



NAEDA Legislative Report August 2009

FY 2010 Budget Resolution – The \$3.4 trillion budget blueprint adopted by Congress contains \$97 billion in new unspecified taxes, allows the top marginal income tax rates for those earning more than \$250,000 to rise to 39.6% and restricts Senate debate (filibuster) on policy changes concerning healthcare and education. This resolution (S. Con. Res. 13) did not have to be signed by the President and it sets the priorities for Congress’s spending.

NAEDA policy opposes a number of these new tax increases.

Americans with Disabilities Act Amendments Act (ADAAA) of 2008 - ADAAA became effective on January 1, 2009 and intended to overturn a series of Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 (ADA) in a way that made it difficult to prove that an impairment is a “disability.” The ADAAA retains the ADA's basic definition of “disability” as: an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

NAEDA continues to monitor the implementation and the pending regulations that will be issued this fall to fully enact the ADAAA. Federated Insurance has provided the following highlights of some of the legislation’s provisions which will show up in the regulations:

- More individuals will be considered “disabled” under the law because the disability threshold is much lower.
- There is renewed emphasis on whether an employer has "reasonably accommodated" an employee's medical request.
- Employers can generally apply the same standards of performance and conduct to all employees because a disabled employee still needs to be able to perform the "essential functions" of the job. However, a reasonable accommodation may be required to assist the disabled employee in meeting a specific performance standard.
- The term “major life activities” has been expanded to include major bodily functions, and the ADAAA includes an illustrative list of major life activities.

NAEDA doesn’t have specific policy on this issue. NAEDA action has been directed by our mission statement “to building the best business environment for North American equipment dealers.” This is clearly a “business environment” issue.

Biofuels - House Agriculture Committee Chairman Collin Peterson (D-MN) and Ranking Member Frank Lucas (R-OK) have introduced the Renewable Fuel Standard Improvement Act (H.R. 2409) to directly address concerns with the Renewable Fuel Standard (RFS) revisions enacted by the Energy Independence and Security Act of 2007 (EISA). Issues have been raised following the announcement of proposed rulemaking by the Environmental Protection Agency (EPA).

Under EISA, the proposed rulemaking requires EPA to consider “indirect land use change” in greenhouse gas (GHG) threshold determinations for biofuels. The land use change provision must be calculated for what is believed to cause “the plowing of new fields” to produce feedstocks for biofuels both domestically and internationally. H.R. 2409 would remove the requirement that indirect land use change be utilized in GHG threshold determinations and implement the definition of renewable biomass included in the 2008 Farm Bill, not the one in EISA.

NAEDA also sent a letter to USEPA on June 16th in support of raising the level of ethanol allowed to be introduced in motor fuels from 10 percent to 15 percent – or some intermediate level. We respectfully asked EPA to approve the waiver requested by the consortium of ethanol producers under 211(F)(4) of the Clean Air Act. [A copy of that letter is on page 7.](#)

NAEDA policy supports development of the biofuels industry.

Bee Tox - It has come to our attention that EPA’s Registration Division Insecticide-Rodenticide Branch is considering regulations that would impact the use of pneumatic planters and require the retrofitting of planting equipment.

In Germany, in the spring of 2008, an unfortunate incident involving seed treated with an insecticide dust combined with a concurrence of bloom and wind conditions to cause the killing of a large number of bees. In response to this incident, some European governments implemented strict regulations that included the requirement that all pneumatic planters have their exhaust pointed downward to reduce the spread of excess insecticide dust. Since then, EPA has come under intense pressure from environmental advocacy groups to impose similar regulations.

Currently there are between 70,000 to 100,000+ pneumatic planters in use on American farms. It is estimated that the cost of retrofitting each unit will be between \$500 to \$1,000, meaning this potential regulation could cost anywhere from \$35,000,000 to \$100,000,000 and does not take into account the costs in the form of the decreased value of used planters. In addition, the dollar values do not reflect the massive logistical problems of physically installing all of these retrofits, which can only occur after they have been designed, tested, manufactured and distributed, and mechanics trained to perform installation.

Another option for EPA to address this problem is by simply stating that if seed is treated with an insecticide product that the seed’s labels contain language it should also be treated with a de-dusting agent.

NAEDA doesn’t have a specific policy on this issue. A policy will be proposed to the board of directors in September that NAEDA oppose an untimely requirement of a retrofit until such retrofits meet all the requirements mentioned above.

Card Check - For those following this issue (Employee Free Choice Act – S. 560), the bill has not moved in the Senate, but efforts for a modified version are actively moving forward. A group of "business" people are supporting a compromise and calling themselves -- "Business Leaders for a Fair Economy." Their Website is <http://www.faireconomynow.org/> and they have unveiled an advocacy plan in support of EFCA. Their tact is to try to get Congress to believe that employers are in support of "Card Check" legislation - claiming to have over 1,000 business members. If you look through the Website, you will see that there is no list of these supposed 1,000 business members.

NAEDA continues a “Take Action” letter writing campaign opposing Card Check and if you have not sent a letter, please do so by visiting our Website and click on the “Take Action” icon. If we are to stop the legislation it must be done in the Senate as a House bill has also been introduced (H.R. 1409) and it will pass easily.

NAEDA doesn’t have a specific policy on this issue. NAEDA action has been directed to date by our mission statement “to building the best business environment for North American equipment dealers.” This is clearly a “business environment” issue. A specific policy will be proposed to the board of directors in September that NAEDA oppose Card Check.

Labor Bills – A number of other labor bills have also been introduced into Congress: Here is a brief summary of those bills:

- National Labor Relations Modernization Act (H.R. 1355) – Similar to the Card Check bill, the arbitration provisions of this bill would lead to government-appointed arbitrators setting wages, benefits, work rules and other terms of an initial union contract, as well as new fines on employers. The bill would also allow unions access to the workplace to campaign.

NAEDA policy opposes mandatory arbitration, therefore our opposition to this bill.

- No Cost Stimulus Act of 2009 (H.R. 1431 & S. 570) – This bill would grant access to energy resources in the Outer Continental Shelf and portions of the Arctic National Wildlife Reserve and streamline the permitting and approval process for infrastructure projects. If implemented, the bill could provide for more than 1.5 million jobs and generate trillions of dollars in royalties and tax revenue for the federal government.

NAEDA policy on Energy would support this bill’s passage.

- Family Friendly Workplace Act (H.R. 933) – This bill amends the Fair Labor Standards Act by allowing eligible employees the option of earning compensatory time off in lieu of payment for overtime hours worked. Compensatory time would be earned at the rate of one and one-half hours of paid leave for each additional hour worked over 40 hours in a workweek, but could not accrue more than 160 hours.

NAEDA doesn’t have specific policy on this issue. NAEDA action has been directed by our mission statement “to building the best business environment for North American equipment dealers.” This is clearly a “business environment” issue that could be supported by NAEDA.

- Agricultural Job Opportunities, Benefits and Security Act (AgJOBS – SB 1038) – This bill was re-introduced by Sen. Dianne Feinstein (D-CA) along with House Bill 2414 sponsored by Reps. Howard Berman (D-CA) and Adam Putnam (R-FL). The bills are designed to help relieve the labor crisis in agriculture through the H2A program. NAEDA policy calls for Congress to enact immigration reform that provides workable and fair legal channels for farmworkers to enter the country, work, and return home when the season is over.

NAEDA policy supports immigration reform for both the H2A the H2B programs. These two bills do not address the H2B program.

- Healthy Families Act of 2009 (H.R. 2460) – This bill would require employers with 15 or more employees to provide up to 7 days of annual paid sick leave for full-time and part-time workers to take care of themselves or family members or equivalent family relationships.

NAEDA policy is silent on these types of bills. A specific policy will be proposed to the board of directors in September that NAEDA oppose any employer mandated legislation that requires a business to absorb new personnel and compliance costs mandated by government.

Climate Change / Cap and Trade - The House passed H.R. 2454, the American Clean Energy and Security Act of 2009, also known as the Waxman-Markey bill by a vote of 219 to 212 before leaving town for the August recess. The Senate is expected to take up their version later in the year. The House bill establishes a mechanism which limits and reduces allowable green house gases (GHG) emissions over time, using market forces to achieve reductions.

According to the USDA, agriculture and forestry have the potential to reduce 15-25 percent of U.S. greenhouse gas emissions. Offsets from these sectors also create a host of co-benefits, such as reducing other air pollutants and improving water quality. Only the agricultural and forestry sectors can deliver quality offsets under a cap-and-trade program that are low-cost, available immediately, and available in quantities sufficient to bridge the calendar gap that will exist until core technological change can be implemented by capped sectors.

USDA's outlook and predictions have been refuted by some organizations. The Heritage Foundation being one of them. [A copy of their statement is on pages 8-9.](#)

NAEDA policy is silent in this area. A specific policy will be developed by the board of directors in September at their St. Louis meeting.

LIFO Inventory Accounting Method – NAEDA and the U.S. affiliates continue to push for preservation of LIFO through a national coalition of businesses and industries. NAEDA joined the national coalition with a \$5,000 contribution last fall and participates in the coalition as a steering committee member. Dealers have been asked through the affiliates to send letters to Congress on what the impacts would be on their dealerships if LIFO were repealed as proposed in the President's budget. This is an ongoing education effort to Congress and their staffs and will become more important as Washington starts to look for "new" money to pay for healthcare and other programs.

NAEDA policy supports continuation of LIFO as an accepted accounting method.

EPA WaterSense Regulations - NAEDA has been working with the National Turfgrass Federation and organizations representing turf, ornamental and horticultural industries to mount an offensive against the EPA's proposed WaterSense regulations and criteria for new home construction.

As proposed, a WaterSense home would be required to have plants other than turfgrass installed on slopes in excess of four feet of horizontal run per one foot vertical rise (4:1). The proposal would also offer an option to limit the amount of turf on landscaped areas to 40 percent or less.

The landscape specifications could be devastating for the turfgrass industry as builders and local governments try to meet or mandate the criteria for the landscape portion of the proposed program by limiting the amount of turf planted. The EPA proposal makes no allowances based on the

location of landscape and the same options would apply to all states with the least or most amount of rainfall or in areas that have warm- or cool-season turfgrass varieties.

This program, if approved as proposed, would have a ripple effect on numerous industries, including seed and sod producers, equipment manufacturers, lawn care providers, and dealer equipment sales and service. [A copy of NAEDA's comments to EPA opposing the regulations is on page 10.](#)

NAEDA doesn't have a specific policy on this issue. NAEDA action has been directed to date by our mission statement "to building the best business environment for North American equipment dealers." This is clearly a "business environment" issue. A specific policy will be proposed to the board of directors in September that NAEDA oppose the WaterSense regulations as proposed.

Health Care – NAEDA continues to monitor proposed legislative proposals concerning health care. There are 5 bills being discussed at the present time, three in the House and two in the Senate. The President also continues to meet with congressional leaders and has somewhat outlined what he wants in a health care reform bill. No one bill at the present time has an advantage over the others, but NAEDA is watching this issue as legislation moves forward. It is widely believed that the Senate Finance Committee bill may be the best option after the summer recess.

NAEDA policy urges Congress to adopt health care legislation that considers small business needs and makes it possible for trade associations to provide health insurance to members and their employees at reduced costs. Our arguments and discussion points to Congress, particularly during the August recess should be:

- NAEDA supports healthcare reform that will allow dealers the opportunity to pool themselves into marketable groups to seek lower premiums. This can be done through association plans that can cross state lines, reduce different state regulations and allow for catastrophic coverage insurance of the group.
- NAEDA opposes the concept of a "Play or Pay" provision where one size fits all and a surtax is imposed on those that don't provide coverage. The surtax in H.R. 3200 is set at 8% of the payroll. (Note: There are some exemptions built into the bill, but they are not adequate.)
- The other problematic provision in both the HELP Committee bill and in the House bill is the public plan, which would be an unfair competitor, ultimately shifting costs to the private sector as it becomes big enough to drive down reimbursements to doctors and hospitals. Businesses and consumers would then flock to the public plan because its premiums would be cheaper, and ultimately no viable private plans would remain.
- Remind elected officials that businesses now insure 170 million people.
- Tort reform also comes up, but is not part of the HELP Committee bill or H.R. 3200 or being considered by the Senate Finance Committee. Tort reform is subject to other committee jurisdictions in both the house and senate so don't look for changes here. There is a belief that a number of medical tests and procedures done today are done just to protect doctors and hospitals from lawsuits. If those tests and procedures were eliminated, billions could be saved in costs, legal bills, and insurance premiums.

Equipment Depreciation – NAEDA has an ongoing effort with AEM, AED, FEMA and some individual manufacturers to pass legislation to make the five year equipment depreciation permanent. Legislation passed last year to change it to five years from seven years expires on December 31, 2009. We expect this legislation to be introduced shortly and taken up for discussion

after the August Congressional recess and become part of a comprehensive tax package prior to the first of the year.

NAEDA policy supports changing the depreciation method to five years.

Shareholder Bill of Rights Act – This bill (S. 1074) was introduced by Sen. Schumer (D-NY) to provide shareholders with enhanced authority over the nomination, election, and compensation of public company executives. It amends the Securities Exchange Act of 1934 to require any proxy, consent or authorization for an annual or other meeting for which the proxy solicitation rules of the Securities Exchange Commission (SEC) require shareholder compensation disclosure to include a separate resolution subject to a shareholder vote to approve the compensation of executives including any “golden parachute.” NAEDA is following this piece of legislation, but no action has been taken.

NAEDA doesn’t have a specific policy on this issue. A specific policy will be developed by the board of directors in September at their St. Louis meeting.

SBA Dealer Floor Plan Financing - The Small Business Administration (SBA) announced a new pilot program that will offer government guaranteed loans to finance inventory for eligible boat, auto, RV and other dealerships on May 29. The program, which began on July 1, is administered through SBA’s 7(a) program. SBA Dealer Floor Plan loans, or “DFP loans,” will come with a 75 percent government guarantee and a maximum repayment term of five years for titleable equipment. The loans are for a minimum of \$500,000 up to the \$2 million.

The availability of floor plan loans has been a priority for NAEDA with the withdrawal of Textron from the marketplace. Contact was made with SBA to see if equipment dealers could also qualify under this program and we were directed to make official comments for the record. In response to that direction, an equipment industry letter was drafted and submitted as requested by SBA for their consideration. [A copy of that letter is on pages 11-15.](#)

NAEDA doesn’t have specific policy on this issue. NAEDA action has been directed by our mission statement “to building the best business environment for North American equipment dealers.” This is clearly a “business environment” issue.

Special Note: With the bankruptcy filings in the automotive industry, NAEDA has seen a number of pieces of state legislation introduced that deal with franchises and repair and warranty protections. Some are directed at manufacturers, some at dealers and some on the rights of consumers.

If you have any questions, please feel free to contact Mike Williams at 636-349-6204 or by email at williamsm@naeda.com.



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

Serving Farm, Industrial and Outdoor Power Dealers

1195 Smizer Mill Road • Fenton, Missouri 63026-3480 • Phone: (636) 349-6221 • Fax: (636) 349-5443 • www.naeda.com

June 16, 2009

Air and Radiation Docket
Environmental Protection Agency
Mailcode: 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2009-0211

The North American Equipment Dealers Association (NAEDA) submits these comments in support of raising the level of ethanol allowed to be introduced in motor fuels from 10 percent to 15 percent – or some intermediate level. We respectfully ask that you approve the waiver requested by the consortium of ethanol producers under 211(F)(4) of the Clean Air Act.

NAEDA represents 5,000 retail agricultural, industrial and outdoor power equipment dealerships in the U.S. and Canada. Collectively, these dealerships employ approximately 100,000 people. NAEDA is a federation that works with 15 affiliated associations in the U.S. and three in Canada. It is on their behalf – and the dealerships we serve – that we support raising the level of ethanol in today's fuels.

We believe increasing the amount of ethanol produced and used will create green jobs, provide environmental benefits, help reduce our dependence on foreign oil and enhance the quality of life in rural America through development of our natural resources. NAEDA-affiliated dealers and their employees have a stake in the future of advanced biofuels production whether they're cellulosic, bio-oils or others.

Dealers are ready to meet the challenges of the biofuels industry. As newer types of equipment are designed and manufactured, dealers will play key roles in providing repairs, parts and services to help support this new green industry and ensure the success of an advanced biofuels strategy. Without a market for these fuels and support for biofuels projects, the resources and capital needed could be lost forever without the requested waiver.

We strongly disagree with opponents of the waiver and their contentions that science-based information to support higher ethanol blends is lacking or that higher blends will contribute to the failure of motor vehicle engines, pollution control equipment and smaller gasoline-powered equipment. Solutions are available, but it may take some manufacturers longer than others to meet these new standards. The equipment industry has proven time and again its commitment to comply with environmental rules and regulations by designing and manufacturing equipment that meets or exceeds the nation's goals for fuel and emissions standards. All that is needed for tomorrow's equipment industry is a clear signal about the future demands of the market place.

Approval of the waiver request would send such a signal.

Sincerely,

Michael Williams
NAEDA Vice President Government Relations

WebMemo



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July 21, 2009

Waxman–Markey: Homeowners, Small Businesses, and Farmers Hit the Hardest

Ben Lieberman

The Waxman–Markey global warming bill narrowly passed the U.S. House of Representatives and awaits consideration in the U.S. Senate. A Heritage Foundation analysis of the bill predicts the bill's energy price-boosting measures will result in sky-high costs. Should it become law, Waxman–Markey will reverberate throughout the economy, costing the nation an average of \$393 billion annually and over a million jobs from 2012 to 2035.

While a bill of this magnitude would leave few untouched, its impact is would not be evenly distributed. In fact, an estimated 2,300 lobbyists are in Washington working this issue, trying to make sure their clients—especially electric utilities and industries that use a lot of energy—get off as lightly as possible. The rest of Americans—especially homeowners, small business owners, and farmers—will be on the hook for the remainder of the multi-trillion-dollar price tag. Although there has been a flurry of last-minute changes to the bill, these alterations do little to reduce Waxman–Markey's overall costs or its disparate impacts.

Homeowners. Waxman–Markey forces down emissions from fossil fuels and especially targets coal. As coal provides America with half of its electricity, these reductions in coal use will drive up electric rates by an estimated 90 percent by 2035. The impact in heavily coal-dependent states—for example, Indiana, Ohio, Kentucky, West Virginia, Missouri, and North Dakota all get more than 80 percent of their electricity from coal—will be even greater. Natural gas and heating oil prices will also

be affected, as their prices are estimated to go up 55 percent and 56 percent, respectively.

For a household of four, those higher energy will cost an average \$527 annually from 2012 to 2035. If there is a car parked in the driveway, add another \$302 for the higher household cost of gasoline per year (about 30 cents more per gallon), thereby increasing the total energy bill to an average of \$829 annually.

But higher direct energy costs are only part of the total household burden: Since nearly all other goods, from food to furniture, require energy to produce and transport, their costs will rise along with the price of energy. Furthermore, other provisions in the bill also mandate stringent one-size-fits-all national energy standards for new houses, which would also likely boost their price and reduce desired features.

Under Waxman–Markey, a household of four's costs are estimated to rise by an average of \$2,979 per year from 2012 to 2035.

Small Business Owners. Electric utilities and some other big businesses have cut special deals that allow them to comply for much less. Waxman–Markey allows for such deals by giving these com-

This paper, in its entirety, can be found at:
www.heritage.org/Research/EnergyandEnvironment/wm2553.cfm

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(202) 546-4400 • heritage.org

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the views of The Heritage Foundation or as an attempt to
aid or hinder the passage of any bill before Congress.

panies free rights to emit carbon dioxide and other regulated greenhouse gases. But small businesses have largely been left out of this special interest game. They will instead face the same higher costs for energy and other products as homeowners. According to a 2008 National Federation of Independent Business poll, energy costs are the second biggest problem facing small business¹: Waxman–Markey would only exacerbate those concerns.

Furthermore, by harming the overall economy, Waxman–Markey makes it more difficult for small business to operate. Under this legislation, gross domestic product (GDP) would decline by an average of \$393 billion annually below where it would otherwise be from 2012 to 2035; cumulative GDP would decline by \$9.4 trillion by 2035. This means that, thanks to Waxman–Markey, in the years and decades ahead small business owners will be operating in a weakened economy, making it even harder for them to attract customers, expand their business, and create jobs.

Overall, Waxman–Markey is a jobs killer—according to The Heritage Foundation analysis, it will result in over million net job losses (which includes any “green job creation”). But even those relative few green jobs, such as those associated with renewable energy sources like wind and solar power or the installation of energy saving devices in federal buildings, are not for small business. The bill’s Davis–Bacon Act provisions, which essentially mandate union wages for these projects, are very difficult for most small businesses to meet and would therefore largely exclude them. Thus, there is little or no upside for small business to offset this bill’s substantial drawbacks.

Farmers. Since farming is energy intensive, it will be hit hard by Waxman–Markey’s energy price hikes. In addition to higher diesel fuel and electricity costs, prices for natural gas-derived fertilizers and other chemicals will also rise. Everything else affecting agriculture, from the cost of constructing farm buildings to the price of tractors and other farm equipment, will also go up. Consequently, farm profits are expected to decline by 28 percent in 2012 and will be an average 57 percent lower from 2012–2035.

Furthermore, since Waxman–Markey is a unilateral measure, it would put American farmers at a competitive disadvantage: No other food-exporting nation has announced any plans to impose similar energy price boosting global warming measures on their own agriculture sector.

Of course, when farmers hurt, the rural economy around them suffers as well. In addition, rural Americans use 58 percent more energy than their urban counterparts, thus the impact of increased energy prices is highly disproportionate. Last minute measures to sweeten the deal for rural electric cooperatives will scarcely make a dent in this disparate impact.

\$9.4 Trillion Poorer. The Heritage Foundation calculates that, by 2035, America would be \$9.4 trillion poorer with Waxman–Markey than without it. This is a tremendous burden and one that is not spread evenly. Should this measure become law, the future for the American homeowner, small business owner, and farmer will be particularly bleak.

—Ben Lieberman is Senior Policy Analyst in Energy and the Environment in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.

1. Bruce Phillips and Holly Wade, “Small Business Problems and Priorities,” National Federation of Independent Business Research Foundation, June 2008, pp. 7–8, at <http://www.nfib.com/Portals/0/ProblemsAndPriorities08.pdf> (July 21, 2009).



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Template for Public Comment Submission on WaterSense Documents

Commenter Name: Michael Williams

Commenter Affiliation: Vice President of Government Relations
North American Equipment Dealers Association

Date of Comment Submission: July 7, 2009

Topic: Outdoor Water Efficiency Criteria 4.0

Comment: The draft specification's raises two concerns for our industry. One concern is the 40 percent turfgrass limitation and the second concern is the ban on turfgrass for steep slopes.

Rationale: The specifications are a "one-size-fits-all homes." To impose a 40 percent turfgrass limitation for all new home sites does not consider the regional differences in the U.S in climate and in available plant materials. Different areas of the U.S. should be allowed to utilize plants that match the local area and weather conditions and not be based on an arbitrary percentage set by EPA.

In addition, to restrict the use of turfgrass on steep slopes denies the benefits of what turfgrass can do to reduce soil erosion and storm water runoff. These two benefits alone make the steep slope ban unreasonable. We believe more research is needed by EPA before adopting this provision.

Suggested Change (or Language): We believe EPA should set aside the Outdoor Water Efficiency Criteria at this time until more stakeholder input can be received and data collected to verify that the proposed criteria will provide the outdoor water efficiency being sought while not resulting in unintended consequences to homebuilders, the turfgrass industry and our outdoor power equipment dealers.

NAEDA represents 5,000 retail agricultural, industrial and outdoor power equipment dealerships in the U.S. and Canada. Collectively, these dealerships employ approximately 100,000 people. NAEDA is a federation that works with 15 affiliated associations in the U.S. and three in Canada. It is on their behalf – and the dealerships we serve – that we are commenting on these proposals.



August 4, 2009

Mr. Grady Hedgespeth, Director
Office of Financial Assistance
U.S. Small Business Administration
409 Third Street, SW., Suite 8300
Washington, DC 20416

RE: Dealer Floor Plan Pilot Initiative Comments

Dear Mr. Hedgespeth:

We appreciate the opportunity to submit comments on how the equipment industry, dealers, distributors and manufacturers are being affected by tighter credit and to suggest ways to improve access to capital for everyone from SBA programs. These comments are submitted on behalf of the American Rental Association (ARA), Associated Equipment Distributors (AED), Association of Equipment Manufacturers (AEM), Farm Equipment Manufacturers Association (FEMA), North American Equipment Dealers Association (NAEDA) and the Outdoor Power Equipment Institute (OPEI).

Credit and the equipment industry

The equipment industry runs on credit. Dealers and distributors borrow to finance equipment in their inventories, rental fleets and to operate their companies on a day-to-day basis. Credit is also critical for equipment buying customers.

Customers seeking to acquire a piece of equipment may choose to buy it, lease it, rent it, or rent it with an option to buy. When buying equipment, customers generally pursue one of three financing or payment strategies. The first is to simply write a check and buy the machine outright. However, given the relatively high cost of some equipment, this is the least common approach. The second (and slightly more common) option is for the purchaser to independently seek financing (e.g., through a local bank or other third-party lender). The third and most common way to buy equipment is to borrow funds for the purchase from a captive finance company affiliated with a manufacturer that the dealer or distributor selling the equipment represents. Captives provide dealers, distributors and their customers with more flexibility than third-party lenders. As a general proposition, captives owned by manufacturers are willing to accept more risk than independent banks because the manufacturer can (at least to a certain extent) offset potential losses on the lending side with profits from the sale of equipment.

Impact of the credit crisis on the equipment industry

With the foregoing in mind, it is no surprise that the equipment industry has been hit hard by the global credit crisis. All our associations' members agree it has become considerably more difficult for customers to get financing to buy equipment and or for the dealers and distributors themselves to get credit to run their companies.

This spring, AED, FEMA and NAEDA conducted member surveys to identify what affect the credit crisis has had on equipment industry and their customers. Each association study asked similar questions and was taken from mid-March to mid-June. Respondents are believed to be representative of each association's overall membership.

Key survey findings for each association were as follows:

AED

- Eighty-one percent of survey respondents reported they had lost sales in the last year because qualified purchasers had been unable to get financing.
- Survey respondents reported losing more than \$120 million in sales because qualified customers were unable to get credit. When the survey results are projected across the association's entire membership, AED calculates distributors have lost more than \$720 million in sales because credit was unavailable.
- Fifty-six percent of the respondents reported an increase in their own credit costs.
- Forty-four percent of respondents said their companies had difficulty securing credit.

FEMA

- Thirteen percent of the survey respondents reported up to \$50,000 in lost sales, 5 percent reported losing between \$50,000 and \$100,000, 18 percent reported lost sales of \$100,000 to one million and 5 percent lost over a million dollars in sales.
- Twenty-eight percent of the respondents reported an increase in their interest costs or in having more difficulty securing credit.
- Respondents also reported that 14 percent had to lay off workers, 23 percent had refrained from hiring new workers, 8 percent had reduced health insurance coverage's and 10 percent had foregone adding equipment to their sales and rental fleets.

NAEDA

- Forty-seven percent of the respondents lost retail sales to customers who could not obtain credit.
- Sixty percent of the dealers acknowledge difficulty in obtaining inventory and floor plan financing.
- Eighty-three percent of the respondents indicated they were reducing inventory to address their inventory financing problems, 43 percent indicated they were expanding the use of captive finance programs, while 47 percent indicated they were attempting to increase the use of non-captive credit sources for their floor planning needs.

The findings illustrate that the lack of access to capital is undermining equipment markets and increasing the costs of doing business for the equipment industry.

The staggering value of lost sales is particularly vexing considering current industry market conditions. Given the well documented drop-offs in housing and commercial construction, in some regions of the country the sales market for new equipment has fallen by as much as 85 percent from peak levels in 2006.

Dealers are struggling to keep their heads above water and credit issues are, in some cases, preventing the only people who want to buy equipment from doing so.

What's behind the credit crisis?

The credit woes plaguing the industry are apparently the result of a number of factors. First, given that the construction industry has been among the hardest hit by the economic downturn, in an effort to minimize risk, some of the large, independent, asset-based lenders have reduced lending or simply stopped writing loans for the industry. At the same time, captive finance companies have found it more difficult to raise money. Wall Street currently has a dim view of asset-based lending and the cost of money for captives has therefore gone up in many cases. The captives are passing the cost increases along to customers and, in some cases, are quoting interest rates for equipment purchasers at well above 10 percent.

Dealers and distributors also report that the finance companies still serving equipment markets have raised their creditworthiness standards. While a tightening of credit terms is not surprising given the recent subprime meltdown, some dealers and distributors have suggested that lenders have over-corrected and told us that it has become difficult to find financing for equipment purchases even for credit-worthy borrowers, including dealers and distributors. Putting the availability issue aside, our members have expressed near universal concern about the high cost of credit for themselves and customers at a time when interest rates in general are so low.

Finally, the decision by Textron Corporation to exit the wholesale finance market in December 2008 eliminated a source of inventory financing for dealers, many of whom didn't have access to captive finance companies of manufacturers. The loss of this financing source affected thousands of dealers, distributors and manufacturers throughout North America.

What can SBA do?

We recognize the challenges that our industry is facing are symptoms of economic problems plaguing the broader U.S. and world economies. However, the following actions by SBA could help speed the industry's recovery and alleviate some of problems we are facing:

- **Tailor Small Business Administration loan underwriting to better serve the equipment industry.** A widely-held perspective in the equipment industry is that loans underwritten by the SBA take too long to get approved and that there is too much "red tape" attached. As one dealer put it, "Buying a piece of equipment is an event; SBA involvement would turn it into a process." Because of the process, captive finance companies generally do not offer loans underwritten by SBA. This is likely attributable in part to the fact that captives are sometimes willing to bear higher risk to facilitate a sale and that those borrowers might not meet SBA requirements. Even so, we suggest that SBA work with captive finance companies and banks serving the industry to develop loan products that meet the unique needs of the equipment industry, particularly those perceived as high-risk borrowers. As one industry finance expert pointed out, just because a potential borrower is "subprime" does not mean the company will not pay its bills on time, it just means they are a higher risk. Unfortunately, it seems that credit is effectively unavailable for smaller, higher risk companies. Additionally, SBA should reexamine its size standards to determine whether they are preventing companies that otherwise fit the definition of small business from benefiting from SBA programs. If so, the standards should be adjusted. If appropriate SBA products and programs

already exist, our research suggests that the industry is largely unaware of that fact and SBA should conduct aggressive outreach to the equipment industry.

- **SBA bias against non-titled vehicles.** Some in the industry perceive that SBA underwriting requirements are biased against our industry's equipment because, unlike motor vehicles, equipment is generally not titled. However, the Uniform Commercial Code (UCC) filing system for liens against movable assets is actually superior in some ways to motor vehicle titling because there is reportedly less variation in registration rules from state to state. SBA should review their loan programs for bias against non-titled assets and, if necessary, clarify the applicability of the SBA underwriting to loans for those types of assets.
- **Improve access to capital for captive finance companies.** While the credit crisis has eased somewhat on Wall Street, looser credit has not necessarily trickled down to Main Street (or "Industrial Boulevard" where many equipment dealers and distributors are located). While we expect conditions to improve as the economy recovers and financial markets make corrections, SBA should look for ways to further assist the commercial and asset-backed paper markets to help lower the cost of funds for the captive finance companies.

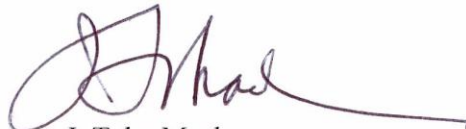
Conclusions

In summary, tight credit is making it more difficult for equipment dealers, distributors and manufacturers to sell equipment and to operate their businesses. While much of the problem is attributable to broader economic problems that are beyond the control of government, there are steps that SBA can take to help alleviate some of the pain. We appreciate SBA's development of this dealer floor plan pilot initiative and ask that you broaden the scope to include our industry and respective dealers, distributors and manufacturers. We stand ready to work with you to find solutions that promote rapid economic recovery and cost-effective floor plan financing for our industry.

Sincerely,




Chris Wehrman
Executive Vice President & CEO
American Rental Association



J. Toby Mack
President & CEO
Associated Equipment Distributors



Dennis Slater
President
Association of Equipment Manufacturers



Bob Schnell
Executive Vice President
Farm Equipment Manufacturers Association



Paul Kindinger
President & CEO
North American Equipment Dealers
Association



William G. Harley
President
Outdoor Power Equipment Institute

ARA represents 4000 U.S.-based Rental companies that rent construction and industrial equipment, tools, event equipment to governments, businesses, and the public. The vast majority of ARA member companies are independently owned rental businesses. Some ARA members also act as dealers for one or more lines of equipment they also rent.

AED is an international trade association representing companies involved in the distribution, rental and support of equipment used in construction, mining, forestry, power generation, agriculture and industrial applications.

AEM is the U.S.-based international trade group serving the off-road equipment manufacturing industry. Our members number over 800 companies that manufacture equipment, products and services used worldwide in the agriculture, construction, forestry, mining and utility fields.

FEMA is a worldwide trade organization, predominantly consisting of specialized farm equipment manufacturers (not tractor or grain combine) in the U.S. Their average sales fall between \$2 million and \$8 million and each firm accounts for about 33 employees. In addition to being important regional suppliers to the farm equipment industry, their technology is at the forefront of the farming and ranching business.

NAEDA represents 5,000 retail agricultural, industrial and outdoor power equipment dealerships in the U.S. and Canada. Collectively, these dealerships employ approximately 100,000 people. NAEDA is a federation that works with 15 affiliated associations in the U.S. and three in Canada. It is on their behalf – and the dealerships we serve – that we ask SBA to consider this request for inclusion in a floor plan financing program.