



October 14, 2022

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Energy Marketers of America



REMINDER: URGE LAWMAKERS TO COSPONSOR "THE CREDIT CARD COMPETITION ACT OF 2022"

Recently, Reps. Peter Welch (D-VT) and Lance Gooden (R-TX) introduced bipartisan legislation known as "The Credit Card Competition Act of 2022" which would ensure retailer choice in payment routing by requiring at least two unaffiliated processors on credit cards, the same process that is used for debit card transactions. Swipe fees remain the second highest operating cost for convenience stores which costs the industry \$138 billion annually. The House bill, H.R. 8874, joins companion legislation already introduced in the Senate, S. 4674, by Majority Whip Dick Durbin (D-IL) and Senator Roger Marshall (R-KS).

[URGE YOUR LAWMAKERS TO COSPONSOR "THE CREDIT CARD COMPETITION ACT!"](#)

NLRB PROPOSES NEW JOINT EMPLOYER RULES

SBLC also reports that in September, the National Labor Relations Board (NLRB) proposed new rules for determining when businesses will be considered joint employers for the purposes of the National Labor Relations Act (NLRA). Comments on the proposed rules are due November 7.

The concept of joint employers and the determination of when two entities that do business together will be considered jointly responsible for specific employees has been a big issue over the last decade not just for the NLRB but also for the Department of Labor (which is also has the issuance of new joint employer rules on its to do list).

For the NLRB's part, the new proposed rules would replace the Trump-era rules which took effect in April 2020, and which narrowed when employers would be considered joint employers for the purposes of the NLRA (which among other things governs issues like unfair labor practices, collective bargaining agreements and protected employment activities). Under the preexisting rule, a business would only be considered a joint employer if it had "direct and immediate control" over the worker's essential terms and conditions of employment. Under the new rule, two businesses would be considered joint employers if they "share or codetermine those matters governing employees' essential terms and conditions of employment." Under the proposed rules, to "share or codetermine matters" would mean to "possess the authority to control (whether directly, indirectly, or both) or to exercise the power to control (whether directly, indirectly, or both) one or more of the employees' essential terms and conditions of employment."

In other words, the new proposed rules (which harken back to the rules that existed before the last set of rules were finalized in 2020) would dramatically expand the circumstances when two businesses could be considered joint employers. EMA plans to submit comments in opposition to the proposed rules.

REMINDER! USDA OFFERING \$100 MILLION IN MATCHING FUNDS FOR INSTALLATION OF HIGHER BLENDS ETHANOL AND BIODIESEL INFRASTRUCTURE

The United States Department of Agriculture (USDA) announced in August the availability of approximately \$100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under the Higher Blends Infrastructure Incentive Program (HBIIIP). A USDA representative attended the Energy Marketers of America's fall meeting in Las Vegas last week to encourage marketers to take advantage of the HBIIIP grants.

According to the USDA, cost-share grants of up to 50 percent of total eligible project costs but not more than \$5 million will be made available to assist transportation fueling and fuel distribution facilities with converting to higher blend status for ethanol

(i.e., greater than 10 percent ethanol) and biodiesel (greater than 5 percent biodiesel) by sharing the costs related to the installation, and/or retrofitting, and/ or otherwise upgrading of dispenser/ pumps, related equipment, and infrastructure. The \$100 million is currently available to support a variety of fueling operations, including filling stations, convenience stores and larger retail stores that also sell fuel. The funds will also support fleet facilities including rail and marine, and fuel distribution facilities, such as fuel terminal operations, midstream operations, distribution facilities as well as home heating oil distribution centers.

[CLICK HERE FOR MORE INFORMATION ON THE USDA HBIIP](#)

DOL PROPOSES NEW INDEPENDENT CONTRACTOR RULES

On Tuesday, the Department of Labor (DOL) released the text of its much-anticipated proposed rules on independent contractors. The proposal will be formally published in the Federal Register on October 13 and the comment period will be held open for 45 days.

According to the Small Business Legislative Council (SBLC), of which EMA is a member, since the DOL first made it clear that it would be revisiting the independent contractor rules, the big question has been whether the agency would look to implement a stringent ABC test like the one adopted in California. To the relief of employers, in the proposed rule the DOL has declined to pursue an ABC test and is instead simply returning to and fleshing out the economic realities test that was in place prior to 2021.

The new proposed rules would reinstate the economic realities test with each factor receiving equal weight and with the worker's and employer's investments into their respective businesses being broken out as its own factor in the test. The proposed rules also provide additional detail on how businesses should assess the issue of control and determining whether the work is integral to the employer's business. The DOL's stated goal in these proposed regulations is to bring the regulations back in line with the case law and standards that employers have become accustomed to.

To read the full SBLC report, including the history of the independent contractor rule, please go [here](#).

LAWMAKERS URGE PRESIDENT BIDEN TO DENY "CALIFORNIA CAR MANDATE"

Last week, 158 lawmakers sent a [letter](#) to the President urging him to reject California's forthcoming request for a waiver that would require 35 percent of all new light-duty vehicle sales to be electrified by 2026, followed by a 100 percent requirement by 2035. This means that by 2035, automakers would be prohibited from selling new vehicles that contain conventional internal combustion engines (ICEs). For this ban to go into effect, California will need to obtain from the U.S. EPA a waiver of Clean Air Act (CAA) preemption provisions. They urged the president to reject California's forthcoming request for the CAA waiver due to widespread concerns for the negative impact it will have on the electric grid, the need for additional power generation, the overreliance on foreign adversaries for critical minerals, and the right of Americans to choose for themselves which vehicles they wish to drive.

Every American will be impacted by this ban, whether they are in one of the 15 states that copies California vehicle laws or whether they are a consumer looking to buy an affordable new pickup truck in the next few years. California needs a waiver from EPA to enact this regulation and ban gasoline and diesel vehicle sales. EPA needs to deny this waiver.

If California's ban moves forward, it will:

- Outlaw the sale of new clean internal combustion engine vehicles (even hybrids) in up to 15 states and the District of Columbia
- Raise the price and reduce the availability of gasoline and diesel cars in other states
- Increase Americans' utility bills to subsidize a massive expansion of the electricity grid for EV charging
- Threaten the viability and jobs of small business energy marketers around the country, whether they deliver gasoline and diesel or renewable fuels like ethanol, biodiesel and renewable diesel.

Court Action to Stop the "California Car Mandate"

EMA has been actively engaged in the fight against banning gasoline powered vehicles since California Governor Gavin Newsom authorized the ban in a 2020 executive order. On May 13, 2022, EMA filed a petition with a federal Court of Appeals in Washington, D.C., asking the court to review the Biden Administration's restoration of the Clean Air Act waiver allowing California to set its own air standards. That waiver was revoked by the Trump administration in 2019. The EMA petition was filed to challenge the restoration of the waiver on various grounds, including that California does not require the more stringent standards to meet any extraordinary or compelling conditions that are unique to California as the Clean Air Act requires. If the court overturns the waiver as requested by EMA, California is likely to lose the authority it claims to ban gasoline powered vehicles in the State. If that happens, any state attempting to adopt the California ban will lose their authority to act as well.

Separate from the current court action, EMA opposes California's waiver request for gasoline-powered vehicle ban. If EPA does not have the authority under the Clean Air Act to ban gasoline-powered vehicles, it is difficult to see how it can allow California to exercise such authority under the statute.

In the meantime, [CLICK HERE](#) to reach out to your lawmakers and urge them to contact EPA and recommend that California's waiver be denied to protect motorists and small business energy marketing companies!

EIA FORECASTS LOWER INVENTORIES AND COOLER WEATHER WILL BRING HIGHER RETAIL PRICES ACROSS ALL HEATING FUEL SOURCES

The U.S. Energy Information Administration (EIA) issued its first winter fuel report of the 2022/2023 winter heating season which runs from November 1 through March 31.

EIA Winter Fuel Forecast Findings:

- Winter energy household expenditures are likely to be higher than previous winter.
- Higher expenditures reflect both higher retail energy prices and more fuel consumption.
- The National Oceanic and Atmospheric Administration forecasts U.S. weather temperatures to be slightly colder with a 6% jump in the number of heating degree days than last winter, leading to more consumption across all fuels and regions.
- Inventories across a range of fuels are low, creating the possibility for high price volatility and price spikes, particularly if the weather turns out to be very cold.

Heating Oil: According to the EIA, 4% of U.S. households (largely in the Northeast) use heating oil as their primary heating fuel. The EIA forecasts average retail prices this winter for heating oil will be 16% higher than last winter. This translates into a total average expenditure of about \$2,350 per household this winter, up 27% from last winter. Total average heating oil consumption per household is expected to be 520 gallons, up 9% compared with last winter. The retail price of heating oil is expected to average \$4.54/gal during the winter of 2022–23, up 16% (64 cents/gal) from the previous winter. Higher heating oil prices are driven by higher refining margins than last winter. Inventories in the Northeast ended September 57% below the five-year average due to: limited regional refining capacity; increasing domestic distillate demand in the first half of the year; and low imports as a result of generally tight distillate markets worldwide.

Propane: According to the EIA 5% of all U.S. households use propane as their primary heating fuel. The EIA forecasts that households in the Midwest, and South will spend 5% (\$80) more, on average, for propane this winter compared with last winter, driven by higher expected consumption. Households in the Northeast will spend an average of \$1,970 per household, which is 8% higher than last winter. Households in the Midwest will spend 5% more than last winter (an average of \$1,650 per household). In the South, EIA expects households to spend 4% more than last winter (about \$1,510 per household).

Natural Gas: Nearly half of all U.S. households heat primarily with natural gas. EIA expect households that use natural gas as the primary space heating fuel will spend about \$930 this winter, 28% more than they spent last winter. The forecasted increase in natural gas expenditures is the result of both higher expected prices and consumption. Working natural gas inventories in the EIA forecast reach almost 3.5 trillion cubic feet (Tcf) by the end of October, or 6% below the previous five-year average.

Electricity: The EIA predicts U.S. households that heat primarily with electricity will spend 10% more than last winter, at an average of about \$1,360. This increase is based on EIA's forecast of 4% more electricity consumption and 6% higher residential electricity prices.

WEEKEND READS:

[Electric-Vehicle Charging to Get Biofuel Credits Under EPA Plan](#)

[GM's electric future extends far beyond cars](#)

[Will Biden Embargo U.S. Oil?](#)

[Chuck Schumer Says 'NOPEC' Bill Targeting OPEC Is on the Table](#)

[OPEC oil cuts bad for global economy, Treasury Secretary Janet Yellen tells Financial Times](#)

[Biden administration weighs whether to shrink offshore drilling lease sales](#)

[UN group adopts 2050 goal of net-zero emissions from planes](#)

[Newsom to call special session to impose tax on oil companies' profits amid record gas prices](#)

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October 17, 2022 - HEMA Golf Tournament - Oahu Country Club - Honolulu, HI

December 1, 2022 - Oregon Holiday Party - Portland Golf Club - Portland, OR

December 8, 2022 - Washington Holiday Party - Topgolf - Renton, WA

February 21-23, 2023 - WPMA Convention & EXPO - Mirage Hotel- Las Vegas, NV

April 27-28, 2023 - Nevada Big Dogs - Red Rock Hotel/Sienna Golf Course - Las Vegas, NV

June 6-7, 2023 - MPMCSA Montana Convention - Fairmont Hot Springs - Fairmont, MT

June 19-21, 2023 - WIED Washington Convention - Suncadia Lodge, Cle Elum, WA

July 16-18, 2023 - OFA Oregon Conference - Sunriver Resort - Sunriver, OR

August 2-4, 2023 - IMP&CSA Idaho Convention - Sun Valley Resort - Sun Valley, ID

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Petro Pete:

Just burned 2,000 calories. That's the last time I leave brownies in the oven while I nap.

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