MAINE ENERGY Marketers Association

PMAA PETROLEUM MARKETERS ASSOCIATION OF AMERICA
1901 N. Fort Myer Drive • Suite 500 • Arlington, VA 22209-1604 • 703-351-8000 • Fax 703-351-9160

Issues Summary and Relevant Committees of Jurisdiction

- **Addressing High Energy Prices** *Committees: House Energy and Commerce; Senate Environment and Public Works*
  Keystone XL Pipeline*:* PMAA members own and maintain over $500 billion worth of liquid fuels infrastructure. When the Keystone XL pipeline is operational, it will be a reliable source of crude oil for US refineries to make gasoline and distillates. PMAA is supporting all efforts to get the Keystone pipeline approved. ***Tier 3 Gasoline***: EPA is moving towards proposing a new national standard for gasoline which is commonly referred to as "Tier 3." PMAA opposes Tier 3 gasoline regulations because it will cause higher pump prices. ***Ozone Standards***: PMAA also opposes EPA's 2008 ozone standards because it will require expensive reformulated gasoline and lower RVP gasoline requirements which will bring higher prices at the pump with very little environmental benefit. ***Monetary Policy****:* PMAA believes that the Federal Reserve's (the Fed) policies to weaken the dollar have put upward pressure on oil prices. ***Commodities Reform*** **Adequately fund CFTC under the President's FY 2013 request at $308 million** to implement CFTC's mission under Title VII (derivatives) of the Wall Street Reform law. Also **oppose efforts to weaken the Dodd-Frank Derivatives Title**. ***Interchange Fees*** Address excessively high credit card interchange fees. ***Create Energy Resources Board*** Congress should give serious consideration to creating a National Energy Resources Board, free of political cycles and appointments, whose purpose is the design and implementation of national energy policy for the next 50 years and whose charge is the safe, environmentally conscious, economically viable and market-driven energy security.

- **Biodiesel Tax Credit** *Committees: House Ways and Means; Senate Finance*
  The one dollar-per-gallon biodiesel tax credit expired on December 31, 2011. **MEMA and PMAA support a simple one-year renewal/extension of the biodiesel blender's credit and opposes moving the credit to the production level**.

- **Commercialization of Rest Stops** *Committees: House Transportation; Senate Environment and Public Works*
  Some state governments asked Congress to change the law to allow states to commercially develop rest stops. Senator Portman (R-OH) tried to attach a rest area commercialization amendment to the Senate Highway bill, but his effort failed after heavy PMAA and coalition grassroots opposition. The amendment collected only 12 votes in which 60 votes were needed for passage. **MEMA and PMAA urge Congress to oppose commercialization of rest stops.**

- **Ethanol Blend Wall** *Committees: House Energy and Commerce; Senate Environment and Public Works*
  EPA approved E15 fuel for cars made after 2001. Many barriers to E-15 exist and PMAA has advised retailers to be cautious. Absent legal and regulatory certainty for E15, very few retailers, if any, will be able to legally sell E15 which will delay the expansion of ethanol use. **Congress and EPA must provide full legal and regulatory certainty for retailers to sell E15, starting with support for the "Domestic Fuels Act of 2012" (H.R. 4345, S. 2264).**

- **FTC's Red Flags Rule** *Committees: House Financial Services; Senate Banking Housing and Urban Affairs*
  PMAA and MEMA urge Congress to revisit this issue and pass legislation focusing the rule on businesses whose primary purpose is consumer financing.

- **Funding for Leaking Underground Storage Tanks** *Committees: House Appropriations Subcommittee on Interior and Environment; Senate Appropriations Subcommittee on Interior and Environment*
  Because the federal 1/10 cents per gallon LUST tax on motor fuels expires on June 30, 2012, PMAA urges Congress to reauthorize the tax to ensure the program's future. Furthermore, **Congress should not rob the LUST Trust Fund of $3 billion dollars and move it to the Highway Trust Fund, nor change the allocation of the $.001 LUST tax. This is bad public policy. If the money is not being used for the LUST program, the LUST tax should be reduced or eliminated.**

- **<u>Futures Market Reform</u>** *Committees: House Agriculture; Senate Agriculture; House Approps; Senate Approps* Commodity futures markets were established as a tool for true physical hedgers to manage risk. Today, they have been highjacked as an investment tool by speculators looking to turn a profit, which have affected petroleum marketers' ability to use futures contracts to determine a fair price for energy based on real-world supply and demand fundamentals. **Congress must adequately fund CFTC under the President's FY 2013 request at $308 million, and Congress must oppose efforts to weaken the Dodd-Frank Derivatives Title**.

- **<u>Health Care Reform Employer Mandates</u>** *Committees: House Ways and Means Subcommittee on Health* In 2014, companies with more than 50 employees will have to pay hundreds of thousands of dollars in penalties if health insurance is not provided to all full time (30 hours per week) employees. **MEMA and PMAA urge Congress to repeal the healthcare law.**

- **<u>Heating Oil Efficiency Tax Credits</u>** *Committees: House Ways and Means; Senate Finance* **Congress should make modifications to renew and expand the credit to home heating oil consumers and achieve the goal of efficiency gains through readily accessible home heating appliances. Alternative qualifying language for oilheat appliances at 86+ AFUE under certain installation conditions should be included, since tests have proved they would achieve an efficiency performance equivalent to 90 AFUE. This is critical to Maine.**

- **<u>Interchange Fees</u>** *Committees: House Financial Services; Senate Banking* The final rule to implement the Durbin amendment capped debit swipe fee rates at 21 cents per transaction and includes a 0.05 percent ad valorem tax. **Congress should oppose interchange fee legislation that would delay the Fed's final rule which was introduced by Rep. Shelley Moore Capito (R-WV). The legislation would continue to allow Visa, MasterCard and their member banks to rip off small businesses and consumers. Secondly, MEMA and PMAA urge lawmakers to move forward legislation which would address skyrocketing credit card interchange fees.**

- **<u>LIHEAP Funding</u>** *Committees: House Appropriations; Senate Appropriations*
  <u>LIHEAP Reform</u> *Committees: House Education and the Workforce; Senate Health, Education, Labor and Pensions* The proposed 2013 budget would cut the program down to $3 billion. The final LIHEAP number under the FY12 Consolidated Appropriations Act was $3.5 billion. **Congress should fund LIHEAP at $5.1 billion and should address concerns about margin over rack programs and leveraging policies.**

- **<u>National Oilheat Research Alliance</u>** *Committees: House Energy and Commerce; Senate Energy and Natural Resources* **MEMA and PMAA urge members of Congress to cosponsor NORA reauthorization legislation, S. 949 and H.R. 1756, which would provide the best means for enabling oilheat consumers to benefit from NORA's R&D, training, safety, and consumer information without the use of federal tax dollars.**

- **<u>Roll Your Own Tobacco</u>** *Committees: House Ways and Means; Senate Finance* **The Senate-passed highway reauthorization bill included language which would close loopholes used by RYO shops. MEMA and PMAA support the legislation because it is likely RYO shops will eventually be closed by federal agents while in the interim they severely undermine convenience stores.**

- **<u>Tribal Gaming Bill</u>** *Committees: House Natural Resources Subcommittee on Indian Affairs; Senate Indian Affairs* **Congress should support S. 771, the Tribal Gaming Eligibility Act which would provide guidance and standards for the determination for eligible land for use in development of Indian reservation casinos and other businesses.**

- **<u>Wetlines</u>** *Committees: House Transportation; Senate Environment and Public Works Subcommittee on Transportation and Infrastructure* **MEMA and PMAA urge Congress to pass a highway reauthorization bill which includes a wetlines study and a cost benefit analysis which would require the Secretary of Transportation to coordinate with an independent non-partisan organization before DOT's proposed wetlines rule can be finalized.** MEMA and PMAA believe that when all the facts are known, DOT will withdraw the proposed rule since it would impose costly and unnecessary regulatory burdens on small business petroleum marketers.

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ADDRESSING HIGH ENERGY PRICES

BACKGROUND

With the price of crude oil and refined products yet again on the rise to unprecedented levels, some motorists wrongly blame the local gas station owner for the spike in prices. A lack of understanding of the retail gasoline business leaves petroleum marketers and gasoline station owners to bear the brunt of consumer anger and frustration.

A number of factors influence energy prices and many MEMA and PMAA member companies are providing leadership in transitioning the country to a clean energy future. MEMA and PMAA want to address the major drivers of energy cost increases confronting the country and pledge our best efforts on resolving these difficult and increasingly expensive problems.

DOMESTIC ENERGY

MEMA and PMAA are strong supporters of the development and use of alternative energy sources in blending with traditional petroleum products such as biofuels. However, not even all alternative energy sources combined will provide the amount of energy required to run a $15 trillion annual economy until far in the future. For the next 100 years, traditional sources of domestically available energy resources of all kinds (oil, gas, coal and nuclear) will need to be brought to bear to maintain the nation's economic and national security.

Congress must expedite approvals for deep water drilling projects, approve the Keystone XL Pipeline, and delay EPA rules implementing Tier 3 gasoline requirements and new ozone standards. Specifically, Congress must delay EPA's 2008 ozone requirements and its new Tier 3 gasoline proposed rules until an interagency study is completed to see how those rules will impact prices at the pump. If EPA were to finalize a rule requiring Tier 3 gasoline and new ozone standards, these rules would force much of the country into nonattainment status which would require refineries to make a lower reid vapor pressure (RVP) fuel and, in many cases, reformulated gasoline (RFG) which would dramatically increase prices at the pump.

MONETARY AND FISCAL POLICY

It is impossible to ignore the role a dramatically weakened U.S. dollar has on energy prices. Crude oil continues to stay well above $120 a barrel. Heating oil inventories are at a 27 year high, consumers have reduced consumption dramatically and demand has fallen. Gasoline inventories are higher than inventories since the mid 1990s. Energy inventories are up, consumer demand is down - yet prices for gasoline and heating oil are rising.

These price increases defy the normal laws of supply and demand. Americans are paying more for essential commodities due to a "phantom tax" that Congress never passed and the President never signed. These increased costs from the phantom tax are courtesy in part of the Federal Reserve which has pumped out trillions of dollars in an attempt to re-inflate the nation's economy. As more dollars flow out of the Fed and into the money supply, the less each dollar is worth. As the Fed drives down the value of the U.S. dollar, everything that is sold in dollars rises in price, which has a dramatic impact on people buying these necessities. **Specifically, every penny at the gas pump is a $4 million per day, or a $1.46 billion a year tax.**

INVESTMENT IN COMMODITIES

With the Government pursuing policies that reduce domestic oil production, accompanied by Federal Reserve actions to devalue the world's reserve currency, speculative investors are being driven to commodity markets. <u>These speculative investors are increasing the price of everything from gold, to wheat, to copper and to crude oil. There really is no other explanation for increasing prices when the world economy is sluggish.</u>

To combat highly leveraged speculators in the marketplace, Congress directed the Commodities Futures Trading Commission (CFTC) to pass rules limiting certain commodities traders' size in energy commodities traded on and off exchanges, such as the CME, where energy commodities are traded daily. The goal was to prevent investors from flooding cash into commodities and inflating their prices. The CFTC has issued a final positions limit rule which would set speculative limits at 25 percent of deliverable supply for spot commodity contracts. Staff at the CFTC estimated that 40 traders in energy contracts would be affected by the new spot-month limits.

"THE ASK"

1. **Approve the Keystone XL Pipeline.**
2. Delay EPA proposed rules to implement Tier 3 gasoline requirements and new ozone standards. *These boutique fuels requirements create supply shortages, and, in most circumstances, supply shortages foster higher prices.*
3. Adequately fund CFTC under the President's FY 2013 request at $308 million to implement CFTC's mission under Title VII (derivatives) of the Wall Street Reform law.
4. Oppose efforts by Wall Street banks to open broad end-user exemptions that would allow them to exploit the Wall Street Reform legislation and cause unwarranted speculation in the futures market.
5. Expedite approval of deep water drilling projects.
6. Address excessively high credit card interchange fees. The Wall Street Reform Act only addressed debit card fees. *If Congress doesn't address credit card interchange fees, small business retailers and consumers will continue to pay the high credit fees in their gasoline purchases. In 2011, interchange fees were the second largest expense item for motor fuels retailers costing retailers $11.1 billion.*
7. Congress should give serious consideration to creating a National Energy Resources Board, free of political cycles and appointments, whose purpose is the design and implementation of national energy policy for the next 50 years and whose charge is the safe, environmentally conscious, economically viable and market-driven energy security plan for the nation and our future.
8. Ease cumbersome environmental regulations and permitting processes to allow refinery expansion in the U.S.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org;
Rob Underwood, runderwood@pmaa.org

MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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EXTEND BIODIESEL BLENDERS TAX CREDIT

The Petroleum Marketers Association of America's (PMAA) member companies blend biodiesel into diesel fuel to help facilitate the renewable fuel blending requirements established under the Renewable Fuels Standard (RFS). 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 transition 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 of imported petroleum. **Although the biodiesel tax credit expired on December 31, 2011, MEMA and PMAA continue to support a simple one-year extension of the blender's credit to ensure the survival of a clean and efficient renewable fuel.**

BIODIESEL TAX EXTENDERS LEGISLATION

PMAA and MEMA will continue to oppose efforts to move the credit from blenders to producers. House Agriculture Committee Ranking Member Collin Peterson (D-MN) and Rep. Schock (R-IL) introduced the "Biodiesel Tax Incentive Reform and Extension Act" (H.R. 2238) that would replace the one-dollar-per-gallon biodiesel blenders tax credit with a new biodiesel production tax credit which would expire in three years. H.R. 2238 is similar to legislation (S. 1277) introduced by Senator Cantwell (D-WA). The biodiesel legislation would: create a biodiesel production tax credit (rather than blenders credit) for three years; give small producers an extra ten cent biodiesel production tax credit for three years ($1.10 a gallon); require that production of B100 or B99 become a taxable fuel requiring the producer to collect the 24.4 cents per gallon tax from a marketer when sold outside of a registered terminal (fuel not subject to excise tax will be dyed (no tax) by producers); and wouldn't allow blenders to be eligible to collect the $1 tax credit.

PMAA opposes H.R. 2238 and S. 1277 because they would effectively kill any below the rack biodiesel blending which provides incentives for marketers to blend and pass on those savings to consumers. If the credit is moved to the producer level, biodiesel producers are unlikely to pass on the credit to petroleum marketers or consumers in the form of lower prices.

"THE ASK"

PMAA and MEMA urge Congress to pass a simple one-year extension of the biodiesel blender's tax credit in order to ensure the future of the biodiesel industry and the future of a renewable fuel for home heating. PMAA also urges Congress to <u>oppose</u> H.R. 2238 and S. 1277 which would move the biodiesel blender's credit to the production level.

PMAA STAFF CONTACTS: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org
MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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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 strong, 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 gas stations, travel plazas, truckstops, restaurants, and hotels**. Over 97,000 businesses are located within a quarter-mile of the interstate, and they employ 2.2 million people. Also, these businesses contributed $22.5 billion in state and local taxes alone in 2010.

REST AREA COMMERCIALIZATION WILL COST THOUSANDS OF JOBS

In an attempt to raise 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). The Virginia Tech Transportation Institute found that commercializing rest areas nationwide could cause a huge decline in sales at Interstate exit businesses: a 46 percent decrease at gas stations, a 44 percent decrease at restaurants, and a 35 percent decrease at truckstops.

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 (for a short term gain in state revenue) and put many retailers out of business. Rest area commercialization would result in an unfair competitive environment for privately-operated retailers, and would destroy a successful economic business model that has proven beneficial for consumers and retailers.

While some state departments of transportation are pushing this idea, there are alternative ways to fund rest areas that do not devastate businesses at highway exits. Virginia is pursuing innovative approaches to paying for highway rest areas. Their ideas should be used as a model for other states facing the prospect of rest area closures. After the previous administration closed many rest areas in the state, Gov. McDonnell reopened them, and unveiled a plan to defray the costs to maintain the facilities with sponsorships, increased advertising, and expanded vending services. These solutions do not directly compete with interstate-based businesses that sell food and fuel to motorists, and are a win-win for all.

LEGISLATION

The Senate's two-year highway reauthorization bill known as the "Moving Ahead for Progress in the 21st Century Act of 2011" (S. 1813) did not include rest area commercialization language. However, an attempt to attach an amendment to S. 1813 by Senator Portman (R-OH) to allow states to commercialize rest areas failed by a vote of 12 yeas-86 nays. The amendment needed 60 votes for passage. The overwhelming vote in opposition to the amendment showed that the Portman amendment would have killed small business jobs and would not have brought states additional revenue if they were allowed to commercialize rest areas.

In the House, Representatives LaTourette (R-OH) and Kucinich (D-OH) also attempted to attach a rest area commercialization amendment to the House Highway bill. However, the amendment was never given a floor vote. The House and Senate will now go to conference to pass a long-term highway bill. PMAA will continue to urge conference committee members to oppose any attempt to commercial rest areas.

"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 again in the highway bill conference or in 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 motorists across the country.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org

MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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ETHANOL CHALLENGES AND OPPORTUNITIES

PMAA members own or supply gasoline to 100,000 out of the 160,000 U.S. retail gasoline locations. In recent years, Congress and the President have taken major steps to expand 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 Fuels 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 13.2 billion gallons of corn-based ethanol in our nation's fuel supply for 2012. Ethanol blends may contain up to 10 percent ethanol which is believed to pose no significant problems to existing gasoline dispensing and storage infrastructure. Currently, the nation consumes approximately 140 billion gallons of gasoline each year. Even if every gallon of gasoline included in the RFS were blended with 10 percent ethanol, refiners would hit the "blend wall" around 14 billion gallons. Refiners are expected to hit the ethanol "blend wall" this year or next (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). Currently E15 poses significant liability risk for gasoline retailers.

In October 2010, EPA approved a waiver for E15 use for 2007 and newer vehicles. A few months later, EPA extended the waiver for 2001 to 2006 model year vehicles. While the waiver was welcome news for supporters of ethanol, the fuel still faced other obstacles before it could be sold in the marketplace, namely overcoming state and local regulatory hurdles and approving the ethanol industry's waiver request for E15 to be sold during the summer ozone season which requires cleaner burning fuels. EPA has already taken the necessary steps to approve the ethanol industry's E15 misfueling mitigation plan, health effects testing requirements, and applications of 18 ethanol producers who want to sell E15.

If Congress wants to expand ethanol use, E15 regulatory and legal barriers 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 because further testing needs to be completed. This position did not change after EPA approved E15 for 2001 and newer vehicles.

- 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 EPA must fully consider the downstream implications of the E15 waiver and be required to delay the introduction of E15 product until comprehensive equipment compatibility studies that are underway by private and government testing laboratories are completed. EPA must also be required to coordinate with the Federal Trade Commission on pending rules by both agencies that would impose duplicative dispenser labeling requirements for E15 product.

CURRENT LEGISLATION

Retailers must be given certainty that they won't be held liable for selling a fuel that the EPA approves for use. The "Domestic Fuels Act of 2012," (S. 2264) introduced by Senators Hoeven (R-ND), Blunt (R-MO) and Klobuchar (D-MN) and House companion legislation (H.R. 4345) introduced by Reps. Shimkus (R-IL) and Collin Peterson (D-MN) provides misfueling protection for retailers who abide by EPA's E15 labeling requirements. For instance, if a motorist ignores the labels and fuels a 2000 model year or older vehicle with E15, the retailer should not be held liable if he/she correctly has the E15 label in place. Secondly, if a retailer stores and dispenses E15 in equipment that satisfies EPA's compatibility requirements then that retailer won't be held liable. Until S. 2264 or H.R. 4345 is signed into law, PMAA believes E15 sales will be minimal due to the legal and regulatory consequences.

"THE ASK"

We urge the Senate Environment and Public Works Committee and the House Energy and Commerce Committee to hold oversight hearings over EPA's decision to permit E15 for use. The committees should address retailers' concerns with E15 in existing gasoline infrastructure. Congress and EPA must also provide full legal and regulatory certainty for retailers to sell E15, starting with support for the "Domestic Fuels Act of 2012." Absent legal and regulatory certainty for E15, very few retailers, if any, will be able to legally sell E15 which will delay the expansion of ethanol use.

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FTC'S RED FLAGS RULE COMPLIANCE

BACKGROUND

In 2008, the Federal Trade Commission (FTC) issued the Red Flag Rule (RFR) requiring "creditors" to develop and implement written identity theft prevention programs as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The RFR requires creditors to provide for the identification, detection, and response to patterns, practices or specific activities – known as "red flags" – that could indicate identity theft. The FTC delayed implementation of the RFR several times due to widespread uncertainty over the type of business activities that satisfy the rule's definition of "creditor" which triggers compliance. Since the FTC was unable to fully clarify this key definition, Congress stepped in and passed the *Red Flag Program Clarification Act of 2010.* While most small business owners believed Congress would narrow the rule's application to bona fide lenders, this was not the outcome. Essentially Congress imposed the new burden on any company that obtains a consumer credit report or provides information to a consumer credit reporting agency.

Compliance with the RFR began on January 1, 2011, but due to the confusion over applicability of the RFR, the FTC is not expected to enforce its provisions until the rule is made to conform to the new provisions adopted by Congress.

WHO MUST COMPLY WITH THE RED FLAG REQUIREMENTS?

The RFR applies to petroleum marketers who regularly and in the normal course of business obtain or use consumer credit reports, directly or indirectly in connection with a credit transaction, or furnishes credit information to consumer credit agencies (credit bureaus) in connection with a credit transaction. PMAA believes the rule should focus on businesses whose primary purpose is to provide consumer financing. The rule should not ensnare small businesses whose primary purpose is to deliver goods and services. Extending credit to consumers is a necessity of the business but not the primary purpose.

"THE ASK"

PMAA urges Congress to revisit this issue and pass legislation focusing the rule on businesses whose primary purpose is consumer financing. Imposing a new regulatory burden on every small business who reviews a consumer credit report is regulatory overkill and cannot be justified.

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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 **federal 1/10 cents per gallon tax on motor fuels which will expire after June 30, 2012**. In succeeding years, thousands of underground tank releases have been cleaned up. At the end of FY 2010, there were approximately 590,000 federally-regulated, active USTs at approximately 212,000 sites across the country. However, EPA estimates there is still a back-log of 88,000 tank leaks waiting to be completed.

To combat this threat, Congress included new inspection, maintenance and operational requirements on tank owners/operators and individual state environmental quality departments in the Energy Policy Act of 2005 (EPAct). EPAct 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 $3.6 billion, Congress and the President have woefully under-funded the program in recent years, appropriating around $112 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.

To make matters much worse, Senators included a provision in the Highway bill that would not only rob the LUST Trust Fund of $3 billion dollars and move it to the Highway Trust Fund, it would also change the allocation of the .001 of a penny LUST tax. The change will permanently dedicate one third of the existing $.001 LUST tax to the Highway Trust Fund and two thirds to the LUST Trust Fund. PMAA opposes this change, if the money is not being used for the LUST program, the LUST tax should be reduced or eliminated.

FUND IT or FLEX IT

PMAA urges Congress to appropriate all funds authorized by EPAct for the LUST Tank Program. Unfortunately, the President has asked for only $104.12 million for the LUST program in FY 2013.

The LUST Trust Fund has consistently been underfunded since Congress imposed new mandates on state UST inspection agencies in 2005. EPAct of 2005 authorized $200 million a year through 2009. Even though marketers pay $190 million into the fund annually and there is $3.6 billion in the fund, petroleum marketers are now being forced to pay higher state UST fees to cover the federal appropriations shortfall.

<u>"THE ASK"</u>

Because the federal 1/10 cents per gallon LUST tax on motor fuels expires on June 30, 2012, PMAA urges Congress to reauthorize the tax to ensure the program's future. Additionally, absent full funding, PMAA strongly supports providing flexibility to the states in complying with EPAct LUST regulations.

Furthermore, Members of Congress should not rob the LUST Trust Fund of $3 billion dollars and move it to the Highway Trust Fund, nor change the allocation of the $.001 LUST tax. This is bad public policy. If the money is not being used for the LUST program, the LUST tax should be reduced or eliminated.

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<u>MEMA STAFF CONTACT:</u> Jamie Py, jamie@maineenergymarketers.com

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1901 N. Fort Myer Drive • Suite 500 • Arlington, VA 22209-1604 • 703-351-8000 • Fax 703-351-9160

OIL 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 Chicago Mercantile Exchange (CME) 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. The five largest banks essentially hold a monopoly in the derivatives marketplace and many end-users complain that they are not being offered competitive prices to manage their risk. Following the 2008 unprecedented run-up in gasoline, diesel and heating oil prices as well as the collapse of the American economy, Congress passed the "Wall Street Reform Act" (P.L.111-203) which gave the CFTC authority to oversee the $600 trillion unregulated swaps market.

ISSUE BACKGROUND

Commodity futures markets were established as a tool for true physical hedgers to manage risk. Today, they have been highjacked as an investment tool by speculators looking to turn a profit, which have affected petroleum marketers' ability to use futures contracts to determine a fair price for energy based on real-world supply and demand fundamentals. 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. 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. Without sufficient oversight and aggregate position limits, market activity can distort the price of oil and other energy commodities.

Because the swaps market isn't transparent, banks can be highly leveraged which can impact oil prices and lead to extreme price volatility at the rack. ***In February 2012, Goldman Sachs reported that oil speculation increased prices at the pump by 56 cents-per-gallon. Goldman noted that every million barrels of oil held by speculators contributed to an 8-10 cent rise in oil price.*** This comment came as the CFTC found that speculators made up more than 80% of the open interest in crude oil futures, whereas, physical end-users made up less than 20%.

This is unacceptable. **The market wasn't created for speculators to dominate the futures market**. With crude oil inventories well above its five year high, oil demand down, and the dollar relatively stable compared to other world currencies, oil prices have skyrocketed from $75 a barrel for the West Texas Intermediate (WTI) crude oil contract in Oct. 2011 to over $108 in March 2012. And, this doesn't tell the whole story. Another crude contract is behind oil's rise.

West Texas Intermediate Crude Oil Contract vs. Brent Crude Oil Contract

A recent phenomenon in the oil markets is the price spread between the *Brent crude oil* contract and the *light sweet West Texas Intermediate (WTI) crude oil* contract. In the past, WTI traded at a premium to Brent, due to its relatively higher quality. But now there's a huge price disparity between the WTI contract and the Brent contract.

In the fall 2011, *The Oil Price Information Service* reported that U.S. coastal markets saw higher prices compared to the middle of the country. The Pacific Northwest saw prices soar some 35 cents over the futures, even as Chicago and Gulf Coast spot gasoline moved below the RBOB benchmark. East Coast refiners are struggling because they have to buy expensive water-borne light crudes from Africa which is priced off of the expensive Brent crude oil contract which has led to a competitive disadvantage because refiners along the Gulf Coast and central U.S. are buying oil that is priced off of the cheaper WTI contract. Currently, the Brent contract is priced at $124 a barrel while WTI is priced at $103. Historically, the Brent contract has been a few dollars cheaper than the WTI contract due to it being a heavier crude, but given that Cushing, Oklahoma's oil supplies are at highs not seen since 1997, the WTI contract is priced at a discount. Secondly, the Brent crude oil contract is a purely speculative contract that financial investors can maximize leverage on OTC exchanges which do not enforce position limits and have lower margin requirements. Some experts believe the loss of Iranian oil supply has caused the Brent contract price run-up (now the world's oil benchmark). However, Saudi Arabia raised production unilaterally to make up for the loss of oil from smaller OPEC members. PMAA believes that the Brent contract is highly vulnerable to excessive speculation given that there is "no cop on the beat" to ensure effective regulation of this contract.

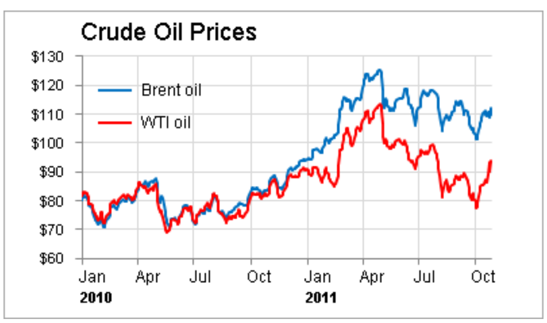
West Texas Intermediate Crude Oil (Symbol: CL)

- Price $106 a barrel
- Traded on regulated exchange (CME)
- **Delivered at Cushing, OK**
- CME raised margins on traders (more money down)
- Prior to 2001, prices based on inventory levels
- Now, based on money flows
- The "Financialization of oil"

Brent Crude Oil Contract (Symbol: BZ)

- Price: $124 per barrel
- Traded on over-the-counter OTC market -- ICE ICE/CME lists Brent. CME enforces limits
- ICE doesn't enforce position limits
- Traders -- highly leveraged bets on the Brent contract
- Brent is highly speculative
- **Not based off inventories, no delivery point**
- US East coast gasoline prices now based off Brent contract, not WTI contract
- Now, based on money flows, the "dark market" deals
- More Speculative leverage = higher prices

Since there is no delivery point and no inventory level for the Brent contract, there's no way of knowing the supply and demand fundamentals. Since much of the U.S. market is now priced off Brent, the CFTC should be examining the price discovery and fundamentals of the Brent contract.



<u>OIL SPECULATION STUDIES</u>

- 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
- **See comprehensive list of 98 studies available via PMAA**

CONGRESSIONAL ACTION

On July 20, 2010, President Obama signed into law the "Wall Street Reform Act" (Public Law No: 111-203). Provisions important to PMAA members in the futures market/derivatives title include aggregate position limits on speculative oil traders, mandated clearing of OTC commodity derivatives, exemption of end-users like PMAA member companies from clearing and margin requirements if they are doing so for commercial purposes, and CFTC authority to regulate swaps, OTC, energy-related and electronically-traded transactions by closing the so-called "Enron," "Swaps," and "London" or "Foreign Exchange" loopholes. The law requires financial institutions to separate their commodity derivatives trades into a capitalized entity walled off from federally insured deposits. This will help reduce the amount of highly leveraged speculators from taking huge positions in the WTI crude oil, RBOB, and heating oil contracts.

REGULATORY ACTION

The CFTC approved a long-delayed final rule that would mandate speculative position limits on crude oil, heating oil, and gasoline. The proposal will limit the number of contracts a single firm can hold in both the regulated and unregulated swaps market. The rule limits traders to 25 percent of deliverable supply in the month nearest to delivery. Deliverable supply will be determined by the CFTC in conjunction with the exchanges. PMAA supports the CFTC's proposed rulemaking on position limits although we support tighter controls in the future once the CFTC is able to capture the entire swaps market to enforce aggregate position limits in an effective manner. PMAA cautiously supports the Commission's final rulemakings on margin/capital requirement for OTC swaps and registration of unregulated exchanges which will reduce leverage in the marketplace that will benefit end-users like PMAA member companies and other market users from excessive price volatility and extreme price increases at the terminal rack. While the final rule didn't go far enough to address excessive oil speculation, it's a step in the right direction. The proposed rulemakings will give end-users better price information because it will force swaps dealers to real-time reporting which will bring competition to the swaps markets.

"THE ASK"

PMAA strongly supports the CFTC's core mission to effectively regulate the $600 trillion swaps market and impose aggregate position limits on non-commercial traders. We urge Congress to:

1. ***Adequately fund CFTC under the* President's *FY 2013 request at $308 million*** to implement CFTC's mission under Title VII (derivatives) of the Wall Street Reform law.
2. ***Support the "Sustainable Funding Act" (H.R. 3665)*** which would provide the CFTC with a permanent funding source.
3. ***Oppose H.R. 1573***, introduced by House Agriculture Chairman Frank Lucas (R-OK), which would delay reform and preserve the monopoly the largest banks have in the derivatives marketplace.
4. ***Oppose H.R. 3283, the "Swaps Jurisdiction Certainty Act,"*** which would compromise the overall swaps market regulatory framework, encourage firms to export jobs overseas as they set up foreign affiliates to evade regulation, exacerbate systemic risk and undermine the CFTC's efforts to work with foreign and international regulators to establish jurisdiction and harmonize regulations.
5. **Oppose *H.R. 2586, the "Swaps Execution Facility Clarification Act"*** would repeal long-overdue pre-trade transparency requirements for Swaps Execution Facilities (SEFs).

PMAA is aware that some large end-user entities are attempting to undermine efforts by the CFTC to mitigate oil price volatility and prevent systemic risk by urging CFTC to provide broader exemptions to avoid clearing and margin requirements, which could allow financial companies to avoid regulation. We urge CFTC Commissioners to avoid the temptation to provide any type of broad end-user exemption that would allow Wall Street banks to exploit the Wall Street Reform legislation and cause unwarranted speculation in the futures market.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org; Rob Underwood, runderwood@pmaa.org
MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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PETROLEUM MARKETERS ASSOCIATION OF AMERICA

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HEALTHCARE REFORM – EMPLOYER MANDATES

On March 23, 2010 President Obama signed the Patient Protection and Affordable Care Act (PPACA) into law (P.L. 111-148). The Act includes most of the features of our new health care system. On March 30, 2010 President Obama also signed into law the Health Care and Education Reconciliation Act (HCERA) as P.L. 111-152. HCERA modifies certain elements of PPACA. Together they constitute the new law governing most of the health care system in the U.S. PMAA supports efforts by the National Federation of Independent Businesses (NFIB) to fully repeal the new healthcare Act because the law will curtail small business job creation.

ISSUE BACKGROUND

Effective January 1, 2014, there are large employer "shared" responsibilities. An employer is an applicable "large employer" with respect to any calendar year if it employed an average of at least 50 fulltime (30 or more hours a week) employees during the preceding calendar year. The new law assesses a penalty on employers with 50 or more full time equivalent workers that fail to provide coverage to their employees and have at least one full time employee who receives a premium tax credit established by the new law.

The large employer's plan will have to meet the minimum essential coverage requirements to be a "qualified employer sponsored plan," however, the new law does "grandfather" existing employer plans. The grandfathering applies to the benefit standards imposed by the law. However, those plans must comply with some new requirements within six months of enactment including: eliminating pre-existing conditions exclusions for children (by 2014 for adults); using a definition of dependent child, if dependent coverage is offered, to allow coverage up to age 26; and prohibiting lifetime limits on coverage and rescissions of coverage. The plans must meet new restrictions on annual dollar coverage limits this year, and eliminate them by 2014. Grandfathered employer plans must be modified by 2014 to eliminate waiting periods beyond 90 days. While a small employer is not required to offer health insurance plans, most group plans will have to meet the insurance reforms (i.e. no pre-existing conditions) imposed by law on grandfathered plans.

SMALL BUSINESS PROVISIONS

The new law also creates a 35% tax credit for 2010-2013 of the lesser of (1) the amount of contributions the employer made on behalf of the employees during the taxable year for the qualifying health coverage and (2) the amount of contributions that the employer would have made during the taxable year if each employee had enrolled in coverage with a small business benchmark premium. To be eligible for the credits, small employers will have to contribute at least 50% of the cost of premiums towards a qualified health plan. Small businesses with 10 or fewer full-time employees and with average taxable wages of $25,000 or less could claim the full credit. It is phased out as average employee compensation increases from $25,000 to $50,000 and as the number of full-time employees increases from 10 to 25. Full-time employees would be calculated by dividing the total hours worked by all employees during the tax year by 2,080 (with a maximum of 2,080 hours for any one employee). **The credit is only available to offset actual tax liability and is claimed on the employer's tax return. The credit is not payable in advance to the taxpayer or refundable. Thus, the employer must pay the employees' premiums during the year and claim the credit at the end of the year on its income tax return.**

WHAT HEALTHCARE REFORM MEANS FOR PETROLEUM MARKETERS

Petroleum marketing companies with significant convenience store operations commonly operate using two business models. Many companies lease stores to independent dealers and, as a result, the company has a relatively small number of employees. Other companies operate stores as direct operations, therefore; they have a relatively large number of employees. The companies that use mostly direct operations must compete with companies that use independent dealers. The new federal health care law imposes a significant new financial burden on marketers using the direct operations model. In 2014, companies with 50 or more full time employees must provide health insurance or pay costly penalties ranging between $2,000 and $3,000 per employee.

"THE ASK"

PMAA urges lawmakers to repeal the healthcare law. If repeal is not achievable, PMAA supports reduction, revision or elimination of the employer mandates.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org
MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

MAINE ENERGY Marketers Association

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HOME EFFICIENCY TAX CREDITS

ISSUE BACKGROUND

As the national representative of the retail heating oil industry, PMAA has long supported initiatives to promote research and development of ultra-efficient heating systems and consumer-oriented tax incentives to encourage their installation. Unfortunately, Congress has historically offered home heating oil consumers minimal benefits with respect to the IRS Section 25C Residential Energy Efficiency Tax Credit program. Consider the following:

- Under the "Stimulus" program (2009-2010) oilheat boilers and furnaces qualified for the tax credit of 30% of the cost up to $1,500 if they met an efficiency rating of 90+ AFUE. However, there are only two (2) furnaces and three (3) boilers that meet these requirements.

- Under the 2011 credit which expired on Dec. 31, 2011, consumers were eligible for a $150 credit for heating system upgrades. This is not a "market mover" and certainly, a more robust credit is needed. To make matters worse, oilheat furnaces and boilers only qualify at an efficiency rating of 95+ AFUE. Currently, there are no (zero) boilers and only two (2) furnaces that meet this qualification.

While the National Oilheat Research Alliance (NORA) has helped develop highly efficient boilers of up to 93 AFUE that qualify for the credit, they are not widely marketable, and in some cases, may be difficult to install. Further, DOE's test procedures do not contemplate the latest in control technologies. Also NORA and Brookhaven National Lab tests have shown very high efficiencies can be achieved through alternate venting strategies to recapture the heat in the vent system. Finally, an oil-fired boiler that delivers heat through a typical radiator system in use in many Northeast homes will top out at 93 AFUE under current DOE test procedures.

"THE ASK"

As the industry moves towards a cleaner-burning, low-sulfur and bio-blended heating oil, a new generation of ultra-efficient heating technologies currently in use in Europe will become available in the United States. Until then, it is important that Congress make necessary modifications to renew and expand the credit to home heating oil consumers and achieve the goal of efficiency gains through readily accessible home heating appliances. We support keeping oilheat boilers and furnaces with an efficiency of 90+ AFUE eligible for the credit. However, alternative qualifying language for oilheat appliances at 86+ AFUE under certain installation conditions should be included, since tests have proved they would achieve an efficiency performance equivalent to 90 AFUE:

I. *A qualified oil furnace or boiler means an oil furnace or a hot water or steam oil boiler which achieves an annual fuel utilization efficiency (AFUE) rating of*
   a. *not less than 90, or*
   b. *not less than 86 and*
      i. *For an oil hot water or steam boiler, is installed with temperature reset or thermal purge controls and an indirect water heater, or*
      ii. *For an oil furnace, is installed with an electronically commutated blower motor.*

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
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HIDDEN SWIPE FEES HARM CONSUMERS

As a major victory for PMAA, debit card interchange reform language is included in the "Dodd-Frank Wall Street Reform and Consumer Protection Act," P.L. 111-203. This victory occurred because of the exceptional efforts of petroleum marketers and their state associations. Particularly meaningful were the marketer and state executives meetings with their Senators on PMAA's May 2010 "Day on the Hill" that coincided with the Senate vote. Without the influence of PMAA members on that pivotal day, it is highly likely the Senate would not have had enough votes for passage of this vital language.

An immediate benefit to retailers, the law permits retailers to offer a discount for cash, check or debit. Retailers may also set credit card purchase minimums but the minimum may not exceed ten dollars. While PMAA was pleased with the legislative outcome, the Federal Reserve's (the Fed) final rule to implement the law fell short of our expectations.

The law directed the Fed to propose a rule to reform debit swipe fees, which it did on December 16, 2010. The law specifically required the rule to ensure that swipe fees are "reasonable and proportional." While using a debit card is the same as writing a check, processing a check cost zero cents compared to the average debit card fee charge of 44 cents.

Under pressure from banks and credit card companies, the Federal Reserve issued its final rule for debit fees which capped debit swipe fees at $.21 per transaction and included an ad valorem fee of five basis points. While the final rule provided some relief for retailers, much more needs to be done to bring down interchange fees and relief to consumers.

EXCESSIVE CREDIT CARD FEES MUST BE ADDRESSED

PMAA and the Merchants Payments Coalition (MPC) are committed to achieving full swipe fee reform. We believe the interchange market is broken and competition must be restored to the credit card fee structure. Credit card swipe fees are still hidden and centrally fixed by the card companies in which fees have more than tripled over the last ten years. For small business gasoline retailers, swipe fees are the second highest expense other than payroll. When someone uses a credit card at a gas station, it typically adds nine to ten cents a gallon to the price and in many cases, the credit card companies make more off selling gasoline than retailers. In 2011, the gasoline retail industry paid $11.1 billion in interchange fees.

"THE ASK"

PMAA urges lawmakers to oppose interchange fee legislation that would delay the Fed's final rule which was introduced by Rep. Shelley Moore Capito (R-WV). The legislation would continue to allow Visa, MasterCard and their member banks to rip off small businesses and consumers. Secondly, PMAA urges lawmakers to move forward legislation which would address skyrocketing credit card interchange fees.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org

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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 LIHEAP FUNDING

In FY 2012, Congress woefully underfunded LIHEAP at $3.47 billion which was well short of the $5.1 billion Congress authorized under the Energy Policy Act of 2005 (EPAct). The President’s FY 2013 budget request calls for $3 billion which marks another year of drastic cuts to this vital program. PMAA urges Congress to increase LIHEAP funding to the $5.1 billion mark for FY 2013.

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.

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.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org

MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

1901 N. Fort Myer Drive • Suite 500 • Arlington, VA 22209-1604 • 703-351-8000 • Fax 703-351-9160

NATIONAL OILHEAT RESEARCH ALLIANCE

ISSUE BACKGROUND

Heating oil retailers are typically small, family-owned businesses who generally compete against large, government-supported utility companies and the political infrastructure that supports it. In the past, the only direct benefit provided to the oilheat industry by the federal government was a small appropriation (less than $1 million on average) to support research at a national laboratory. Of these funds, significant amounts were used to support the Department of Energy infrastructure, while few were used to develop meaningful product improvements for heating oil consumers.

During the late 1990's, Oilheat industry participants determined that a small appropriation directed by Washington was not going to provide the way forward for the industry. The industry wanted to be responsible for its future, and provide better products and services to its customers.

NORA was established in 2000 (P.L 106-469) and, in 2005, Congress extended NORA for an additional five years. Unfortunately, prior to extending the program, the program lapsed for eight months. That lapse was extremely disruptive, resulting in delayed projects and requiring a restructuring of operations. In 2010, the Congress again failed to act, and as a result, the program expired on February 6, 2010.

WHY A CHECKOFF PROGRAM?

The industry developed, and Congress authorized the National Oilheat Research Alliance (NORA), which is a funded by a check-off program that allows industry – not the government - to support and fund critical initiatives for oilheat businesses, technicians, and consumers. Benefits of the structure include:

1. Parity with other energy sources: Electric and gas utilities are essentially state-run monopolies that allow for uniform assessments to fund R&D and consumer education activities. Propane, a competing fuel, successfully implemented a similar check-off program and self-assessments to engage in these activities and improve its competitive position prior to the oil heating industry considering this approach. The heating oil industry decided that a limited self-assessment would help level the playing field with the large competing utilities and thus provide additional value to consumers.

2. Efficient and fair collection mechanism: A small, uniform assessment that allows wholesalers and retailers to work cooperatively without violating anti-trust laws.

3. Efficient use of resources: The efficient collection mechanism allows management of the program to be small and limited, and utilize existing industry resources to focus the program's efforts on critical activities such as R&D, consumer education, and technician training.

4. Absolutely NO Government Spending: Federal appropriations ended shortly after NORA's R&D program became operational. NORA is 100% funded by the industry and has no impact on the national deficit. It provides for important R&D and critical training opportunities.

WHY GOVERNMENT AUTHORIZATION?

Federal government involvement is limited to empowering the industry to develop an efficient and effective self-assessment program that allows the smallest retailer and the largest wholesaler to work cooperatively, and without fear of violating anti-trust laws.

The program provides tremendous benefits to the industry and its consumers. NORA's initiatives have helped to reduce Oilheat consumption by 30% over the last decade, which amounts to nearly $600 in annual savings per customer. Without Congressional authorization, the oilheat industry will lose the check-off program and its ability to work cooperatively and efficiently to provide these types of consumer benefits and efficient technologies to stay competitive in the marketplace.

As we look to decrease government spending and involvement in business operations, we believe that NORA provides some unique and positive ideas. It provides the opportunity for an industry to work together, to not seek funds from Congress, and to have a small organization provide large benefits for small businesses.

CURRENT LEGISLATION

Senators Shaheen (D-NH), Snowe (R-ME), Sanders (I-VT) and Burr (R-NC) introduced NORA reauthorization legislation, S. 949, and Representatives Bass (R-NH), Welch (D-VT), Pallone (D-NJ) and Lance (R-NJ) introduced companion legislation, H.R. 1756. Both bills promote oilheat efficiency, research and education by reauthorizing, strengthening and making technical corrections to the National Oilheat Research Alliance Act of 2000 (NORA).

The bills would extend the NORA program for seven years, which would allow for long-term planning and initiatives to educate consumers on the importance of energy efficiency to conserve fuel, regular service and safety practices, and the latest in Oilheat technology and renewable alternatives. The legislation redirects more funds for research, development and deployment of new ultra-efficient oilheating technologies, such as biofuel-blended product and the integration of solar equipment as a compliment to existing heating equipment. NORA has 68 House cosponsors (31 Republicans, 37 Democrats) and 15 cosponsors in the Senate.

"THE ASK"

MEMA and PMAA urge members of Congress to cosponsor NORA reauthorization legislation, S. 949 and H.R. 1756, which would provide the best means for enabling oilheat consumers to benefit from NORA's R&D, training, safety, and consumer information without the use of federal tax dollars. More importantly, once NORA legislation is enacted, it will pay dividends in allowing the industry to move toward a highly efficient heating fuel which will save consumers money, and enable the industry to move to cleaner and greener fuels.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org

MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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ROLL-YOUR-OWN TOBACCO

BACKGROUND

Since 2009, there has been a disparity between the taxes imposed on packaged cigarettes and "roll-your-own" cigarette tobacco ($24.78/lbs), and the taxes imposed on "roll-your-own" pipe tobacco, also called "loose tobacco" ($2.83/lbs). Certain tobacco retailers have begun exploiting this disparity by purchasing "roll-your-own" (RYO) machines. These large machines—which cost $30,000—are placed in retail outlets and "rented" to customers, who are then able to use the machine to create cigarettes out of cheaper pipe tobacco. Such cigarettes cost far less than traditionally packaged cigarettes due to pipe tobacco's lower tax rate. Further, they produce cigarettes at a far higher rate - approximately 200 cigarettes (one carton) every ten minutes - than do individuals who **literally** "roll their own" cigarettes with rolling paper.

CURRENT REGULATION AND LITIGATION

In September 2010, the Alcohol and Tobacco Tax and Trade Bureau (TTB) deemed the proprietors of retail establishments that "rent" RYO machines to consumers to be "manufacturers" of tobacco products, subjecting them the enhanced regulatory requirements associated with being a manufacturer. Several months later, a Federal District Court in Ohio issued an order enjoining TTB from enforcing this policy. That order is currently on appeal to the Sixth Circuit Court of Appeals. The litigation is expected to take several years before it is fully resolved.

This scenario has and will continue to have devastating consequences for the retail tobacco market. Tobacco retailers who do not own RYO machines are subject to a substantial competitive disadvantage because the cigarettes they sell are taxed at a far higher rate than the cigarettes sold by retailers who own RYO machines. Nonetheless, they are reluctant to invest $30,000 in a machine that could soon provide no competitive advantage should TTB prevail in the ongoing litigation. Not only will it provide no competitive advantage, but TTB has said it will seek to collect back taxes on all of the cigarettes sold using these machines.

LEGISLATION

Senate Finance Committee members were able to secure language in the Finance Title of the Senate-passed highway reauthorization bill, S. 1813, which codifies, (when the highway reauthorization bill is signed into law), TTB's Ruling classifying retailers who own RYO machines as "manufacturers." This legislative solution provides much-needed market certainty. This would not raise any tax rates, but simply clarify that those retailers who rent RYO machines to customers are in fact tobacco manufacturers, consistent with the TTB's ruling. It would also provide substantial certainty and benefits to all tobacco retailers:

1. For retailers who *already purchased* RYO machines, this solution would protect them from the real possibility that, in the likely event TTB prevails in its lawsuit, they would owe a substantial amount in back taxes for all cigarettes sold using such machines. Because the proposed legislative solution would be effective from a date certain in the future, they would not be liable for such back taxes.
2. For retailers who have not purchased RYO machines, this solution allows them to avoid investing $30,000 in equipment for which the competitive advantage is uncertain.

"THE ASK" PMAA urges Congress to retain the RYO legislative language that is in the Senate-passed two-year highway reauthorization bill, S. 1813, which would bring parity to the tobacco market.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org and Rob Underwood, runderwood@pmaa.org

MAINE ENERGY Marketers Association

PMAA PETROLEUM MARKETERS ASSOCIATION OF AMERICA

1901 N. Fort Myer Drive • Suite 500 • Arlington, VA 22209-1604 • 703-351-8000 • Fax 703-351-9160

THE TRIBAL GAMING ELIGIBILITY ACT

PMAA is a leading national trade association in the petroleum industry representing 8,000 independent petroleum marketing companies who own 60,000 retail fuel outlets such as gas stations, convenience stores and truck stops. Additionally, these companies supply motor fuels to 40,000 independently owned retail outlets and heating oil to eight million households and businesses.

ISSUE BACKGROUND

Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA) allows for exceptions for Indian reservations to make highly questionable claims for "restored lands," and "initial reservation," and the "settlement of a land claim." These were intended to be limited exceptions for newly acknowledged and restored tribes so that they would not be prejudiced and that they did not have any land in trust at the time the IGRA was adopted. Despite new regulations that were adopted in 2008 for Section 20 of IGRA, vague guidelines and standards remain in place for making the determination of restored lands. These vague guidelines have allowed tribal communities to build casinos far from where they live which impacts traffic, local businesses, taxation, housing, and fire and police services which can lead to increased crime rates.

Preventing tribal casinos from exploiting loopholes in the IGRA is critical for small business gasoline station owners to compete in a highly competitive motor fuels marketplace. PMAA is concerned that the development of new off-reservation casinos has the potential to develop new tribal gas stations that unfairly compete with non-tribal gas stations.

PMAA supports Senator Barbara Boxer (D-CA) and Jon Kyl's (R-AZ) bipartisan "Tribal Gaming Eligibility Act," (S. 771) which aims to stop "reservation shopping" in which tribes try to build casinos and other tribal businesses far from where they live. Essentially, the legislation provides guidance and standards to the determination for eligible land for gaming, while retaining the delicate balance of authority between tribes, states and the federal government.

WHAT S. 771 MEANS FOR GASOLINE STATION OWNERS

Tribal convenience stores have been able to undercut their off-reservation convenience store competitors because in many states, tribes do not have to pay gasoline and tobacco taxes. This gives tribal businesses a competitive advantage and can put nearby competitors out of business. Since tribal convenience stores can take advantage of not paying taxes, this leads to reduced federal and state tax revenues because motorists will choose to refuel at gasoline stations on Indian reservations to avoid paying taxes.

S. 771 would bring transparency and fairness in determining whether an Indian tribe can build a casino/business outside of existing reservations if a Tribe has a substantial direct, ancestral and modern connection to the land taken into trust following passage of IGRA. The legislation calls for clear and convincing evidence that determines, beyond a reasonable doubt, the connection to the land be acquired for Tribal gaming.

"THE ASK" PMAA urges lawmakers to support the "Tribal Gaming Eligibility Act" (S. 771).

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org

MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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PMAA PETROLEUM MARKETERS ASSOCIATION OF AMERICA

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CARGO TANK TRUCK RETROFIT MANDATE

Several years ago the Department of Transportation (DOT) considered a proposal to prohibit transport trucks from traveling on highways with gasoline in the wet lines. DOT did not suggest a certain method but indicated their view of purging the wet lines 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 and that the high cost of the empty wet line mandate outweighed any safety benefits gained to move forward with the proposal. The DOT is now taking another look at issuing a rule on the transportation of gasoline in the wet lines.

REGULATION

The Pipeline and Hazardous Materials Safety Administration (PHMSA), an agency within the DOT, issued its proposed wet lines rule on January 27, 2011. PHMSA has yet to issue a final rule.

The proposed rule gives tank truck operators 12 years after publication of the final rule to retrofit existing tanks with bottom protection like steel rails or install purging equipment, and any trailer manufactured two years after the effective date of regulation would have to be equipped with in line purging devices or steel guard rails to shield the wet lines from impact. It is important to note that the proposal does not apply to cargo tank trailers hauling diesel fuel, kerosene or heating oil.

MEMA and PMAA POSITION

PMAA is actively working with other national associations in opposition to the proposals. We have expressed concern about the excessive and unnecessary costs the retrofit mandate would impose on small business petroleum marketers.

PMAA believes the proposed wet line mandate:

- Will weaken our existing, very efficient, fuel transportation system. There are over 15,000 gasoline cargo tank trailers in the U.S. and less than 100 are equipped with purging equipment. Retrofitting existing transport trailers with bottom mounted steel guard rails to protect against impact is virtually impossible due to trailer design limitations.

- 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. The cost to replace a transport trailer can run as high as $100,000.

- Cannot be justified as sound public policy. Those who support the wet line retrofit mandate are understating costs and overstating benefits. The shortage of purging equipment will drastically increase costs. In the alternative, the replacement of cargo tanks trailers altogether would be an impossible compliance cost for small business petroleum transporters to meet.

- Will result in more deaths (by DOT's own prior admission) during the retro-fit installation of purging devices in existing equipment than would be saved from wet line rupture due to traffic accidents. The DOT also admits in the current rulemaking that retrofitting existing trailers with wet line protection rails is all but impossible.

LEGISLATION

The House Transportation and Infrastructure Committee's five-year, $260 billion highway reauthorization bill known as the "American Energy & Infrastructure Jobs Act" (H.R. 7) included a wet lines study and a cost benefit analysis which would require the Secretary of Transportation to coordinate with an independent non-partisan organization before DOT's proposed wet lines rule can be finalized. PMAA supports the wet lines study language. While H.R. 7 was not considered by the full House, the House and Senate will now go to conference over the Senate passed two-year highway reauthorization bill, S. 1813. PMAA urges House and Senate conferees to include a wet lines study in the final House-Senate conference agreement.

"THE ASK"

PMAA urges Congress to pass and the President sign into law a highway reauthorization bill which includes a wet lines study and a cost benefit analysis which would require the Secretary of Transportation to coordinate with an independent non-partisan organization before DOT's proposed wet lines rule can be finalized. PMAA believes that when all the facts are known, DOT will withdraw the proposed rule since it would impose costly and unnecessary regulatory burdens on small business petroleum marketers.

In absence of legislation, the DOT should withdraw the wet line mandate given that the agency so recently rejected a similar proposal based on a comprehensive cost benefit analysis which remains valid today.

PMAA STAFF CONTACT: Sherri Stone, sstone@pmaa.org
Rob Underwood, runderwood@pmaa.org

MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com

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DOT PROPOSES COSTLY & UNJUSTIFIED WETLINES RULE

- On January 27, 2011, the Pipeline and Hazardous Materials Safety Administration (PHMSA), an agency within the Department of Transportation (DOT), issued a proposed rule regarding the transportation of gasoline in the external product piping (wetlines) on cargo tanks transporting flammable liquids.
- The proposed rule is similar to a rule PHMSA proposed in 2004 and then withdrew in 2006 after determining the costs would exceed the benefits by 5%.
- The proposed rule would limit the amount of gasoline in each wetline to one liter. Transports usually have four wetlines – one per compartment.
- The proposed rule gives tank truck operators 12 years to retrofit existing tanks with bottom protection like steel rails or install purging equipment, and any trailer manufactured two years after the date of regulation would have to be equipped with in line purging devices or steel guard rails to shield the wet lines from impact.

A review of the PHMSA proposed rule was prepared by Edgeworth Economics and released April 22, 2011. Edgeworth found that:

- The agency is proposing a rule which according to its best estimates would impose a net cost to society. PHMSA calculates that the costs exceed the benefits 4 to 16%.

- PHSMA justifies this imbalance using assumptions that the costs will be offset by the avoidance of environmental remediation and litigation costs.

- PHMSA's entire regulatory cost analysis is flawed.

- PHMSA underestimates the cost of purging equipment, the cost of delay at the loading rack due to operation of purging equipment, the cost of equipment installation, the cost of installer injury, disability and death and costs due to the loss of time the transport trailer is available to haul gasoline.

- PHMSA estimates purge equipment costs at $2300 per tank. Edgewood estimates $4475.

- PHMSA estimates 12 hours of installation labor at $23.75 per hour. Edgewood estimates 14 hours at $33.23 per hour, and 25 hours at $70 an hour for retrofits.

- PHMSA estimates a weight penalty of the added purging system at $444,938 over the 27,000 trucks. PHMSA wrongly assumes that 25% of trucks generally reach the weight maximum. Edgewood conservatively estimates 75% reach the maximum with an actual penalty of $1.35 million.

- PHMSA assumes no risk for the "hot work" on retrofitted tankers. From 1998-2009 at least 20 technicians were killed by explosions while working on tankers.

- PHMSA has assumed no monitoring or enforcement costs associated with the rule.

- PHSMA ignored the cost of training drivers to operate the purging systems. Just one hour of training per driver will cost over $1 million in the first year.

- PHSMA has not considered the implications of the rule to air pollution. The purging technology is likely to cause increased emissions of volatile organic compounds (VOCs) by raising pressure inside the tank.

- PHMSA does not consider the substantial cost of delay for operation of purge systems at the terminal rack. Edgewood estimates the delay would cost $17.6 million per year for each minute of delay, based only on drivers' labor cost. The purge system is expected to cause a 3-6 minute delay to purge the wetlines.

- Wetlines incidents are rare. PHMSA estimates that over 100,000 cargo tank shipments of flammable liquids occur each day, and from 1999 to 2008 there have been 8 incidents that resulted in a fatality or injury that are attributable to wetlines releases.

PHMSA failed to justify the need for wetline retrofit because they used incorrect incident data which resulted in a seriously flawed regulatory cost benefit analysis. Wetline incidents are rare and do not justify the enormous compliance costs imposed on small businesses. PMAA feels strongly that the NPRM cannot be finalized at this time and requests that PHMSA withdraw the NPRM in order to perform an accurate regulatory impact analysis based on reliable, accurate and quantifiable data.

PMAA CONTACT: Sherri Stone, sstone@pmaa.org; Rob Underwood, runderwood@pmaa.org
MEMA STAFF CONTACT: Jamie Py, jamie@maineenergymarketers.com