



WASHINGTON WIRE

NAED Washington Wire, Week of June 3rd 2024

Washington, DC is heading into full-on election season mode with both parties digging in and offering up a number of messaging bills for headlines.

- Fixing the 25C tax credit
- Pushback on the Department of Labor “walkaround rule”
- House Committee on Ways and Means tax writing “working groups”
- The U.S. House Subcommittee of Energy debates updating building codes
- The Future of “LIFO”
- Clean energy use for new and renovated federal buildings
- Opposition to the Warehouse Workers Fairness Act
- November election update

Here’s more on the issues we are tracking out of Washington, DC this month.

NAED Pushes US Treasury Department for 25C Fix

Last month, NAED along with our industry partners at NEMA and NECA met with the US Treasury Department regarding implementation of the 25C tax credit. In order to track products eligible for the tax credit, regulators have proposed a novel PIN system which is completely out of sync with how the industry currently tracks equipment. Even tracking “enabling properties” which consist of products like panelboards, sub-panelboards, branch circuits, and feeders would require the new PIN system. NAED, NEMA, and NECA are requesting that “enabling properties” be exempt from these PIN requirements and that the industry be allowed to track equipment under current systems, utilizing proven tracking methods like SKUs.

Ed Orlet, NAED Senior Vice President, submitted a statement to the Treasury Department prior to the meeting summarizing the electrical distribution industry's position, which reads in part: "Electrical distributors' role in complying with regulations is often overlooked by policymakers. One of the greatest challenges to successfully implementing the goals of Infrastructure Investment and Jobs Act and Inflation Reduction Act is product availability. One of the greatest supply chain challenges distributors face is access to accurate and timely product information from manufacturers. Further complicating this issue will make our supply chain less efficient at a time when we need to do our part in the decarbonization of the US economy. While we support making sure that only legitimate products are brought to market, introducing an entirely new tracking system for the 25C tax credit when the industry already has mechanisms in place to track "enabling properties" is the wrong approach. NAED supports efforts to exempt enabling properties from these PIN requirements."

We will continue to keep you updated on our push to ensure tax credits passed to benefit the industry do not upset the supply chain or create unintended compliance issues.

DOL Walkaround Rule Update

The Department of Labor's (DOL) [Walkaround Rule](#), which took effect on May 31st, is facing challenges in the courts and in Congress. A lawsuit challenging the regulation has been filed in the U.S. District Court for the Western District of Texas. The complaint alleges OSHA exceeded its statutory authority and the regulation infringes on property owners' rights to exclude third parties, making it unconstitutional under the Fifth Amendment.

NAED joined other small business associations in advocating for a resolution through the Congressional Review Act which would nullify the rule. The letter reads in part: "If implemented, OSHA inspections would no longer be solely focused on upholding federal workplace health and safety standards but instead would become opportunities for individuals with grievances against the employer to further their own agenda – whether that be unionizing the facility, pursuing public pressure campaigns against the company, attempting to obtain or exploit employers' proprietary information, or seeking to target the workers themselves for any number of reasons."

You can read the **NAED** supported coalition letter [here](#).

The exact language is in the final rule is below:

§ 1903.8 Representatives of employers and employees.

(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by employees is not an employee of the

employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

NAED Engages with Ways and Means Working Groups

One of the most consequential coming policy fights for NAED members will be advocating for an extension of the 2017 “Tax Cuts and Jobs Act” (TCJA). TCJA included a number of helpful reforms for NAED members: cutting marginal tax rates across the board, increasing the death tax exemption, creating a new small business tax deduction, improving equipment expensing laws, and cutting the corporate tax rate. If no law is passed before December of 2025, these provisions will “snap back” to pre-2017 levels, creating a massive tax hike on NAED members.

The tax-writing House Ways and Means Committee under the leadership of new Chairman Jason Smith (R-MO) has created working groups to address specific areas of the expiring TCJA. The working groups include: American Manufacturing, Working Families, American Workforce, Main Street, New Economy, Rural America, Community Development, Supply Chains, U.S. Innovation, and Global Competitiveness. **NAED** will be submitting comments to the appropriate working groups and working hand-in-hand with the Ways and Means committee to make sure our members’ stories are told. We will also be joining in support of comments from our coalition partners at the Family Business Coalition, S-Corp Association, and LIFO coalition.

Expiration of 2017 tax relief represents the most potentially damaging legislative threat to our members, and we will keep you updated as our team digs in to make sure taxes are not increased on NAED businesses.

NAED Supports Updated Building Codes

The U.S. House Energy Subcommittee of Energy and Commerce recently held a hearing targeting federal support for building energy codes. In conjunction with the hearing, **NAED** signed a letter of support for the subcommittee that speaks to codes’ benefits as well as the backing the Department of Energy has received to facilitate these efforts through grantmaking.

The letter reads in part: “The U.S. Department of Energy is currently providing grants to support the adoption and implementation of current energy codes to interested communities pursuant to statute. Like similar investments Congress has made on a bipartisan basis, Congress directed the Department to make these grants available given the benefits energy

codes provide for housing affordability and community resilience, and because the lack of resources is a key impediment to code updates and implementation for state and local governments. Built into the model energy codes these grants support are maps that adjust code provisions to account for regional variations, as well as prescriptive and performance pathways that provide flexibility in code compliance. We welcome the Subcommittee's review of sustainable construction investments and encourage continued bipartisan support for the development, adoption, and effective implementation of building energy codes and standards."

You can watch the hearing [here](#).

NAED Continues Push to save "LIFO"

A significant percentage of NAED small businesses continue to use the "Last in, First Out" (LIFO) method of inventory valuation. Over the past several years, members of both parties have contemplated using LIFO repeal as a "pay-for" on several tax related bills. If repealed, companies using LIFO would be forced to report their reserves as income, resulting in a massive incremental tax liability. Additionally, repealing LIFO would mean potentially higher future tax bills and would make it harder for companies to manage inflation. Other proposals have sought to tax LIFO reserves.

NAED is member of the LIFO coalition Steering Committee, and with the coming expiration of the Tax Cuts and Jobs Act next year, the coalition is stepping up its efforts to protect LIFO from being used to raise revenue for tax extensions. Our team is taking part in monthly strategy meetings with other stakeholders and joining allies in LIFO meetings with key Congressional staff. These meetings have focused on members of the "Supply Chain" working group (the working group responsible for handling LIFO) through the Ways and Means Committee. The coalition is also working on two new economic studies that will provide new material to distribute to Capitol Hill.

NAED will keep you updated on all proposed changes to LIFO and our actions to protect this valuable hedge against material price swings.

DOE Final Rule Published: Clean Energy for New Federal Buildings and Major Renovations

The federal government is the largest property owner and consumer of energy in the US and a new Department of Energy rule confirms that federal buildings will now be going increasingly electric. On April 24th the Department of Energy finalized ["Clean Energy for New Federal Buildings and Major Renovations."](#) Specifically, the new rule requires a 90% reduction in direct fossil fuel consumption over the next five years and the elimination of burning fossil fuels on-site by 2030. The rule applies to new construction and major renovations that exceed certain cost thresholds, including: (1) \$3.6 million in 2024 dollars for federally owned public buildings;

(2) \$3.8 million in 2024 dollars for federally owned non-public buildings; and (3) \$1.8 million in 2024 dollars for leased federal buildings. This rule is consistent with the [Federal Buildings Performance Standards](#) announced in 2022, which are meant to reduce carbon emissions from the federal government's over 300,000 existing buildings.

Electrification is happening at a stunning pace and **NAED** is committed to doing our part to help decarbonize the economy while ensuring that the electrical grid is properly updated to handle this transition. The government is already retrofitting more than 100 federal facilities across the country to become all-electric or net-zero emissions, deploying \$1 billion from the Inflation Reduction Act.

Stay tuned for more updates on rules and regulations on electrification.

NAED Opposes the Warehouse Workers Fairness Act

NAED has joined a coalition of small business groups opposing the Orwellian named "Warehouse Worker Protection Act." The letter reads in part: "The Warehouse Worker Protection Act resurrects OSHA's long-discarded ergonomics standard. When this regulation was first promulgated a quarter century ago, it was found to be so unworkable that a strong bi-partisan majority of Congress voided it in the first-ever use of the Congressional Review Act. In addition, the bill would force employers to implement costly remedial measures before they have been found guilty of an OSHA violation. The bill would also establish a highly burdensome system to micromanage the warehousing and distribution industry, which will undermine the efficiency of this vital part of our nation's supply chain. Finally, despite its narrow sounding title, the legislation would impact workplaces in nearly every industry sector nationwide. We urge Congress to reject this bill."

Washington has a way of resurrecting bad ideas. While this legislation is not likely to pass this year, **NAED** and other small business associations are dedicated to voicing consistent opposition to bills that could harm our members.

Political Update

Unless you have somehow managed to shield yourself from all political updates besides the Washington Wire, you have probably seen the news about former President Trump's convictions in New York. So what does it mean for the Presidential race? Liam Donovan, a longtime political commentator with strong ties to the small business community had this to say to Politico Magazine, as the magazine asked top analysts for ["snap reactions"](#): "the conviction of Trump on 34 counts may or may not move votes — and in a remarkably close election even a sliver could prove decisive. That part remains to be seen; but for the majority of Americans, the outcome merely serves to confirm their deeply held priors both about the country they live in, and the nature of the opposing political tribe."

With less than 6 months until November, the Presidential race will assuredly have many more twists and turns before election day. We will provide a breakdown of new Presidential polling next month once the dust has settled from the trial and discuss how both Presidential candidates may differ on key policy issues affecting NAED members. President Biden and former President Trump will square off in their first debate this month on June 27th.

Thank you for staying engaged and please do not hesitate to email Ed Orlet at EOrlet@NAED.org with any government affairs related questions.