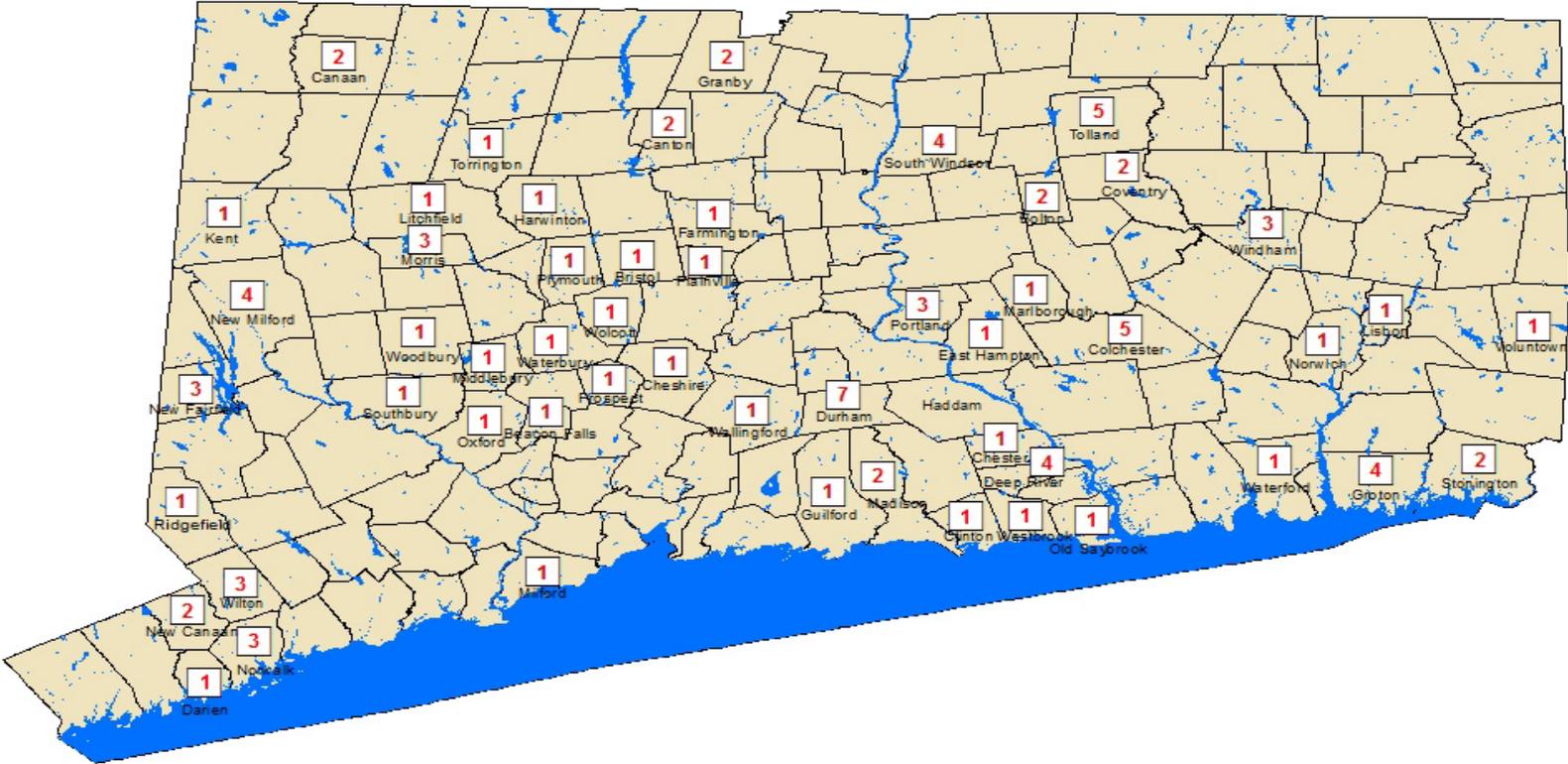
Table A-3. Number of Registrants		
Report	DBAs, Trade Names, Branch Offices	Affiliate Company
Reported none	22	44
Reported one	16	8
Reported more than one	14	0
Source: OPM		

The 2008 figures for total LPG sales including the total number of wholesale, residential retail, and non-residential gallons are presented in Figure A-4. Wholesale sales are sales made to resellers only. All sales made to the consumer or end-user are retail sales. Retail sales include residential and non-residential sales. Residential retail sales are sales made to consumers for use in their homes. This includes sales to multifamily homes, apartment complexes, and condo associations. As the figure shows, residential retail sales account for the most gallons of propane sales followed by non-residential and wholesale.



Appendix B: DPUC Map

Propane Systems Under DPUC Regulation



B-1

Appendix C: Legislative Proposals

Proposed Legislation in Recent Years (2008-2011)		
2011		
BILL NAME	DESCRIPTION	STATUS
SB1080 Regulation Of Propane	To require the Department of Public Utility Control to establish procedures for regulating the state's propane industry as of July 1, 2012.	Intro by Energy Public Hearing Senate Calendar
PB 6027 Choice of Suppliers for Propane Customers	To allow propane customers to choose their propane suppliers	Ref to Energy
PB 6030 Regulating Underground Propane Storage Tank Companies	To regulate underground propane storage tank companies.	Ref to Energy
PB 635 the Sale of Propane	To make propane a regulated industry under the Department of Public Utility Control.	Ref to Energy
2010		
BILL NAME	DESCRIPTION	STATUS
HB 5222 Residential Retail Heating Oil and Propane Contracts	<p>To require parties to buy heating fuel that contains fees other than a unit price to have a written contract. to permit contracts to be made by oral or telephone agreements if satisfy certain conditions.</p> <p>To prohibit heating dealers from conditioning the sale of (1) a tank on the purchase of fuel oil or propane or (2) fuel oil or propane on the sale of a tank.</p> <p>To define “guaranteed price contract” to include all forms of prepaid and fixed-price heating oil and propane contracts.</p> <p>The bill also (1) adds physical supply contracts as an acceptable form of security to ensure delivery and (2) requires that the commitments obtained through futures or physical supply contracts be at least 80% of the maximum number of gallons that the dealer is committed to deliver.</p> <p>To require dealers to disclose on their annual registration certificate all affiliated companies registered with DCP that are under common ownership or have interlocking boards of directors.</p> <p>To add certain fines and penalties and increased others, making them uniform. It allows DCP to suspend or revoke any registration if the registrant fails to comply with a subpoena. nothing in the bill would validate any provision or clause for liquidated damages that would otherwise be unenforceable.</p>	Intro by General Law Public Hearing Ref to Judiciary
SB 465 Purchasing of Propane	To subject “underground propane storage tank” companies to regulation by DPUC as public service companies (utilities).	Intro by Energy Public Hearing Ref to Appros

2009		
BILL NAME	DESCRIPTION	STATUS
CB 506 Prohibiting Certain Contracts for Home Heating Oil and Propane Gas	To prohibit any home heating oil or propane gas dealer from offering any residential customer a guaranteed, prepaid, fixed, or capped contract	Intro by Energy Public Hearing
RB 6500 Heating Oil and Propane Gas Charges	To protect residential purchasers of retail fuel oil and propane gas (This bill was folded into Committee Bill 6470)	Intro by General Law Public Hearing
PB 5394 Consumer Propane Contracts	To limit the length of propane contracts to two years. At least 90 days before the expiration of a contract, the dealer must mail the consumer a letter notifying the consumer of the expiration and renewal option. Any contract renewal must be in writing and signed by the consumer	Ref General Law
PB 5997 Prohibiting the Termination of Propane Delivery in Certain Cases	To add propane to the list of heating sources that cannot be terminated during the winter season	Ref to Energy Ref to General Law
PB 5994 Price of Propane	To require propane dealers to disclose to residential customers the current price per gallon of propane.	Ref to Energy Ref to General Law
PB 5404 Propane Dealers and Unfair Trade Practices	To require propane dealers to disclose all delivery and material charges as separate items on their bills and to disclose all such charges at the time of contracting with a customer. A violation is an unfair trade practice.	Ref to General Law
HB 6470 Residential Retail Heating Oil and Propane Contracts	To require parties entering into an agreement for the retail sale of fuel oil or propane gas for residential heating to execute a written or qualifying contract containing the terms and conditions for delivery and any potential fees, charges, or penalties. The bill also: <ul style="list-style-type: none"> • restricts the fees a retailer may charge and limits potential liquidated damages. The contract must also allow the customer to purchase the propane tank for fair market value at the end of the contract. A violation of these provisions is an unfair trade practice. • amends the written residential disclosure report to include, if applicable, a statement disclosing the existence of a propane tank in excess of 20 gallons, the name of the tank owner, and the related contract. • creates a definition of “guaranteed price contract” to include all forms of prepaid and fixed price heating oil and propane contracts. • adds physical supply contracts and a letter of credit as acceptable forms of security to ensure delivery and requires that the commitments obtained through futures or physical supply contracts be at least 80% of the maximum number of gallons that the dealer is committed to deliver. • requires any holder of a futures contract, surety bond, physical supply contract, or letter of credit to notify DCP of any cancellation. 	Intro by General Law Public Hearing Ref to Appros Ref to Energy HOUSE Adopt Amend A SENATE Cal.

2008		
BILL NAME	DESCRIPTION	STATUS
SB 523 Heating Oil and Propane Gas Charges	To require all heating oil and propane gas contracts to be in writing, except where there are no fees for services or a contract is provided completed over the telephone.	Intro by General Law Public Hearing Ref to Judiciary
Source: PRI Analysis		

Appendix D: CT Antitrust Laws

Overview of Antitrust Issues

The following overview is summarized from OLR report 95-R-1177.

The Connecticut Antitrust Act makes unlawful: (1) contracts, combinations, or conspiracies in restraint of trade; (2) tying and exclusive dealing arrangements; (3) monopolization and attempts to monopolize trade or commerce; and (4) price discrimination. The act authorizes the Attorney General to investigate suspected violations, and to sue for damages and injunctive relief on behalf of state residents who have suffered damages, and on behalf of the state or any of its political subdivisions concerning damages to its general economy. State law authorizes the Attorney General to enforce the act's provisions by investigating and instituting proceedings for suspected violations. A brief description of the act's components is provided below.

Restraint of trade or commerce. Two provisions of the act make certain contracts, combinations, or conspiracies unlawful. Specifically, C.G.S. §35-26 that a contract, combination or conspiracy is unlawful if it is “in restraint of any part of trade or commerce.” The other provision, C.G.S. §35-28, makes contracts, combinations, or conspiracies unlawful if they have the purpose or effect of: (1) fixing prices; (2) controlling production, sale, or supply; (3) allocating customers or markets (functional or geographical); or (4) refusing to deal or inducing others not to deal with another person.

Tying and exclusive dealing arrangements. C.G.S. §35-29 prohibits a supplier from leasing, selling, or contracting to furnish services or goods, and from fixing a price or giving a discount or rebate, “on the condition or understanding that the lessee or purchaser shall not deal in the services or the commodities of a competitor or competitors of the lessor or seller,” when the effect may be “to substantially lessen competition or tend to create a monopoly in any part of trade or commerce . . .” The prohibition applies when the good or services are for the use, consumption, or resale in Connecticut. This provision includes agreements to sell a product only on the condition that the buyer (1) also purchases a different (or tied) product, or at least that he will not purchase that different product from any other seller; (2) deals only with the seller; or (3) takes all of his needs from the seller for a specified period of time.

Monopolization and attempts to monopolize. C.G.S. §35-27 makes illegal “[e]very contract, combination, or conspiracy to monopolize, or attempt to monopolize, or monopolization of any part of trade or commerce.” In contrast to the previous statutory references, this provision may be violated by unilateral as well as by concerted action. The act states that monopolization consists of “(1) the possession of monopoly power in the relevant market and (2) the purposeful acquisition or maintenance of monopoly power. Monopoly power has been defined as the power to control prices or exclude competition”.

Price discrimination. Under certain conditions, C.G.S. §35-45 outlaws price discrimination between different purchasers of equivalent commodities, if the effect may be to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or

prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

The provision does not apply to leases, licenses, consignments, or offers to sell. It requires that the discrimination be by the same seller and between different purchasers, and that the sales involve “commodities,” which the act defines to include any tangible or intangible property, but not services. The commodities must be sold for use, consumption, or resale in Connecticut.

The provision is not violated if the price differences reflect “differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered . . . [or] changing conditions affecting the market for or the marketability of the goods. ” A seller may rebut a prima facie case of price discrimination by showing that his lower price “was made in good faith to meet an equally low price of a competitor” (CGS § 35-45(b)).

Exemptions. There are three exemptions identified in the act (CGS § 35-31). Subsection (a) declares that the act does not prohibit labor, agricultural, or horticultural organizations established for mutual assistance, and not having capital stock, from “lawfully carrying out the legitimate objects thereof.”

Subsection (b) is a narrowly drawn version of the doctrine of state action immunity from antitrust liability outlined by the U. S. Supreme Court.³³ The provision immunizes “activities of any person when said activity is specifically directed or required by a statute of this state, or of the United States.”

³³ Parker v. Brown, 317 U. S. 341, 350-52 (1943)