



NAEDA Update

NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION e-newsletter

Thursday, May 10, 2012

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Legislative & Regulatory News

U.S. District Court Issues Enjoins New H-2B Program Rule

A Federal District Court Judge in the Northern District of Florida has issued a nationwide preliminary injunction barring the U.S. Department of Labor (DOL) from implementing their H-2B program rule. The Rule was challenged in federal court on behalf of the businesses and business association, who include the U.S. Chamber of Commerce and representatives from the landscape and forestry industries. The judge's decision also bodes well for the H-2B wage rule litigation that is pending in the same court. The Court found that the plaintiffs sufficiently established facts to demonstrate their standing to bring this challenge and that they would likely succeed on its merits. As a result, the Court issued the preliminary injunction to block implementation of the rules while the merits of the plaintiffs' case are considered by the judge. The plaintiffs argued that the DOL does not have the statutory authority to issue the program rules and furthermore that in its process of issuing the rules, the Administration violated the Administrative Procedure Act and the Small Business Regulatory Flexibility Act as well.

Legal proceedings in this case will continue. The Court has now ordered the parties to file motions for summary judgment on June 25, 2012, and has allowed 14 days for response briefs. In addition, the Department of Justice could appeal the decision.

The April 26 decision was handed down just before the Final Rule was to take effect. On February 21, 2012, the Secretary of Labor issued the Final Rule ("Rule") that overhauled the temporary, non-agricultural foreign worker H-2B program for seasonal workers. Although the Rule was originally scheduled to take effect on April 23, 2012, the Department of Labor (DOL) had extended the effective date to April 27, 2012.

Longstanding Dispute with Europe over Hormones in Beef is Resolved

The European Union voted April 26 to modify its regulations to open an autonomous tariff quota for imports of high-quality beef not treated with hormones, effectively ending a longstanding dispute between the E.U. and the U.S. over the presence of hormones in imported beef. The modification expands the number of permissible imports from the current 20,000 tonnes (established in 2009) to 21,500 tonnes, beginning July 1, and to 48,000 tonnes, beginning August 1. The customs duty of this tariff-rate quota will remain fixed at zero. In return, both the U.S. and Canada have suspended sanctions on EU products, including chocolates, jams, fresh truffles and Roquefort cheese.

In 1998, the WTO found that the EU ban on meat imports treated with certain growth promoting hormones from the U.S. and Canada was inconsistent with the sanitary and phytosanitary measures and authorized the suspension of concessions to the EU.

Groups Press for Senate Action on Farm Bill

Following approval of the 2012 Farm Bill by the Senate Agriculture Committee, a number of agriculture, conservation, nutrition, and rural development organizations have been pressing Senate leadership to schedule floor time for the legislation. The Senate Agriculture also released a summary of the committee-

CEO Blog

Membership Does Matter

May 2012



It is hard to believe that it is May again and time for the NAEDA Equipment Dealer – 2012 Buyer's Guide. This resourceful publication is an industry standard that is used throughout the year by

dealers across North America. Thanks to all the companies who list their information and especially to the advertisers that help make this publication possible.

Because this particular issue is so unique, I take a little different approach to my regular column and try to summarize some of the achievements and accomplishments of NAEDA and the affiliated associations during this past year. Almost like a Reader's Digest version of an annual report. So here goes ...

It has been another active year for issues and activities related to our association's top priority – **manufacturer relations**. In addition to regular meetings to discuss dealer issues and concerns, contract reviews have become a staple of what we do for dealer members. This past year was no exception. Nine different contracts were reviewed, including legal analysis, to determine if they met our criteria for being commercially fair and balanced. In several instances, significant changes were made as a result of discussions between NAEDA and the company in question. The Industry Relations Fund is often used to support the analysis and distribution of information to dealers. This past year over \$63,000 was expended from the fund.

The NAEDA – Industry Relations Taskforce (IRTF) also had a busy year with nine different manufacturer meetings and additional meetings with manufacturer related associations such as AEM, FEMA and OPEI. As always, the focus of these meetings is to be the advocate for strategic

passed Agriculture Reform, Food and Jobs Act of 2012.

Meanwhile, the House Agriculture Committee continues its series of Farm Bill hearings. To date, the various agriculture subcommittees have held hearings on Rural Development, Dairy, Conservation, and Specialty Crops and Nutrition. With hearings scheduled on the Credit and Commodity portions of the Farm Bill in the next several weeks. The House Budget Committee approved, by party line vote, legislation that would circumvent pending automatic defense spending cuts by reducing domestic spending by more than \$260 billion over the next ten years, with \$33.2 billion of that figure coming from reductions to nutrition programs passed by the House Agriculture Committee last month. While the legislation is expected to pass the House later this week, the bill is certain to die in the Senate.

A copy of the Senate summary can be found [here](#).

Equal Employment Opportunity Commission Issues Guidance on Criminal-Background Checks

The Equal Employment Opportunity Commission (EEOC) has issued a new guidance document that impacts the ability of employers to continue to use criminal-background checks to make informed hiring decisions. The new guidance replaces one that had been in effect for twenty-five years and has served a wide variety of professions and occupations as a de facto national regulation. Numerous organizations, including NAEDA, had expressed concerns to EEOC as this guidance document was being developed. All the organizations believed that criminal background checks are an important tool in efforts to help protect employees, customers and the public at-large from workplace violence, fraud and theft.

Dealers are encouraged to become familiar with these new guidelines. Note the section on "best practices" included in the document starting on page 25.

A copy of the guidance document can be found [here](#).

EEOC has also issued a Q & A which can be found [here](#).

dealer issues and industry concerns while at the same time attempting to understand the goals and business objectives of manufacturers. The reality is that in this symbiotic relationship, the goal is to profitably serve the needs of various customer segments in an environment of mutual trust and respect.

As typically happens, other issues surfaced during the year involving manufacturer policies that could be detrimental to dealers unless they were dealt with by NAEDA and affiliated organizations. One example might be a poorly designed program placing legally questionable and artificial limits on shop labor rates that dealers can charge for warranty/service. In every instance where NAEDA and affiliated organizations were involved early on in the process, a rule of reason or simply eliminating a poor policy choice was the result.

Also this past year, our second ranking priority, **government relations**, dealt with several issues that caused dealers some real heartburn or sleepless nights. Here are just a few examples in this important area:

- **3% Withholding Repeal** – NAEDA supported the repeal of the 3% withholding tax on certain payments made to dealers by federal, state and local units of government. Without this repeal, a dealer's revenues would have been reduced, causing cash flow problems, increased bookkeeping costs and raised expenses to those same units of local government. The repeal bill (H. 674) was signed into law by the president on November 21, 2011.

- **Free Trade Agreements** – NAEDA supported passage of the free trade agreements with Columbia, Panama and South Korea. Our support was based on the jobs that will be created and the fact that it leveled the playing field for agricultural trade. All three bills (H. 3078, H. 3079 & H. 3080) were signed into law by the president on October 21, 2011.

- **Patent Reform** – NAEDA supported passage of this bill (H. 1249) as an additional and critical piece of legislation for economic development, jobs, growth and competitiveness. The president signed this into law on September 16, 2011.

- **Debit Card Fees Changed** – NAEDA supported changes in how debit card swipe fees were charged. The changes were made in regulations by the Consumer Financial Protection Bureau authorized in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

- **IRS 1099 Filing Requirements** – With passage of H.R. 4, this onerous requirement for dealers to file IRS Form 1099 for each business transaction that exceeded \$600 and to withhold up to 28%

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Webster's Dictionary defines the word BASIC as:

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Industry & Manufacturing News

Icahn sells LightSquared debt, creditors extend talks

Billionaire investor Carl Icahn has sold his \$250 million debt holdings in Philip Falcone's telecom start-up LightSquared MOSAV.UL, while Falcone continues to negotiate with creditors to avoid a debt default, according to sources familiar with the matter.

News of Icahn's debt sale comes as remaining creditors agreed to a second week-long extension until May 14 of their talks with Falcone about reducing his firm, Harbinger Capital Partners' 96 percent equity stake in LightSquared.

[Read more](#)

Source: Reuters

U.S. farmer demand for machinery still strong

U.S. farmers are buying equipment as agricultural finances strengthen, the Federal Reserve Bank of Kansas City said in its quarterly report on national farm lending.

Total U.S. agricultural loans reached \$79.1 billion in the first quarter of 2012, up from \$62.8 billion for the same period a year ago. Farm machinery and equipment loans hit \$6.9 billion, near the peak demand of \$7.1 billion in the first quarter of 2011.

[Read more](#)

Source: Reuters

NAEDA / Industry Meetings Scheduled

NAEDA's Industry Relations Task Force has scheduled several meetings with manufacturers in the upcoming months. The next IRTF meeting will occur on May 25, 2012 with John Deere management at their new headquarters in Olathe, KS. Any Deere dealers with issues should contact a member of the IRTF or their affiliate association. Additional meetings are scheduled with AGCO on June 13, OPEI on June 20 and Case IH on July 18. Dealers are again encouraged to contact a member of the IRTF or their affiliate association with any issues they might have prior to the meetings.

AGCO receives government loan to expand Minnesota plant

Officials with Federated Rural Electric, of Jackson, Minn., and USDA Rural Development presented AGCO with a \$740,000 no-interest loan for up to 10 years.

The loan will be directly applied to a major expansion project nearing completion on the AGCO Jackson campus. The firm plans to add about 75,000 square feet of production space and a state-of-the-art showroom.

[Read more](#)

Source: bidafarm.com

NAEDA, Association & Program Partner News

Online registration open for GIE+EXPO 2012

Online registration is now open for the 2012 GIE+EXPO (Green Industry & Equipment Expo), which will be held in Louisville October 24-26.

Outstanding prizes are available for those who register early! Two lucky registrants will win the two grand prizes – \$1,800 travel packages to the show.

[Read more](#)

Source: GIE+EXPO

Canadian News

Shell, logen scrap plans for Canada biofuel plant

Royal Dutch Shell and logen Corp have scrapped plans for a commercial-scale biofuel plant in Manitoba, spelling the loss of 150 jobs and raising questions about widespread and near-term use of fuel made from agricultural waste in Canada.

Ethanol production from food grains, especially corn, has generated debate about the ethics of diverting

of a payment to a vendor was repealed. This law was signed by the president on April 14, 2011.

- [Agriculture Equipment Definition](#) – NAEDA opposed the guidance document proposed by The Federal Motor Carrier Safety Administration (FMCSA) that would have defined agricultural equipment. Their proposed definition would have impacted equipment movements across state lines. FMCSA withdrew the guidance document and instead noted it would rely on the states to define agricultural equipment.

- [IRS 1099-K Reconciliations](#) – The Housing and Economic Recovery Act of 2008 requires the IRS to collect a 1099-K from third-party payment entities, such as credit card companies. The 1099-K was to show all credit transactions within a merchant's business for the year. IRS on February 9, 2012 announced that there will be no reconciliation required on the 2012 form, nor "do we intend to require reconciliation in future years."

- [NLRB Court Decisions](#) – Two federal courts have ruled against the National Labor Relations Board's regulation requiring employers to post "employee rights posters on unionization." NAEDA supported these lawsuits and appreciates the actions taken by the court to control unreasonable regulations.

- [NAEDA 2012 Fly-In](#) – The 9th Annual NAEDA Fly-In was held on March 21 and 22 where dealers, NAEDA staff and association executives lobbied Congress on behalf of all dealers regarding issues important to our industry.

The past year was also one for **surveys!** We always appreciate the participation by NAEDA affiliates and dealers to make these surveys possible. There were three major surveys conducted this past year: NAEDA Compensation and Benefits, Dealer-Manufacturer Relations and the OPE Internet Policy survey. Findings for each of these surveys are distributed to dealers and in the case of Dealer – Manufacturer Relations, to manufacturers as well. Based on the positive feedback we received, it appears that these surveys are an important part of providing key data and knowledge to dealers and to the industry.

NAEDA Equipment Dealers Foundation (EDF) was also part of the overall success story this past year. In addition to providing \$37,750 to twenty-one employees impacted by natural disasters, the foundation created a new matching scholarship program to enhance school programs already established at the affiliate level. The new scholarships are designed to enhance the amount available to top prospects who want to obtain training and education and show an interest in returning to our industry after

food for use in fuel and has been a key reason why U.S. corn stocks are projected to fall to a 16-year low this summer.

[Read more](#)

Source: Reuters

USDA Veterinary Services Reduces Staff at Two US-Canada Border Ports

Effective April 4, 2012, the US Department of Agriculture (USDA) Animal and Plant Health Inspection Services (APHIS) ended full-time staffing of Veterinary Medical Officers at the International Falls, MN and Baudette, MN border ports. Import services can be arranged with Veterinary Services (VS) on a limited, as-needed, and by appointment only basis. Such arrangements should be made at least 2 weeks in advance by calling the VS Minnesota Area Office at (651) 290-3691. Importers arranging VS services will be responsible for full payment of all estimated import-related service prior to the shipment's arrival. More information can be found [here](#).

Tip of the Month



[May Compliance Tip of the Month: 3 Steps to Prevent Workplace Violence](#)

Workplace violence is a risk that can be managed. It should be a priority for all HR managers because homicide is the 2nd leading cause of death in the workplace for all workers, and it is the #1 cause of death for women in the workplace ([Bureau of Labor Statistics](#)). Are your employees safe? Take these three steps to ensure a safe work environment. Find out more at <http://blog.kpaonline.com/category/tipofthemonth/>

Free KPA webinars

- Thursday, May 17, 2012 - [Key Labor Law Developments for Union and Non-Union Dealerships](#)

graduation.

Also, a new brochure will be published by NAEDA, with the assistance and permission of the Ohio Farm Bureau, to help dealers and their staff better understand how to use social media and the internet to enhance business opportunities and profitability. This publication will be available in the very near future and we hope every dealer member will find it useful.

As I said up front, this is merely a thumbnail sketch, a Reader's Digest version of the actions and successes on behalf of dealer members across North America. NAEDA and all the affiliates have been busy assisting dealers with key member service programs and education on everything from trucking regulations to time management. In addition, the affiliate associations are typically the front line when dealers have issues about their performance or market share and even possible termination of their contract.

All in all, when you put all the various programs, advocacy, information and services together, membership in the association is a phenomenal bargain. Typically, for a few hundred dollars per year for both affiliate and NAEDA dues, it amounts to pennies per day, or less than the cost for a cup of coffee! It is our mission to help dealers succeed and to provide the best business environment possible. We are your advocates, your voice and your biggest cheerleaders! We have your back! We are proud to serve our dealer members and the equipment industry. I trust you can appreciate all that we do on your behalf. Your membership and support are certainly valued. Membership does matter – and that's the way I see it!

PAUL KINDINGER is president/CEO of the North American Equipment Dealers Association. The association provides educational, legal, legislative, and financial services to approximately 5,000 retail agricultural, construction, large property/rural lifestyle, and outdoor power equipment dealers in the United States and Canada.



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