

March 5, 2010

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BIODIESEL TAX CREDIT EXTENSION IN JOBS BILL II

Earlier this week, Senate Majority Leader Harry Reid (D-NV) and Finance Committee Chairman Max Baucus (D-MT) introduced Jobs bill II (H.R. 4213), which is being considered by the Senate. Included in Jobs bill II is the vital one year extension of the one dollar per gallon biodiesel blender's tax credit. The credit will also be available retroactively for biodiesel produced during the credit's lapse. The biodiesel tax credit expired Dec. 31, 2009.

PMAA and member associations are also urging the Senate to include a one year extension of the National Oilheat Research Alliance (NORA) authorization in Jobs II and have been conducting a targeted grassroots campaign to communicate to the Senate the urgency to include NORA in Jobs II.

Many of you have contacted your Senators numerous times to ask that they extend the biodiesel tax credit. Still, it is worthwhile to contact your Senators once again at 202-224-3121 and remind them that passage of a biodiesel tax credit one year extension is needed immediately. The Senate is expected to resume debate of the Jobs II bill on Tuesday.

COTA TO HIGHLIGHT FUTURES MARKET REFORM FOR EIA

On Tuesday, April 6 from 3:30 – 5:00 PM, PMAA Vice Chairman Sean Cota of Bellow Falls, Vermont will speak at the Energy Information Administration's 2010 Energy Conference: Short-Term Stresses, Long-Term Change session titled: "Regulating Energy Commodities." The EIA Conference will be held April 6 – 7 at the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue, NW, Washington, DC. The Conference will focus on climate change, energy and the economy, the impacts of a smart grid, the regulation of energy commodities, short-term prices, long-term energy outlooks, biofuels, U.S. and global natural gas markets, energy efficiency, and the energy-water nexus.

PMAA was one of the first national organizations to favor giving the Commodity Futures Trading Commission (CFTC) the necessary tools to effectively regulate energy futures markets. Cota is an independent petroleum marketer who noticed the extreme volatility taking place on futures exchanges in the early 2000s when federal legislation was passed to deregulate energy exchanges and also allowed broad exemptions for hedge funds and institutional investors to place highly leveraged bets on commodities.

As Congress moves forward with regulating energy derivatives contracts, federal regulators will be impacted on how they will impose rules on energy derivatives trading. Richard Newell, EIA's Administrator, invited Cota to offer his assessment on the current state of regulating energy contracts and what the future may hold for federal regulators if the President signs a commodity derivatives reform bill this year.

HOUSE WAYS AND MEANS COMMITTEE CHAIRMAN RESIGNS

House Ways and Means Committee Chairman Charlie Rangel (D-NY) stepped down this week after being admonished by the House Ethics Committee for breaking House rules for accepting corporate-sponsored Caribbean trips. Rep. Rangel is also being investigated on a number of other ethic scandals including failure to disclose rental income from a villa in the Dominican Republic, solicitation of donations using Congressional letterhead for a college center named for him and renting four Harlem apartments at below market rates.

House Speaker Nancy Pelosi (D-CA) has supported Rangel while the Ethics Committee reviews his case. However, Rangel's decision to step down was seen as a way to avoid any backlash from voters in the upcoming election season after the Ethics Committee's decision to admonish him.

Taking over the House Ways and Means Committee Chairmanship is 14-term Democrat from Michigan, Sander Levin. PMAA does not expect any significant policy changes with Rep. Levin in control of the House's most powerful Committee.

SENATOR ADVISES "CAP AND TRADE IS DEAD"

According to the Washington Post, in a recent meeting with prominent environmental lobbyist, Senator Lindsey Graham (R-SC) uttered five words which PMAA hopes will be engraved in stone "cap and trade is dead." In 2009, the House of Representatives passed cap and trade legislation which, if enacted, would have severe repercussions for gasoline and diesel marketers and their customers. "The Waxman/Markey cap and trade bill would have pushed gasoline over four dollars a gallon and likely over five dollars," said Oregon marketer Jason Powell, who chairs PMAA's Climate Change Task Force.

The pronouncement by Senator Graham is significant because Graham has been working closely with Senator John Kerry (D-MA) and Senator Joe Lieberman (I-CT) searching to write climate legislation that moderate Senators could support. Both Kerry and Lieberman have been highly visible in their effort to curb greenhouse gases, which they believe are the primary source of climate change. Many scientists agree that greenhouse gases contribute to climate change but often disagree on exactly how much carbon emissions contribute.

PMAA has been very opposed to the Waxman/Markey cap and trade bill because it unfairly burdens consumers of liquid fuels such as gasoline, diesel and heating oil. Senator Graham indicated that he and Senator Kerry plan to introduce legislation in March that will apply different carbon controls to individual sectors of the economy. While many experts believe global carbon restrictions are needed, the recent global conference in Copenhagen revealed that many countries are unwilling to accept binding agreements to restrict carbon.

The cap and trade concept has become more controversial in recent months because of its potential for massive bureaucracies and credit trading influence. Giving Wall Street a new avenue to speculate on carbon credit value is not attractive to many legislators.

While the new Kerry/Lieberman/Graham legislation will likely impose unnecessary price increases on liquid fuels, the measure will be better than cap and trade. PMAA will report more when additional details of the legislation are released.

2011 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2011 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 22-24, 2011.

MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2010

June 8-10, 2010 – MPMCSA Convention – Billings Hotel and Convention Center – Billings, Montana

June 22-24, 2010 – WOMA Convention – Suncadia Lodge – Cle Elum, Washington

August 4-6, 2010 – IPM&CSA Convention – Schweitzer Mountain Resort – Sandpoint, Idaho

August 31-September 1, 2010 – NMPMA Convention – Embassy Suites, Albuquerque, New Mexico

September 8-10, 2010 – UPMRA Convention – Park City Marriott – Park City, Utah

Petro Pete: “Never test the depth of the water with both feet.”

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PMAA Regulatory Report - DOT - March 1, 2010

Subject: U.S. DOT Drug and Alcohol Testing Requirements

Issue: Regulatory Changes to the Drug and Alcohol Program

Date: March 1, 2010

PMAA Contact: Mark S. Morgan, Regulatory Counsel - mmorgan@pmaa.org

EXECUTIVE SUMMARY – The U.S. Department of Transportation issued three final rules on February 25, 2010 that affect petroleum marketers who must comply with federal drug and alcohol testing requirements for CDL/HAZMAT drivers. While the rules do not impose new regulatory burdens, they adopt changes that are required for full compliance.

U.S. DOT Issues Changes to Driver Drug and Alcohol Testing Program

1. The first rulemaking adopts in total an Interim Final Rule authorizing employers to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of CDL/HAZMAT drivers when a State law requires such reporting. This rule does not create an affirmative duty to report test results. It only allows such reporting if a state so requires. This is a technical amendment removing previous language that prohibited transfers of drug and alcohol testing results unless the employer first obtained written consent from the driver. Under the new rule, if a state requires reporting of drug and alcohol test results, the employer is not required to obtain consent from the driver to comply. The rule is available at <http://edocket.access.gpo.gov/2010/pdf/2010-3729.pdf>.
2. The second final rulemaking makes technical changes to U.S. Department of Transportation driver drug and alcohol program forms. Both the U.S. DOT Alcohol Testing Form (ATF) and the Management Information System (MIS) Data Collection Form are updated. Petroleum marketers use these forms to comply with U.S. DOT drug and alcohol program testing and reporting requirements. The DOT recognizes that employers and alcohol testing technicians may currently have a large supply of the old ATF forms. Instead of discarding these forms, the DOT will permit their use until supplies are exhausted or employers may begin using the new forms immediately. Either way, only the updated forms may be used beginning August 1, 2010. Since the MIS is a single-page form that is an annual submission usually done electronically via the Internet, (at <http://damis.dot.gov>), it is less likely employers have a large number of these forms on hand. Therefore, employers may not use existing supplies of MIS forms for the next reporting deadline of March 15, 2010. Instead, the new MIS forms must be used. Both revised forms with instructions can be found at <http://www.dot.gov/ost/dapc/mis.html>. The final rule can be viewed at <http://edocket.access.gpo.gov/2010/pdf/2010-3731.pdf>.
3. The third final rule adopts an Interim Final Rule (IFR) that allows certain pre-screening devices for alcohol testing. When the federal alcohol testing rules for CDL/HAZMAT drivers were finalized on February 15, 1994 [54 FR 7302 et seq.], a provision was included requiring breath testing be conducted using evidential breath testing devices (EBTs). However, the DOT subsequently added flexibility in testing methods by allowing the use of non-evidential alcohol screening device (ASD). Regulations updating the types of ASD allowed for non-evidential screening purposes were made in an IFR on January 11, 2007 IFR [72 FR 1298]. The final rule adopts the IFR as written and can be viewed at <http://edocket.access.gpo.gov/2010/pdf/2010-3730.pdf>.

Should you have any questions about these new forms or drug and alcohol testing requirements, please feel free to contact [Mark S. Morgan](mailto:Mark.S.Morgan), Esq., PMAA Regulatory Counsel at 202.364.6767.