

# COMMITTEES OF JURISDICTION FOR PMAA 2010 CONFERENCE ISSUES

## Futures Market Reform:

**House Committee(s):**  
All Members of Congress  
Agriculture; Financial Services

**Senate Committee(s):**  
All Members of Congress  
Agriculture; Banking

## Credit Card Interchange Fees:

**House Committee(s):**  
All Members of Congress  
Judiciary; Financial Services

**Senate Committee(s):**  
All Members of Congress  
Judiciary; Banking

## LIHEAP:

**House Committee(s):**  
Education and Labor  
Appropriations (Subc. on Labor, Health)

**Senate Committee(s):**  
Health, Education, Labor and Pensions  
Appropriations (Subc. Labor, Health and Human Services)

## Global Climate Change/Alternative Fuels:

**House Committee(s):**  
All Members of Congress  
Energy and Commerce

**Senate Committee(s):**  
All Members of Congress  
Environment and Public Works, Energy and Natural Resources

## NORA/OILHEAT EFFICIENCY CREDITS/HOMESTAR:

**House Committee(s):**  
Energy and Commerce; Ways and Means

**Senate Committee(s):**  
Energy and Natural Resources; Finance

## Emergency Price Controls:

**House Committee(s):**  
All Members of Congress  
Energy and Commerce; Judiciary

**Senate Committee(s):**  
All Members of Congress  
Energy and Natural Resources; Judiciary; Commerce

## Leaking Underground Storage Tanks:

**House Committee(s):**  
Appropriations (Subc. on Interior Environment)  
Energy and Commerce

**Senate Committee(s):**  
Appropriations (Subc. on Interior & Environment)  
Environment and Public Works

## Interstate Rest Area Commercialization:

**House Committee(s):**  
Transportation

**Senate Committee(s):**  
Transportation

## Cargo Tank Retrofit Mandate:

**House Committee(s):**  
Transportation

**Senate Committee(s):**  
Commerce

## Biodiesel Tax Credit/:

**House Committee(s):**  
Ways and Means

**Senate Committee(s):**  
Finance

## **EXPANDING GROWTH OPTIONS FOR ETHANOL USE**

PMAA members own or supply gasoline to 100,000 U.S. retail gasoline locations. In recent years, Congress and the President have taken major steps to change our nation's energy future by fostering the development of home-grown alternative fuels. The Energy Independence and Security Act of 2007 (EISA) (Pub. Law 110-40) requires the motor fuel supply to contain 36 billion gallons of ethanol and advanced biofuels by 2022 (known as the renewable fuel standard (RFS)).

Biofuels like ethanol and biodiesel have a variety of impacts on the economy and the environment. PMAA supports the use of renewable fuels in gasoline and distillates and many of our member companies are supportive of expanded use of ethanol, but regulatory and legal barriers must be overcome in order to protect petroleum marketers, retailers and consumers.

### **THE ETHANOL "BLEND WALL"**

EISA requires 12.95 billion gallons of renewable fuels in the nation's fuel supply for 2010, 13.95 billion for 2011 and 15.2 billion for 2012. In most regions of the country, ethanol blends may contain up to 10 percent ethanol which is believed to pose no significant problems to existing gasoline dispensing and storage infrastructure.

Here is where the "blend wall" comes into play. The nation consumes approximately 145 billion gallons of gasoline each year and approximately 120 billion gallons are subject to the RFS ethanol blending formula. Even if every gallon of gasoline included in the RFS were blended with 10 percent ethanol, refiners would hit the "blend wall" around 12 billion gallons. Refiners are expected to hit the ethanol "blend wall" between 2011 and 2012 (at current 10 percent ethanol blended consumption).

EPA has been petitioned by the ethanol industry (Growth Energy) to solve the "blend wall" dilemma by permitting ethanol blends up to 15 percent (E15). Increasing gasoline blends from E10 to E15 could solve the "blend wall" issue but it creates other problems that would need to be resolved. In December 2009, Growth Energy's waiver application to allow E15 blends was denied by EPA. EPA said the decision must be delayed until additional testing is completed on the effects of E15 use on conventional fueled vehicle engines and emission systems.

It is likely that EPA will approve, but not mandate, an E15 fuel by August 2010 for vehicles manufactured in 2001 and beyond. PMAA member companies are concerned about the potential conflicts with existing laws and regulations and, with possible equipment damage and liability, if EPA approves the new fuel.

## **If Congress truly wants to expand ethanol use, regulatory and legal barriers surrounding E15 must be addressed:**

- Gasoline retail infrastructure equipment is certified to dispense and store up to 10 percent ethanol by Underwriters Laboratories (UL). Although UL has expressed "confidence" that most retailers can safely sell up to 15 percent ethanol blended gasoline, they have not actually "certified" existing dispensers, piping or underground storage tanks for such use. This is a major obstacle because several federal regulations, state laws, local ordinances and insurance policies require UL certified equipment. Retailers who decide to sell E15 could be held liable to pay for cleanup costs if a leak occurs due to the increased ethanol blends, and insurance companies may deny coverage.
- Auto manufacturers extend warranties on existing vehicle fleets up to 10 percent ethanol. They have not been willing to amend their warranties to handle blends above 10 percent. Even if EPA approves E15 for use in model year vehicles 2001-present, the auto manufacturers have indicated that they are not likely to amend their warranties, arguing that further testing needs to be completed.
- Marketers also need misfueling protection. Manufacturers of small engines, such as boats, lawn mowers, and chain saws, believe E15 will overheat and damage small engines. Retailers will surely be ensnared in litigation if the small engines are damaged. Small engines are only certified to handle up to 10 percent ethanol. It is not likely that small engine manufacturers will amend their warranties to handle blends above 10 percent.

### **"THE ASK"**

Congress and EPA must provide legal and regulatory certainty to retailers if E15 is to be approved for use. Currently, PMAA is researching and developing legislation to reduce the legal and regulatory barriers which limit retailer abilities to sell E15. PMAA welcomes members of Congress participation in developing this important legislation. Absent legal and regulatory certainty for E15, very few retailers, if any, will be able to legally sell E15 which will hinder the expansion of ethanol use in the U.S.

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## **HIDDEN CREDIT CARD FEES HARM CONSUMERS**

### **BACKGROUND**

Nearly every U.S. retailer faces a common problem, the increasing costs of accepting credit cards for payment. These costs known as interchange fees affect every retailer who accepts credit or debit cards, and are borne by customers' everyday without their knowledge. Consumers pay more for goods and services to help cover these fees, approximately \$350 per household annually.

When a purchase is made with a credit or debit card, the payment is processed through both the retailer's bank and the bank that issued the card. The issuing bank charges the retailer's bank a fee to process the transaction. In turn, the retailer's bank then adds its own transaction processing fee and passes both fees along to the merchant. Although transactions and accounting are administered electronically, credit card interchange fees have risen 117 percent since 2001.

Currently, the interchange fee is the only cost a retailer cannot negotiate. It is not uncommon for interchange fees to exceed a retailer's net profit margin.

Consumers who pay with a debit card pay for interchange fees even though the debit card is linked to the consumers' checking account. Processing a debit card transaction should be treated like an electronic check. Retailers can negotiate the cost of processing e-checks with banks. Currently, the interchange fee is the only cost a retailer cannot negotiate.

PMAA and the Merchants Payments Coalition (MPC) support comprehensive interchange fee reform that includes e-check parity. MPC is composed of 88 state and national trade associations, which PMAA is a member, represents 2.7 million locations and 50 million employees.

### **LEGISLATION**

The Credit Cardholders' Bill of Rights Act (H.R. 627) which was signed into law in May 2009, required a Government Accountability Office (GAO) study on the effects of interchange fees on retailers, consumers and other parties. The report which was released in November 2009, disputed Visa and MasterCard officials' account that average interchange rates have remained fairly constant the last 20 years. GAO said Visa and MasterCard's anti-competitive practices have actually led to dramatically increased interchange rates. For instance, both networks' corporate card's swipe fee rates have increased considerably – Visa by 36% and MasterCard by 82%. GAO highlighted that "if negotiations resulted in lower interchange fees for merchants, then merchants could pass these savings to consumers through lower prices." PMAA praises this statement because it highlights the competitiveness of the motor fuels industry.

Additionally, Reps Welch (D-VT) and Shuster (R-PA) introduced H.R. 2382, the "Credit Card Interchange Fees Act of 2009." This legislation would eliminate anticompetitive contract rules, such as the Honor All Cards rule that Visa and

MasterCard impose on the merchants who accept their cards. The bill also requires disclosure of interchange fees to the FTC, Federal Reserve, and consumers.

Last week, Sen. Durbin (D-IL) introduced amendments to the financial regulatory reform legislation to address interchange fees on debit card transactions and allow retailers to offer discounts based on payment type and which credit card is used. Recently, Rep. Welch (D-VT) introduced legislation similar to Durbin's amendments.

### **“THE ASK”**

Urge your Senators to pass Sen. Durbin's amendments to the Financial Regulatory Reform legislation (S. 3217) to reduce the burden interchange fees have become to retailers/consumers.

#### **1. Durbin-Leahy-Landrieu Amendment (#3771) to stop credit/debit card networks from imposing anti-competitive restrictions on the small businesses, merchants and government agencies who accept their cards.**

- Visa and MasterCard could no longer use their dominant market power to force those who accept their cards to also agree to anti-competitive restrictions on the discounts they can offer and on their ability to choose the forms of payment they accept.
- The amendment would say that sellers can do the following things without being threatened or punished by card networks like Visa and MasterCard:
  - Offer discounts to customers to use a competing card network;
  - Offer discounts for use of cash, check, debit card or stored-value card (current law does not fully ensure that merchants can offer these discounts); and
  - Set a minimum or maximum transaction amount for payment by card (small businesses lose money on transactions when they cannot set these amounts).
- This amendment does not involve any government regulation of interchange fees. All it does is allow more market-based competition and more discounting options for consumers.

#### **2. Durbin – Specter - Whitehouse Amendment (#3769) to ensure that interchange fees charged for debit card transactions are reasonable and proportional to the costs incurred in processing the transaction.**

- Will prevent Visa and MasterCard from continuing to increase debit card interchange fee rates, which currently amount to 1% - 2% of the transaction even though the actual cost of processing a debit transaction is far less.
- Direct the Fed to issue regulations to ensure that interchange fees imposed on debit card transactions be “reasonable and proportional”. (The rules would have a carve-out for small bank debit cards).
- Without this amendment, Visa and MasterCard (which control nearly all of the debit card market) will continue to raise debit interchange fees simply because their market power means that merchants can do little to fight back. Reducing debit interchange fees would be like a tax break on every debit card sale a merchant makes.

Urge members of the House to support Rep. Welch's (D-VT) bill, H.R. 5199, the Electronic Check Parity Act of 2010. Like Sen. Durbin's amendments, the bill would give the Federal Reserve the authority to regulate interchange fees on debit cards and permit retailers to discount for payment type and card.

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## **NATIONAL OILHEAT RESEARCH ALLIANCE**

### **ISSUE BACKGROUND**

The National Oilheat Research Alliance (NORA) is a collaborative program established to strengthen the heating oil industry by improving education and training for employees, providing information to consumers, and developing highly energy efficient products for oilheat customers without a subsidy from the federal government. The heating oil industry is primarily composed of small businesses, and NORA has provided the opportunity for marketers and dealers to work cooperatively to build a stronger, more energy efficient industry. NORA has developed world class education programs, more efficient appliances, and a strong consumer education campaign highlighting the benefits of oilheat.

In 2005, Congress extended NORA for an additional five years, but only after the program had lapsed for eight months. That lapse was extremely disruptive, resulting in delayed projects and requiring a restructuring of operations. Now, law expired on February 6, 2010.

NORA is essential to the long term future of the heating oil industry, and reauthorization will ensure that oilheat customers continue to reap the benefits.

### **LEGISLATION NEEDED**

Last year, Senators Reed (D-RI), Snowe (R-ME) and Shaheen (D-NH) introduced S. 1672, a bill to extend NORA for one year, to February 2011, allowing the oilheat industry time to work with Congress on a longer-term reauthorization measure that would embrace efforts to develop a renewable, ultra-low sulfur heating fuel for homes and businesses. S. 1672 was approved by the Senate Energy and Natural Resources Committee by voice vote and was placed on the Senate's legislative calendar for action in 2010. In the House, Representatives Welch (D-VT), Pitts (R-PA), Michaud (D-ME) and McMahon (D-NY) introduced similar NORA legislation (H.R. 3589).

S. 1672 and H.R. 3589 would provide the best means for enabling the heating oil industry to continue to finance R&D, training, safety, and consumer information without the use of federal tax dollars. PMAA urges both the House and Senate to pass a one year extension of NORA immediately either as a standalone measure or through a Jobs or energy package. The heating oil industry is also eager to begin discussions on a long term authorization that would empower the industry to sell a cleaner and greener fuel, and develop more manufacturing jobs in the United States. While a short term extension is appropriate, developing a way to ensure that this fuel meets the needs of its customers and the country is also vital.

## **NORA ACCOMPLISHMENTS**

- NORA has been working with the National Biodiesel Board to bring biofuels to the heating oil industry. Called BioHeat®, biofuels have excellent performance abilities and are cleaner than other sources. The American Society for Testing and Materials (ASTM) approved BioHeat blends of B5 (a five percent blend). NORA continues to work with ASTM on approval for 6 percent (B6) to 20 percent (B20) blends of biodiesel.
- NORA developed highly efficient home boilers and furnaces now available in the marketplace. Prior to NORA, the top efficiency for oilheat equipment was 86 percent.
- An interactive database that tracks all training records, and provides up-to-date training opportunities. It allows Heating Technicians to access detailed reports on their credential status, and educators can easily post CEUs for their students and conduct communication to potential students for upcoming classes through this database.
- NORA developed a Fuel Savings Analysis Calculator (FSA) for demonstrating to consumers the advantages of upgrading older heating and hot water systems to new, higher efficiency equipment.
- A wealth of educational materials for the heating oil industry including books on how to assist consumers in saving energy, improving equipment performance, preventing leaks and responding to petroleum releases.
- NORA partnered with community colleges and vocational schools (private and public) to establish training curricula for well trained professional employees.
- NORA has developed effective communication vehicles to inform customers that oilheat is a modern, high quality product delivered by local businesses. In the coming years, NORA will work to ensure all consumers have access to information about high efficient equipment.
- NORA continues to improve tank quality. The safe storage of oil is of critical importance, and NORA is developing new technologies, better inspection techniques, and more effective ways to remediate leaks.

## **“THE ASK”**

PMAA urges Congress to pass a one year extension of NORA (S. 1672/H.R. 3589) immediately either as a standalone measure or through a Jobs or energy package. Also, PMAA urges Congress to pass a longer term extension of NORA that would empower the industry to sell a cleaner and greener fuel and would develop more manufacturing jobs in the United States.

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## GLOBAL CLIMATE CHANGE

Climate change is a complex and long-term public policy challenge that must recognize the vital role energy plays in maintaining jobs, economic strength and way of life. Most PMAA members will accept fair and reasonable carbon emission reductions as long as the reductions are balanced across all carbon sources. Policy recommendations to date have placed a disproportionate amount of reductions on liquid fuels such as gasoline, diesel and heating oil. Furthermore, since people rely on heating oil to survive and reducing their consumption is quickly limited by cold weather, home heating oil should not be included in any reduction requirements that inevitably increase price.

### **CLIMATE CHANGE LEGISLATION**

#### House of Representatives

President Obama and Congressional leaders have pledged support for legislation designed to curb carbon emissions. The largest component of the legislation will focus on dramatically reducing carbon emissions resulting from petroleum and coal consumption. In June 2009 the House of Representatives narrowly passed H.R. 2454, the American Clean Energy and Security (ACES) Act, that would require a 17 percent reduction in carbon emissions below 2005 levels by 2020.

In its analysis, the Energy Information Administration (EIA) estimated that the ACES climate bill would drive gasoline, diesel and heating oil prices above five dollars per gallon. The increased energy costs would burden every American, but the burden would fall hardest upon rural Americans.

PMAA opposes H.R. 2454 because it would unfairly burden consumers. The bill has become more controversial in recent months because of its potential for massive bureaucracies and credit trading influence which would give Wall Street a blank check to trade carbon derivatives and drive up the price of motor and heating fuels.

#### Senate

A number of legislative proposals have been introduced in the Senate to curb carbon emissions; however broad support remains elusive. In November 2009, the Senate Environment and Public Works (EPW) Committee approved a bill that was introduced by Senators Barbara Boxer (D-CA), chair of the EPW Committee, and John Kerry (D-MA), chair of the Foreign Relations Committee. S. 1733, the Clean Energy Jobs and American Power Act, commonly referred to as the Boxer-Kerry bill, calls for a cap-and-trade regime with a 20 percent reduction in carbon emissions by 2020.

Without much support for the Boxer-Kerry bill in the Senate, Senators John Kerry (D-MA), Joe Lieberman (I-CT) and Lindsey Graham (R-SC) drafted a climate bill that would put a price on carbon and include incentives for clean coal technology and nuclear power; provisions they hoped would gain broad bipartisan support. However, a combination of other legislative priorities and difficulty getting other Republican support has delayed introduction of the bill. Given the demands on Congress and the beginning of the elections process, it is unlikely the Senate will move a climate bill this year.

The Waxman-Markey bill, Boxer-Kerry bill, and Kerry-Graham-Lieberman bill discriminate against liquid fuels. Any policy developed to reduce carbon emissions should be spread over all carbon sources – equivalent to their carbon emissions. Furthermore, heating oil should be given special consideration because homeowners must heat their homes and the potential to cut costs via reductions in consumption are greatly limited.

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## **HOME OILHEAT EFFICIENCY TAX CREDITS AND HOME STAR LEGISLATION**

### **ISSUE BACKGROUND**

The Petroleum Marketers Association of America (PMAA) and the New England Fuel Institute (NEFI) represent nearly all of the home heating fuels distributed to American homes and businesses and also represent thousands of jobs directly related to the manufacturing and maintenance of oil heating equipment. The oilheat industry is a vital part of our nation's economy which is evolving into a cleaner and greener fuel through BioHeat®, ultra low sulfur diesel (ULSD) and highly efficient boilers and furnaces. While we applaud federal attempts to incentive home energy efficiency projects through the American Recovery and Reinvestment Act of 2009 (ARRA), also known as the stimulus package, we are concerned that the guidelines set out for qualifying equipment exclude a large portion of highly efficient oilheat equipment. PMAA and NEFI urge Congress to make changes to the stimulus bill which will allow the oilheat industry to benefit from several energy efficiency tax credit provisions designed to encourage the greater use of more energy efficient heating equipment.

The stimulus package contained provisions to extend home energy efficiency tax credits (\*\*Section 25C credits\*\*) through 2010 with a \$1,500 aggregate cap which allows taxpayers to deduct the whole amount for one single efficiency upgrade to their home if the system meets the following criteria: *Qualified Oil heat water boiler with AFUE (Annual Fuel Utilization Efficiency) rate of not less than 90.* Qualified oil hot water boilers with an AFUE of not less than 90 is unduly restrictive as less than one percent of the total available oil hot water boilers can achieve this AFUE rating, and our contention is that, for oil hot water boilers, the best measurement of efficiency does not fall exclusively within the AFUE rating. Furthermore, there are only four gas-fired boilers made in the U.S. that qualify under the ARRA and only one qualifying oil-fired boiler. All other residential boilers that qualify for consumer tax credits are largely manufactured overseas. We have manufacturing facilities in America whose workers would see an enormous benefit from our federal government's investment in expanding American energy efficiency objectives using American-made equipment.

### **STUDIES COMPLETED ON AFUE OILHEAT RATINGS**

Department of Energy Laboratory studies show savings of 25 percent or more can be achieved by upgrading homes to high efficiency integrated heat and hot water systems. Field results are often much higher. Existing technology saves more energy than is recognized in the boiler AFUE rating method. As such, the boiler AFUE rating is not a predictive standard. See <http://www.nora-oilheat.org/site20/uploads/NORA%20Policy%20r7.pdf> for complete details of the DOE's Brookhaven National Laboratories study.

The experts at Brookhaven estimated that there are more than one million oil-fired boilers nationwide operating at efficiencies of 80 percent or less. Additionally, the DOE laboratory studies highlighted:

- The best performing system in the study is a proven American made oil heat system, which outperformed modulating condensing equipment with higher AFUE ratings.
- The systems are affordable, easy to service, use industry standards components, and have relatively quick payback periods.
- Upgrades typically are completed in one day.

Over the past 30 years, progress in oilheat technology has cut the national per-consumer annual consumption of heating oil from approximately 1,100 gallons down to 700 gallons – a reduction of more than 36 percent – and an associated reduction in emissions of all types, including CO2 emissions.

**PMAA and NEFI urge Congress to make a short-term, minor change in minimum AFUE ratings eligible for the federal tax credit which will allow greater a application of these technologies and greater reductions in emissions as a result...**

### **CONGRESSIONAL ACTION NEEDED**

*Amending Division B, Title I, Subtitle B, Part III, sec 1121(F) Qualified oil heat water or steam boiler, or furnace – The term qualified oil hot water or steam boiler or furnace’ means any oil hot water or steam boiler or furnace which achieves AFUE rate of not less than 90, or*

- 1) *Oil boilers with an 86 AFUE rating or greater that has temperature reset or thermal purge controls.*
  - 2) *Furnaces with an 86 AFUE that uses an electronically commutated blower motor.*
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### **HOME STAR – “CASH FOR CAULKERS” PROGRAM**

The President’s HOMESTAR “cash for caulkers” proposal would expand the existing Section 25C tax credits for boilers and furnaces among other efficiency improvements such as air-sealing, attic insulation, duct seal or replacement, wall insulation, windows, air-conditioning and super efficient refrigeration. The Home Star Energy Retrofit Act of 2010 (H.R. 5019) and Senate Home Star legislation (S. 3177) set oil furnaces with an 86 AFUE rating or greater that use an electrically commutated blower motor and an oil boiler with an 86 AFUE rating or greater that has temperature reset or thermal purge controls are eligible for the federal rebates under the Silver Star and Gold Star programs. The bill would establish a six billion dollar program that would offer tiered rebates depending on the upgrades.

Under the Silver Star program, homeowners could receive as much as \$1,500 per retrofit but not to exceed \$3,000 or 50 percent of the total project cost (whichever is less). Eligible measures include insulation, duct sealing, water heaters and HVAC units, windows, and doors. Homeowners seeking to make major efficiency improvements would be eligible for up to \$8,000 under the Gold Star rebate program to retrofit their whole home to achieve a 20 percent energy savings. The program would provide direct rebates at the point of sale for certain items. Hardware stores and large national home improvement chains can provide rebates to the customer and then seek reimbursement from the Federal government. GOLD STAR performance standards would require an energy audit by a BPI (Building Performance Institute) accredited contractor or Residential Energy Services Network RESNET® Certified Rater before any HOMESTAR rebates would be released.

The heating oil industry recommends that an additional yet related prescriptive measure be included in the Silver Star proposal - the retrofit of existing hydronic equipment with Automatic Water Temperature Controllers. These electronic control configurations can be used with existing installed hydronic boilers installed at a fraction of the cost of complete equipment replacement, and yield 10 to 15 percent energy savings. While the performance-based concept has exceptional merit, the test-in/test out and modeling requirements add a layer of costs which reduce the funds available for the actual components of efficiency improvement. It is worth noting that the Gold Star program will have limited impact on jobs creation as many of the small business which is vital to effective delivery of consumer energy efficiency do not have the resources available for the requisite training and equipment needed to conduct relevant performance-based efficiency projects.

### **“THE ASK”**

**PMAA and NEFI urge Congress to pass HOME STAR legislation (H.R. 5019) (S. 3177) quickly and to make minor adjustments to Section 25C credits under the ARRA to reflect the HOME STAR eligibility language. Additionally, PMAA and NEFI urge legislators to include the Automatic Water Temperature Controller section above in the HOME STAR bill.**

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## **EXTENSION OF THE BIODIESEL BLENDERS TAX CREDIT**

The Petroleum Marketers Association of America (PMAA) and the New England Fuel Institute (NEFI) represent nearly all of the home heating fuels sold in America and our members market clean and efficient BioHeat®. **We urge Congress to expedite a one-year extension to the \$1 per gallon federal biodiesel blenders' tax credit which expired at the end of 2009 and make it retroactive.**

### **BIODIESEL -- IMPORTANT TO HEATING FUELS INDUSTRY**

Many of our members market biodiesel at wholesale and retail to meet growing U.S. consumer demand. In order to maintain consumer demand as well as incentives for continued investments in biodiesel production, transportation and retailer infrastructure and storage, immediate renewal of the biodiesel blender's tax credit is essential.

Renewal of the tax credit is also vital for the U.S. heating oil industry to expand BioHeat® as well as transitioning towards an ultra-low sulfur diesel (ULSD) component in our nation's heating oil supply. The industry supports Congressional, regional and state government goals to increase domestic energy and environmental security, including a reduction to imported petroleum and nation-wide greenhouse gas emissions. However, federal policies that support the biodiesel industry, such as the \$1 per gallon tax credit, are needed in order to help facilitate this transition and continued consumer interest in biodiesel in the motor and heating fuel markets.

### **BIODIESEL TAX EXTENDERS LEGISLATION**

The House approved a one year extension of the \$1 per gallon credit in December 2009, as well as the ten cents per gallon production credit for small producers, as part of the Tax Extenders Act of 2009, H.R.4213. The House approved the bill 241-181. The Senate passed Jobs bill II, the "American Workers, State and Business Relief Act," as a substitute amendment to H.R. 4213 by a vote of 62 – 36 in March 2010. Included in Jobs bill II is the vital one year extension of the \$1 per gallon biodiesel blender's tax credit. The credit will also be available retroactively for biodiesel produced during the credit's lapse. Since the House and Senate used different offsets, they must reconcile differences which they intend to do by Memorial Day recess.

### **"THE ASK"**

**PMAA and NEFI urge Congress to act immediately and finalize a one year retroactive extension of the \$1 per gallon biodiesel blenders' credit in order to ensure the future of the biodiesel industry and the future of a renewable fuel for home heating.**

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## **COMMODITY FUTURES MARKET REFORM**

The Commodity Futures Trading Commission (CFTC) is the federal government regulator of commodity futures/swaps (derivatives) markets in the United States. Energy derivatives contracts that fall under CFTC jurisdiction include: crude oil, gasoline, ultra low sulfur diesel (ULSD), heating oil, electricity and natural gas. Trading of these derivatives contracts takes place predominately on the New York Mercantile Exchange (NYMEX) and the Intercontinental Exchange (ICE) – with trillions of dollars traded daily. Derivatives trading volume in unregulated or over-the-counter (OTC) markets have grown exponentially with some estimates of up to 400 percent since 2006 alone. The OTC market consists of privately negotiated contracts that enable companies or investors to hedge against or bet on swings in the value of energy commodities. Unlike exchanges, the business is unregulated and prices are not public. This is a serious problem that needs an aggressive legislative response, especially following the 2008 unprecedented run-up in gasoline, diesel and heating fuels prices.

Independent gasoline marketers and heating oil dealers have lost faith in the ability to use derivatives markets to determine a fair price for energy based on real-world supply and demand fundamentals. Countless Congressional hearings have revealed that there is inadequate transparency and that aggregate position limits are needed in the commodity trading markets. Public and private pension funds, hedge funds, sovereign wealth funds and other institutional investors are heavily investing in derivatives contracts for crude oil and refined petroleum products, and enjoy little or no controls, such as tough limits on speculative positions. Without sufficient oversight and aggregate position limits, market activity can distort the price of oil and other energy commodities.

Commodity futures markets were established as a tool for true physical hedgers to manage risk. Today, they have been hijacked as an investment tool by speculators looking to turn a profit. Pension funds, hedge funds, sovereign wealth funds and other institutional investments in commodities have exploded from \$13 billion in 2003 to \$317 billion in July 2008. Investment-only speculators that engage in a “buy and hold strategy” serve no purpose in the commodity markets other than to diminish its role as a tool for managing risk and discovering a fair market price for physical hedgers such as petroleum marketers, airlines and farmers.

Economists now agree that the U.S. economy entered a recession in December 2007 with the supply of crude oil increasing and the demand for crude oil decreasing during the first half of 2008 though oil prices continued to skyrocket. When crude oil reached \$150 a barrel for December delivery in July of 2008 and then fell to \$33 in December, it was not completely a result of supply and demand fundamentals – it was influenced by excessively-leveraged speculators, index investors and hedge funds in unregulated OTC markets. To understand the overwhelming complexity of the OTC derivatives markets, CFTC Chairman Gary Gensler stated in a recent Congressional hearing: “A \$50 gasoline fill-up at the pump could have as much as \$1,000 in derivatives behind it on average... the total value of derivatives traded in the United States is based on a dollar amount nearly 20 times the size of our economy.”

### **OIL SPECULATION STUDIES**

- Massachusetts Institute of Technology (MIT) Center for Energy and Environment Policy Research; “*The Oil Price Really Is A Speculative Bubble,*” September 2008
- Rice University’s Baker Institute for Public Policy, “*Who is in the Oil Futures Market and How Has It Changed?*” August 2009
- The Peterson Institute for International Economics; “*The 2008 Oil Price “Bubble,”* August 2009
- Princeton University; “*Index Investing and the Financialization of Commodities,*” September 2009

## **REGULATORY ACTION**

In January 2010, the CFTC issued its notice of proposed rulemaking to re-establish speculative position limits on regulated derivatives including crude oil, natural gas, heating oil and gasoline blendstock contracts. PMAA submitted comments in support of the rulemaking. Still, PMAA urges Congress to pass commodity futures market reform legislation to capture the entire over-the-counter (OTC) derivatives marketplace. Because of this proposed rulemaking, once Congress enacts language that captures OTC derivatives, CFTC will be able to move quickly to encompass position limits on the full marketplace. Without Congressional action, CFTC's ability to effectively monitor the entire OTC marketplace cannot be accomplished.

## **CONGRESSIONAL ACTION**

House Agriculture Committee Chairman Collin Peterson (D-MN) and House Financial Services Committee Chairman Barney Frank (D-MA) worked tirelessly during the first session of the 111<sup>th</sup> Congress to craft comprehensive derivatives market reform legislation. Eventually, their efforts were successful when they were able to attach amendments to the financial reform package known as the "Wall Street Reform and Consumer Protection Act" (H.R. 4173). The amendments would impose aggregate position limits, and set sensible margin and capital requirements that would limit volatility in the commodities derivatives marketplace. The amendments also accomplished other PMAA objectives including: requiring foreign boards of trade (FBOTs) (i.e. "London loophole") that provide services to U.S. participants to adopt for each of its contracts position limits; requires large trader reporting and OTC transactions to strict reporting requirements; requires the Commission to hold two public hearings a year consisting mostly of commercial interests to give their recommendations on position limits; and requires that nearly all OTC transactions be settled and cleared through a CFTC regulated derivatives clearing organization (DCO).

In the Senate, Banking Committee Chairman Christopher Dodd (D-CT) introduced a broad financial reform bill which includes futures market reform legislation in March 2010. The Committee approved the bill by voice vote without amendments. Furthermore, Senate Agriculture Committee Chairwoman Blanche Lincoln (D-AR) introduced the "Wall Street Transparency and Accountability Act of 2010," which was approved by the Agriculture Committee by a vote of 13 to 8 on April 21, 2010. Senator Chuck Grassley (R-IA) was the lone Republican who supported the bill.

## **"THE ASK"**

PMAA strongly supports the substitute amendment derivatives language offered by Senate Agriculture Committee Chairwoman Blanche Lincoln (D-AR) and Senate Banking Committee Chairman Chris Dodd (D-CT) included in the "Restoring American Financial Stability Act of 2010" (S. 3217) which will:

- Require speculative traders to conduct trades on a regulated exchange or swap execution facility and clear their transactions through a clearinghouse as well as subject speculative traders to aggregate position limits.
- Exempt end-users like PMAA member companies from clearing and margin requirements if they are doing so for commercial purposes.
- Grant the Commodity Futures Trading Commission (CFTC) the authority to regulate swaps, OTC, energy-related, and electronically-traded transactions by closing the so-called "Enron," "Swaps," and "London" or "Foreign Exchange" loopholes.

PMAA is aware that many amendments will be offered during PMAA's Washington, DC May 2010 Conference to try and weaken the bill. Some large end-user entities could undermine efforts by Congress to mitigate oil price volatility and prevent systemic risk by introducing amendments to provide broader exemptions to avoid clearing and margin requirements. We urge Senators to avoid the temptation to provide any type of broad end-user exemption that would allow Wall Street banks to exploit the legislation and cause unwarranted speculation in the futures market.

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## **FUNDING FOR LEAKING UNDERGROUND STORAGE TANKS**

### **ISSUE BACKGROUND**

Leaks (releases) from underground storage tanks (UST) pose a serious threat to the environment and to public health. In the 1980s, Congress and the Environmental Protection Agency (EPA) began to address the problem of UST releases by creating the Leaking Underground Storage Tank (LUST) Trust Fund financed by a one cent per gallon tax on gasoline and diesel, which will expire after September 30, 2011. In succeeding years, thousands of underground tank releases have been cleaned up. However, EPA estimates there is still a back-log of 102,000 tank leaks waiting to be completed.

To combat this threat, Congress included several new inspection, maintenance and operational requirements on tank owners/operators and individual state environmental quality departments in the Energy Policy Act of 2005 (EPAAct). EPAAct also authorized more money (\$200 million per year through 2009) to be made available to states from the LUST Trust Fund.

Many members of Congress supported these underground tank mandates on state governments because increased LUST fund expenditures were authorized. Petroleum marketers have supported the LUST fund and have paid \$ 3.6 billion in LUST taxes since its inception.

Despite new spending authorizations and the current trust fund balance of \$3.2 billion, Congress and the President have woefully under-funded the program in recent years, appropriating between \$72 and \$77 million each year. The fund collects approximately \$190 million for clean-ups and earns approximately \$127 million in interest each year. It is essential that these funds be used for the purposes for which they were collected.

### **FUND IT OR FLEX IT**

PMAA urges Congress to appropriate all funds authorized by EPAAct for the Leaking Underground Storage Tank Program. Unfortunately, the President has asked for \$113.2 million for the LUST program in FY 2011. The economic stimulus package, which passed in January 2009, included an additional \$200 million in funding for LUST remediation, but cannot be used for new inspection and enforcement requirements.

The LUST Trust Fund has consistently been underfunded since Congress imposed new mandates on state UST inspection agencies in 2005. EPAAct of 2005 authorized \$200 million a year through 2009. Even though marketers pay \$190 million into the fund annually and there is over three billion dollars held in the fund, petroleum marketers are now being forced to pay higher state UST fees to cover the federal appropriations shortfall.

Absent full funding, PMAA strongly supports providing flexibility to the states in complying with the new EPAAct regulations.

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## EMERGENCY PRICE CONTROLS (GOUGING)

### ISSUE BACKGROUND

Few things agitate consumers more than rising gas prices. As crude oil prices hit unprecedented levels which reached \$147 a barrel in 2008, consumers and politicians point the finger at oil companies and how they are “gouging” the public. While there is no evidence to support these claims, a lack of understanding as to how gasoline prices are set leaves marketers and retailers to bear the brunt of consumers’ frustration.

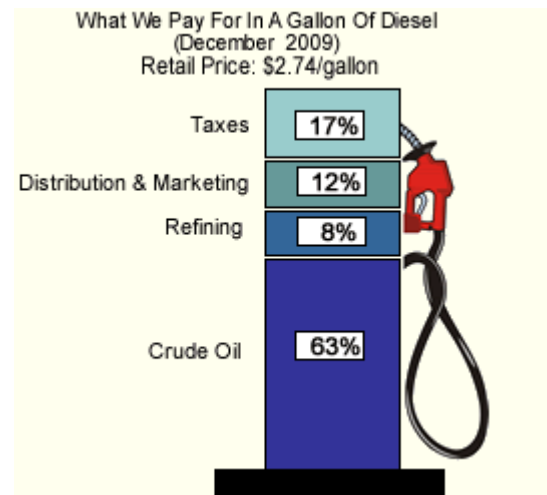
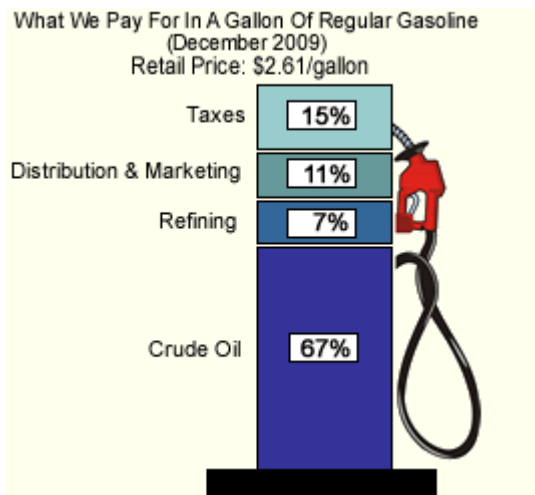
### HOW GASOLINE IS PRICED

The U.S. motor fuels production and distribution system is extremely complex and few people outside of the petroleum industry truly understand how the retail price of gasoline is determined.

- 1) **Crude Oil:** The price of crude oil is the biggest contributor to the price of gasoline accounting for 76 percent of the price per gallon consumers paid during July 2008. Worldwide industrial growth and geo-political as well as U.S. failure to develop crude oil reserves in the Gulf of Mexico, the Outer-Continental Shelf (OCS) and the Arctic National Wildlife Reserve (ANWR) push prices up.
- 2) **Refining Capacity:** A new U.S. oil refinery has not been built in over 30 years and dozens have been shuttered. Cumbersome environmental regulations and permitting processes make refiner plans to expand production capacity more difficult than they should be.
- 3) **Futures Market Speculation:** Futures markets have become the dominant wholesale pricing mechanism for daily gasoline, diesel and heating oil prices. With the massive inflow of capital and non-commercial speculators such as hedge funds, pension and endowment funds into commodity markets, prices on energy contracts become increasingly volatile and excessively high without the supply and demand fundamentals to justify the run-up from about \$50-\$60 dollars per barrel in early 2007 to almost \$150 in July 2008.

The influx of non-commercial investment has created artificial demand for energy commodities which has destroyed the price discovery mechanism that commodity markets provide to physical hedgers such as petroleum marketers, airlines and farmers. Furthermore, loopholes in law allow non-commercial investors to avoid position limits which leads to excessive speculation and higher energy prices. PMAA supports an open and transparent energy futures market with aggregate position limits on non-commercial traders.

- 4) **Boutique/Renewable Fuels Mandates:** Some states and localities have imposed specific recipes for gasoline and diesel supplies sold within their jurisdiction. These boutique fuels requirements create supply shortages, and in most circumstances, supply shortages foster higher prices.
- 5) **Credit Card Fees:** In 2008, gasoline retailers paid \$8 billion to banks and credit card companies in fees. Card companies collect an outrageous percent of the total per gallon price in interchange fees. Until interchange fee reform is addressed, retailers will continue to pay excessively high and unfair interchange fees, which were the second largest expense item in 2009 for motor fuels retailers.



Source: Energy Information Administration, Washington, DC

## **RETAIL PROFITS**

Major integrated oil companies have removed themselves from the retail gasoline business. Of the 160,000 U.S. retail gasoline locations, 97 percent are owned by independent businessmen and women. While those small businesses may sell a particular brand of gasoline, they do not share in any of the profits (or losses) generated by refiners. Gasoline retailers do not benefit from high crude oil or gasoline prices. Because they operate in such a competitive environment, the higher prices climb, the further margins are squeezed.

## **LACK OF EVIDENCE**

In the wake of Hurricanes Katrina and Rita, our nation's infrastructure was severely damaged. We saw widespread product shortages and gas prices began to skyrocket. If there was ever an opportunity for retailers to price gouge, this would have been it. Instead, the overwhelming majority of retailers behaved as responsible corporate and community citizens and set their prices according to prevailing market conditions.

According to the Federal Trade Commission (FTC) in its Spring 2006 report, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases*, 99 retailers were sent investigative orders for violating the FTC's definition of price gouging. Of those who had not already settled state charges, only 24 individual retailers were further investigated by the FTC. Of those 24, only six were found to have had "price increases that could not be substantially attributed to increased costs or national market trends." In any industry with 160,000 retail locations, there will inevitably be some bad actors. PMAA will certainly not make excuses for those who charge excessively high gasoline prices. However, a 99.9 percent compliance rate for the industry as a whole shows that state laws are working and that further federal legislation is not needed.

## **EFFECTS OF PRICE CONTROL LEGISLATION ON CONSUMERS**

Gasoline price control legislation will not just affect small businesses. The FTC report, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases*, includes general findings on the impacts that price gouging legislation may have on consumers. The FTC recognizes that when faced with an emergency or a similar time of rapidly rising gas prices, suppliers may be reluctant to send product to an affected area for fear of running afoul of price gouging laws. The result will be product shortages in affected areas creating further price discrepancies and building higher hurdles for consumers and emergency responders who desperately need fuel. Instead of being protected from unconscionable pricing, consumers would pay dearly at a time when their needs are the greatest.

## **"THE ASK"**

PMAA urges Members of Congress to appeal to reason rather than emotion when considering legislation to solve the "problem" of price gouging by mandating outrageous fines should a refiner, marketer or retailer charge an "unconscionable" price for their product.

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## **LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

PMAA members market 90 percent of the heating oil sold in the United States. Heating oil is used predominately in Northeast states and many lower income households also use oil to heat their homes. Heating oil marketers have a unique relationship with their customers and communities that electric and natural gas utilities cannot provide. Heating oil dealers are mostly small, second and third generation family-owned businesses who provide both fuel supply and service for heating oil equipment for tens of thousands of customers.

Rising energy prices have made the cost of home heating an increasingly heavy burden to bear. Our nation's low-income families and the elderly are hit the hardest. Sometimes they are faced with the choice between paying their heating bills and providing other essentials such as food, medicine, and warm clothing. The Low Income Home Energy Assistance Program (LIHEAP) has been critical in helping those citizens who need it most.

### **SUPPORT ADEQUATE FUNDING FOR LIHEAP**

Until recently, Congress failed to fully appropriate LIHEAP as established under the Energy Policy Act of 2005 (EPAct) authorizing \$5.1 billion. As part of the FY 2010 Omnibus spending bill, Congress appropriated \$5.1 billion for LIHEAP matching the same funding level the program received last year. President Obama's FY 2011 budget provides \$3.3 billion for LIHEAP while creating a new trigger mechanism to provide automatic increases in energy assistance whenever there is a spike in energy costs. The administration expects the trigger to provide roughly two billion dollars in additional assistance in 2011 and \$6.5 billion over 10 years. PMAA urges Congress to increase LIHEAP funding to the \$5.1 billion mark this year.

### **PROPOSED CHANGES TO LIHEAP**

As part of the 1990 LIHEAP reauthorization bill, Congress included language encouraging states to "leverage" better prices for customers participating in LIHEAP. States which are able to leverage better energy prices would, in turn, qualify for more federal LIHEAP dollars. In several Northeast states, leveraging programs targeting the heating oil industry have surfaced due to insufficient LIHEAP funding. These programs vary, but most are discount of margin-over-rack (MOR) or discount-off-retail (DOR).

Utility energy providers are able to build the costs of these leveraging activities into their rate bases. By applying a minimal rate increase across their entire customer base, they are able to pass the costs along to their customers. Heating oil marketers and dealers are not utility vendors.

Heating oil marketers cannot pass these costs along and because of aggressive state leveraging programs, many heating oil dealers have had to withdraw from state energy assistance programs to the detriment of their predominately low-income customers.

LIHEAP is the only welfare program that offers such a leveraging incentive. There is no leveraging program for food stamps, for example, where low-income customers can pay less for their groceries at the expense of other, higher income customers.

### **“THE ASK”**

As Congress moves to reauthorize LIHEAP, we urge legislators to increase funding to \$5.1 billion and reform the existing federal leveraging statute. Several proposals for reform include but are not limited to:

- Remove the leveraging requirement completely;
- Exempt heating oil, Bioheat®, kerosene and propane from the leveraging requirement;
- Restrict leveraging programs to only state regulated utilities that engage in cost recovery through public utility ratemaking procedures;
- Prevent states from essentially creating special classes of customers;
- Allow and encourage state fuel agencies to use the numerous and available pre-buy, cap and fixed price programs or other measures found in the marketplace, which dealers use to cut consumer costs;
- Discourage margin-over-rack (MOR) programs, which are causing a decline in fuel dealer participation in LIHEAP, and thus, hurt low-income Americans;
- Encourage leveraging options that are not prejudicial to dealers with long-standing customer relationships. For example, attempts by state programs will sometimes “bid out” the LIHEAP block of fuel sales. This interferes with dealer-customer relationships that are, in many cases, decades old. Because LIHEAP does not pay the entire household fuel bill, such practices will place more than one fuel supplier into the household energy mix, and as a result, increases the chance of supply problems, including overfilling of fuel tanks and resultant spill cleanups.

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## **HEALTHY FAMILIES ACT, H.R. 2460 AND S. 1152**

Congresswoman Rosa DeLauro (D-CT) introduced the “Healthy Families Act,” which would mandate that businesses with more than 15 employees provide a minimum of one hour paid sick leave for every 30 hours worked up to a total of 56 hours of paid sick time in a calendar year. The late Senator Edward Kennedy (D-MA) introduced companion legislation, S. 1152.

Workers can also use sick days to care for a sick family member, to obtain preventative or diagnostic treatment or to seek help if they are victims of domestic violence. Small employers with fewer than 15 employees are exempt from the Act and employers can require workers to provide documentation supporting any request for leave longer than three consecutive days.

**Definition of employer:** An employer is any “person” engaged in commerce or in any industry or activity affecting commerce who employs 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

**Covered employees:** Part time employees are included. If the normal workweek of such an employee is less than 40 hours, the employee shall earn paid sick time based upon that normal work week. For the purpose of counting employees for coverage, an employee is basically anybody on the payroll for any amount of time. This aspect of the definition has its roots in the Fair Labor Standards Act definition which is much broader than other employee definitions such as those found under equal opportunity laws. Employees will be eligible to earn paid sick time at commencement of employment.

**Use of sick leave:** An employee shall be entitled to use the earned paid sick time beginning the 60th calendar day following commencement of employment. After that 60th day, the employee may use the paid time as it is earned. An employer is permitted to loan paid sick time to an employee in advance of the earning of the time by the employee. Paid sick time earned shall carry over from one calendar year to the next; however an employer does not have to permit an employee to accrue more than 56 hours of paid sick time at a given time.

**Liability:** Lest we forget about the plight of our poor lawyers, the bill provides for a civil action to recover damages by employees, individuals or their representative for and on behalf of the employees or individuals; or the employees or individuals and others similarly situated.

**“THE ASK:”** This is not the first time this bill has been introduced. However, in these economic times it is particularly difficult to understand the logic behind introduction.

PMAA agrees with the U.S. Chamber of Commerce opposition to this legislation arguing that a new federal intrusion in the workplace cannot be justified, particularly when employers are struggling to stay in business in this struggling economy.

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## **“CARD CHECK”**

“The Employee Free Choice Act (EFCA) of 2009” (H.R. 1409 and S. 560) known as “card check” were introduced by Congressman George Miller (D-CA) and the late Senator Ted Kennedy (D-MA). With union membership sliding from 20 percent in 1983 to 12 percent of the labor force today, unions see “card check” enactment as an important step toward reversing their loss of power. However, 2009 marked a year of defeat for union organizers legislatively. According to a September 2009 Gallup Poll, a majority of Americans believes unions hurt the economy, and only 48 percent approve of them overall.

The Petroleum Marketers Association of America (PMAA) represents 8,000 independent petroleum marketing businesses that collectively account for approximately half of the gasoline and nearly all of the heating oil sold in the United States. Passage of “card check” legislation would harm small business petroleum marketers and their ability to remain competitive.

### **BACKGROUND**

The National Labor Relations Act (NLRA) has been in place for 70 years to ensure employers and employees have the opportunity to make their case. The majority of elections are held within 39 days and most union elections are won by organized labor. Under NLRA, if union organizers collect signatures from 30 percent of employees in a bargaining unit, the federal National Labor Relations Board will hold an election to determine whether to certify the union.

The EFCA provisions would undermine an employee’s ability to choose to join a union. Rather than having the ability to vote by secret ballot, the employee would vote in front of a union representative and would be open to threats and intimidation. The legislation would repeal the current system of a federally supervised election process with secret ballots to determine whether employees will have a union in their workplace.

If the EFCA becomes law, it would result in contracts being written by federal arbitrators instead of through the collective bargaining and negotiating process. Under EFCA, if the first contract (where there are protections to make sure both sides negotiate in good faith) is not agreed to within 120 days, the contract would be formed by a panel that may not understand the business or the competitiveness it faces. The 120 day time period is extremely short and would virtually grant the union the ability to stall contract negotiations to obtain more favorable conditions in the contract under a federal arbitration panel. In most cases, the union will go far beyond what the employer would be willing to accept.

### **“THE ASK”**

At a time when our nation needs job creation to lift this nation out of recession, Congress must not pass EFCA. Passage of EFCA would hinder small businesses and force employers to cut jobs. PMAA believes the government should not alter a system that is already working. The current process ensures employees and employers are given the time necessary to have the opportunity to make their case.

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## **INTERSTATE REST AREA COMMERCIALIZATION**

When Congress created the Interstate Highway System in 1956, community leaders feared that local businesses, jobs, and tax bases would shrink as truckers and other motorists bypassed their cities and towns. As a result, Congress prohibited development on interstate rights of way. Section 111 of Title 23 United States Code prohibits interstate rest areas built after January 1, 1960 from offering commercial services such as food and fuel.

The ban on the commercialization of rest areas has resulted in a strongly competitive economic environment with over 60,000 businesses developing along U.S. interstate highways. Prohibiting publicly-run rest areas from competing with private sector businesses has been an undeniable success, resulting in industries that provide valuable services such as travel plazas, truckstops, restaurants, hotels and gas stations. Collectively, these businesses are estimated to employ over two million people and contribute a total of over \$15 billion in federal, state and local taxes by 2010.

The previous Administration's highway reauthorization proposal included the establishment of a pilot program where 10 states would be eligible to offer commercial services at rest areas.

## **STATES MOVING FORWARD WITH REST AREA COMMERCIALIZATION**

In October 2008, California, Oregon and Washington submitted a proposal to the Department of Transportation to commercialize the state's rest areas as a tool for increasing revenues for the cash-strapped states. The application to provide alternative fuels and other commercial services to motorists along Interstate 5 (I-5) from Canada to Mexico seeks an exemption from the federal ban on such activities. The application was submitted under an experimental program within the Federal Highway Administration as a backdoor attempt to establish commercialized facilities along I-5. Additionally, newly elected Virginia Governor Bob McDonnell (R) supports efforts to allow commercialization of rest areas.

## **REST AREA COMMERCIALIZATION WILL COST THOUSANDS OF JOBS**

In an attempt to raise state revenue, many state governments have supported the idea of commercializing rest areas, contracting fueling and other services to private vendors. While advocates for commercialization claim that such services will benefit the public, the reality is that rest area commercialization would close as many as half of the nearby interchange-based businesses (according to a 2003 study by the University of Maryland).

PMAA is concerned that interstate-based gasoline retailers will be unable to compete with commercialized rest areas, which are conveniently located on the highway right-of-way, and would create a de facto monopoly in favor of businesses operated out of rest areas. Interstate rest area commercialization would destroy the property tax base of local governments and put many retailers out of business. Rest area commercialization results in an unfair competitive environment for privately-operated retailers, and will ultimately destroy a successful economic business model that has proven beneficial for both consumers and retailers.

## **"THE ASK"**

It is imperative that Congress maintain the current prohibition of rest area commercialization, and reject any attempt to weaken existing law should the issue come under discussion in the next highway bill reauthorization or any other legislation. Enabling the commercialization of rest areas will serve to destroy economic value to cities and towns dependent on interstate-based businesses. Ultimately, allowing the commercialization of rest areas will result in fewer retail gasoline stations, which will harm the motorists across the country.

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## **CARGO TANK TRUCK RETROFIT MANDATE**

Several years ago the Department of Transportation (DOT) looked closely at a proposal to prohibit transport trucks from traveling on highways with gasoline in the wetlines. DOT did not suggest a certain method but indicated their view of purging the wetlines with compressed air was a favored method. A device has been patented that uses the DOT preferred method. After much consideration, DOT determined there were too many unresolved issues to move forward with the proposal. The DOT is now taking another look at issuing a rule on the transportation of gasoline in the wetlines.

### **CURRENT LEGISLATION**

Representative James Oberstar (D-MN), Chairman of the House Transportation and Infrastructure Committee, supports an empty wetlines mandate on new and existing transport trucks. In November 2009, the Committee approved an amendment to H.R. 4016, the Hazardous Materials Transportation Safety Act, which mandates wetlines purging equipment on new trucks two years after enactment, and requires existing trucks to be retrofitted with the purging equipment by December 31, 2025. The Senate has a full legislative agenda and has not taken up the 2009 Highway bill or the Hazardous Materials Transportation Safety Act.

PMAA is actively working with other national associations in opposition to the proposals. PMAA has expressed concern about the financial burden particularly on retrofits that the mandate would impose on our members.

### **PMAA POSITION**

The wetlines purging equipment mandate:

- Will weaken our existing, very efficient, fuel transportation system. Wetlines purging equipment is practically non-existent. There are more than 27,000 gasoline, diesel and heating oil cargo tank trucks in the U.S. and less than 100 have purging equipment.
- Will unfairly burden thousands of small businesses who cannot afford to retrofit trucks. The cost to retrofit a truck is as much as \$8,000. The annual cost to maintain the purging equipment is \$400 per unit.
- Cannot be justified as good public policy. The supporters for requiring new equipment are understating costs and overstating benefits. A drastic shortage of purging equipment will drastically increase costs.

The experts DOT should study all of the facts concerning the transportation of gasoline in wetlines as part of the rulemaking process. An ill-conceived mandate will have many harmful and unintended consequences.

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