

**GAO**

Report to the Chairman, Committee on  
Energy and Natural Resources,  
U.S. Senate

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June 2010

# PROPANE AND HEATING OIL

Federal Oversight of  
the Propane  
Education and  
Research Council and  
National Oilheat  
Research Alliance  
Should Be  
Strengthened



Highlights of [GAO-10-583](#), a report to the Chairman, Committee on Energy and Natural Resources, U.S. Senate

## Why GAO Did This Study

Millions of Americans use propane and oil heat for such purposes as heating and cooking. Congress authorized creation of the Propane Education and Research Council (PERC) in 1996 and the National Oilheat Research Alliance (NORA) in 2000 to provide research and development, safety and training, and consumer education for propane and oil heat, as the highest priority activities. Congressional deliberations on the groups' creation emphasized providing funding for research and development. PERC and NORA fund operations by assessing fees on propane and oil heat sales.

GAO examined (1) how PERC and NORA spent assessments collected, (2) the extent to which their reported activities help achieve strategic goals, (3) the extent to which key statutory requirements were met, and (4) the extent of federal oversight. GAO analyzed the Propane and Oilheat Acts and PERC and NORA documents and interviewed representatives of PERC, NORA, and the Departments of Energy (DOE) and Commerce.

## What GAO Recommends

Congress may wish to clarify certain requirements and specify priority ranking, expenditures, and a DOE oversight role. DOE did not comment; Commerce agreed; NORA did not disagree and in some aspects agreed; and PERC interpreted certain information differently in several cases. PERC believes the Propane Act allows the congressional contacts it funds but welcomes clarification.

To view the full product, including the scope and methodology, click on [GAO-10-583](#). For more information, contact Mark E. Gaffigan at (202) 512-3841 or [gaffiganm@gao.gov](mailto:gaffiganm@gao.gov).

## PROPANE AND HEATING OIL

### Federal Oversight of the Propane Education and Research Council and National Oilheat Research Alliance Should Be Strengthened

#### What GAO Found

Based on GAO's analysis of their financial and annual reports, PERC and NORA spent over half of the assessments collected on what they classified as consumer education. From 1998 through 2008, PERC collected about \$350.6 million. During those years, PERC spent about \$318.5 million, including about \$178.6 million for consumer education, \$50.7 million for safety and training, \$28.1 million for research and development, and over \$61 million for engine fuel, industry, and agriculture programs, and for general and administrative expenses. The remaining balance of about \$32.1 million was unspent, mostly reflecting, according to PERC, approved commitments to future spending. From 2001 through 2008, NORA collected about \$107.4 million and spent about \$101.6 million. NORA's spending included \$68.4 million for consumer education, \$17.8 million for education and training, \$6.2 million for research and development, \$300,000 on its oil tank program, and \$8.9 million for general and administrative expenses. NORA officials said that the unspent \$5.8 million balance reflected mostly commitments to future spending.

PERC and NORA report activities in all program areas, but it was not always clear how those activities achieved strategic goals. PERC's research and development and agriculture program activities appeared consistent with strategic goals, but it is not clear to what degree consumer education, safety and training, engine fuels, and industry activities helped achieve these goals. For example, a key goal of PERC's consumer education activities was to increase propane usage, but studies provided to GAO were inconsistent about whether propane usage increased. NORA's research and development activities were generally consistent with its strategic goals, but because NORA's strategic plan lacked goals for its consumer education, education and training, and oil tank programs, GAO could not determine if these activities achieved desired results.

While some PERC and NORA activities appeared to meet statutory requirements, others raised issues such as whether certain types of activities involving Congress or politically affiliated entities were covered by specific lobbying restrictions in the Acts. Assuming PERC and NORA's activities were permitted, issues remain about whether Congress anticipated that the assessment funds would be used for these activities, particularly when classified as "consumer education" by PERC and NORA under the Acts. Issues also remain about whether Congress anticipated that such a high proportion of the groups' funding would go to education activities, in comparison to the relatively little support given to research and development, a key area of interest during congressional deliberations about the Acts.

Federal oversight of PERC and NORA has been limited. Commerce recently completed the required analysis of oilheat prices, but DOE has not used oversight authority granted by the Propane and Oilheat Acts. For example, DOE has not overseen PERC and NORA's activities by reviewing budgets or making recommendations to PERC and NORA, as authorized by law.

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## Abbreviations

CEO	chief executive officer
CETP	Certified Employee Training Program
DOE	Department of Energy
NAORE	National Association for Oilheat Research and Education
NORA	National Oilheat Research Alliance
Oilheat Act	National Oilheat Research Alliance Act of 2000
PERC	Propane Education and Research Council
PMAA	Petroleum Marketers Association of America
Propane Act	Propane Education and Research Act of 1996
USDA	U.S. Department of Agriculture

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United States Government Accountability Office  
Washington, DC 20548

June 30, 2010

The Honorable Jeff Bingaman  
Chairman  
Committee on Energy and Natural Resources  
United States Senate

Dear Mr. Chairman:

Tens of millions of Americans rely on propane and heating oil for heat, hot water and—in the case of propane—cooking and motor fuel. Within the last 15 years, Congress has authorized the creation of two national entities to undertake propane and oilheat research and development, safety and training, and consumer education programs and provided the Department of Commerce and the Department of Energy (DOE) with certain related authority. The Propane Education and Research Act of 1996 (the Propane Act)<sup>1</sup> and the National Oilheat Research Alliance Act of 2000 (the Oilheat Act)<sup>2</sup> authorized the establishment of the Propane Education and Research Council (PERC) and the National Oilheat Research Alliance (NORA), respectively. The Oilheat Act expired on February 6, 2010, and is under consideration for reauthorization.<sup>3</sup> Conversely, the Propane Act does not expire.

PERC and NORA fall into a category of congressionally-authorized programs known as check-off programs. To fund check-off programs, a fraction of the wholesale cost of a product is set aside by the producer and deposited into a common fund to be used to benefit producers and consumers. Similar programs are in place for agriculture commodities, including milk, beef, pork, and cotton. To fund PERC operations, each

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<sup>1</sup>Pub. L. No. 104-284, 110 Stat. 3370 (Oct. 11, 1996).

<sup>2</sup>Pub. L. No. 106-469, 114 Stat. 2029 (Nov. 9, 2000).

<sup>3</sup>The Congressional Budget Office, in a March 2, 2010, cost estimate, determined that reauthorizing NORA for one additional year would have no impact on the federal budget. The Budget Office also stated that NORA's activities should be considered governmental in nature because assessments collected by NORA are compulsory and enforced by the federal government's sovereign authority.

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gallon of odorized propane gas sold is assessed \$0.005.<sup>4</sup> To fund NORA operations, each gallon of heating oil sold is assessed \$0.002.

By statute, both PERC and NORA give a portion of the assessments collected to state propane and oilheat associations with similar missions.<sup>5</sup> Specifically, pursuant to the Propane Act, PERC gives 20 percent of its assessments to state propane associations. According to PERC, its oversight of these funds includes a PERC council review of a state association's proposed use for these funds and the submission of periodic and final reports from the state associations. The Oilheat Act requires NORA to give 15 percent of its assessments to qualified state associations, which may then request to receive any portion of the remaining 85 percent of the assessments collected in their states. NORA's oversight of state expenditures is similar to PERC's, but state associations are required by NORA to submit quarterly reports on program spending.

In June 2003, we reported that oversight of PERC by Commerce and DOE was insufficient and recommended that they provide more active oversight.<sup>6</sup> In this context, and as Congress considers reauthorizing NORA's authorizing statute, you asked us to review federal oversight of PERC and NORA and examine how these organizations are spending the assessments. Specifically, we examined (1) how PERC and NORA have spent the assessments they have collected, (2) the extent to which PERC's and NORA's reported activities help to achieve the results defined in their strategic goals, (3) the extent to which PERC's and NORA's activities have met key requirements in their authorizing statutes, and (4) the extent to which PERC's and NORA's activities and spending received federal oversight.

In addressing these objectives, we examined PERC's and NORA's spending, performance, response to the authorizing statutes, and coordination with applicable federal agencies. We reviewed PERC and NORA spending from the first year of operation—1998 for PERC and 2001

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<sup>4</sup>As propane is naturally odorless, a chemical called an odorant is added to give it a distinct odor as a means of detecting a leak. Virtually all commercial propane is odorized.

<sup>5</sup>The PERC and NORA state associations are private enterprises and not state government entities.

<sup>6</sup>GAO, *Propane: Causes of Price Volatility, Potential Consumer Options, and Opportunities to Improve Consumer Information and Federal Oversight*, GAO-03-762, (Washington, D.C.: June 27, 2003).

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for NORA—through 2008. We did not review 2009 data for PERC or NORA because audited financial statements were not available for timely review.<sup>7</sup> To assess the reliability of financial data from PERC and NORA, we analyzed related documentation, examined the data to identify obvious errors or inconsistencies, and worked with PERC and NORA officials to identify data problems. We determined the data to be sufficiently reliable for the purposes of this report. We reviewed PERC and NORA financial statements, annual reports, meeting minutes, and other reports and obtained information and views on both PERC and NORA from a wide range of officials in the Departments of Commerce and Agriculture (USDA),<sup>8</sup> DOE, and the private sector. Appendix I provides a more detailed explanation of our scope and methodology. We conducted this performance audit from June 2009 through June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Propane, also known as liquefied petroleum gas, is a byproduct of both crude oil refining and natural gas processing, with approximately equal amounts of total propane produced from each process. Propane is used to power household appliances and fuel gas fireplaces and barbeque grills, and less than 1 percent of U.S. homes use propane as their main heating fuel.<sup>9</sup> Additionally, propane is used on farms to dry corn and power farm equipment and irrigation pumps. Businesses and industry also use propane for off-road vehicles, such as forklifts and power generating systems. Propane is also used to fuel some over-the-road cars, buses, and trucks. Demand for propane, according to 2007 data from the American Petroleum Institute, is divided among the following sectors: chemical industry (51 percent); residential/commercial (18 percent); gasoline blending (18 percent); and other sectors, including agricultural and industrial. Propane

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<sup>7</sup>PERC issued its audited financial statement for 2009 in May 2010. NORA presented a draft of its audited financial statement for 2009 at its April 2010 council meeting.

<sup>8</sup>We contacted USDA to determine whether PERC had been coordinating its statutorily-mandated agricultural research and development activities with the Department.

<sup>9</sup>According to a 2009 propane market report by a PERC contractor, of new home construction starts in 2007, about 6.5 percent used propane as their main heating fuel.

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supply/demand is influenced by several factors, including changes in domestic production, weather, and inventory levels. Prices of propane follow crude oil price trends and are affected by the prices of competing fuels in each market, the distance propane has to travel to reach a customer, and the volume used by a customer, among other things.

Oilheat is a petroleum product refined from crude oil. About 7.4 percent of U.S. homes rely on oilheat as their main heating fuel.<sup>10</sup> Heating homes is the primary use for oilheat, making the demand for oilheat highly seasonal. Most of the oilheat use occurs during October through March, primarily in the Northeast. Oilheat prices are determined by the cost of crude oil, production, and marketing and distribution, as well as industry profits and losses.

PERC and NORA provide the framework for propane and oilheat producers and marketers to establish self-help, non-federal programs of research and development, training, safety, and consumer education activities. Both the Propane Act and the Oilheat Act outline key procedural, administrative, and spending requirements to administer these programs. To help with that administration, PERC has about 30 staff, a national council, and 5 advisory committees, while NORA has 2 staff, an executive committee, and 3 advisory committees. Both the Propane and Oilheat Acts specify “functions” that PERC and NORA are required to conduct—namely, “develop[ment] [of] programs and projects” to implement the statutes, including by conducting activities in three basic areas. The Acts also identify essentially these same three areas as mandatory “priorities” for PERC’s and NORA’s programs and projects; within these broad areas, the Acts do not specify a particular funding level or ranking. The three areas are:

- *Research and development:* The Propane Act requires PERC to develop programs that “provide for research and development of clean and efficient propane utilization equipment.” The Oilheat Act directs similar oilheat-related research and development projects and also directs NORA to fund projects in the demonstration stage of development.
- *Safety and training/education and training:* Both the Propane Act and the Oilheat Act require development of “programs to enhance consumer and employee safety and training.” PERC refers to this program area as

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<sup>10</sup>According to a 2009 PERC contractor report, of new home construction starts in 2007, about 1.3 percent used heating oil as their main heating fuel.

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“safety and training,” while NORA refers to it as “education and training.” Projects that fall into this spending category include developing employee training materials and conducting training courses for industry personnel.

- *Public/consumer education:* The Propane Act directs PERC to develop projects “to inform and educate the public about safety and other issues associated with the use of propane . . .” Similarly, the Oilheat Act directs NORA to develop “consumer education” programs, defined as programs that provide “information to assist consumers and other persons in making evaluations and decisions regarding oilheat and other nonindustrial commercial or residential space or hot water heating fuels.” Such activities have included the development of radio, television, and print advertising directed at consumers and industry professionals.<sup>11</sup>

The Acts generally do not prohibit PERC and NORA from conducting programs or projects beyond the statutory areas, and both organizations have carried out additional activities. PERC, for example, has spent funds on agriculture and engine fuel programs and, in order to coordinate its activities with other parties, as required by the Propane Act, has established an “industry programs” area to provide support, data, and other services to the propane industry and maximize the impact of the assessment rebate program. Likewise, in 2004 and 2005, NORA funded an oil tank training and education program for tank installers, inspectors, and insurers in order to address concerns about storage tanks. NORA’s president stated that NORA’s oil tank program fulfilled several of the statutory priorities, such as research and development, consumer education, and safety and training. Finally, both PERC and NORA have used assessment funding to meet general and—as expressly authorized by their statutes—administrative expenses.

While the Propane and Oilheat Acts generally permit activities beyond these designated statutory areas (provided the activities implement the requirements of the Acts), the Acts prohibit or limit funding of certain activities and conversely, specify certain minimum expenditures. For example, the Propane Act prohibits PERC funds from being used for over-the-road engine fuel projects in a percentage exceeding the percentage of

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<sup>11</sup>The Propane Act limits PERC’s activities to “research and development, training, and safety matters” in any year in which the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil by greater than 10.1 percent. PERC’s activities in response to this funding restriction are discussed later in this report.

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the propane market used for that purpose, which was about 1 percent according to a 2009 PERC contractor report, and limits expenditures for administrative expenses to 10 percent of funds collected per fiscal year. The Propane Act also requires PERC to use at least 5 percent of collected funds on programs to benefit the U.S. agriculture industry and, as discussed in more detail below, prohibits the use of PERC funds to conduct certain lobbying activities (the Oilheat Act contains similar lobbying restrictions).

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## PERC and NORA Reported Spending More Than Half of the Assessments They Collected on National and State Consumer Education Programs

PERC and NORA reported spending over half of their combined \$458 million in assessments collected between 1998 and 2008 on what they characterized as “consumer education.”<sup>12</sup> They made other major expenditures in the other two statutory priority areas: research and development and safety and training programs (for PERC) and education and training programs (for NORA).

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## PERC Reported Spending More Than Half of the Assessments It Collected on Consumer Education Programs

From 1998 to 2008, according to our analysis of PERC’s audited financial statements, annual reports, and other PERC information provided to us, PERC collected about \$350.6 million in assessments. Consistent with PERC’s authorizing statute, PERC allocated \$69.5 million (19.8 percent) to state propane associations.<sup>13</sup> Together, PERC and the affiliated state associations reported spending about \$318.5 million (or about 90.8 percent of the \$350.6 million collected) as follows: \$178.6 million (50.9 percent of the \$350.6 million collected) on what it characterized as consumer education programs, \$50.7 million (14.5 percent) on safety and training programs, \$28.1 million (8.0 percent) on research and development, \$20

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<sup>12</sup>The Propane Act provides that PERC should, among other things, undertake programs to inform and educate the “public” about safety and other issues associated with the use of propane. PERC, in its financial statements, has reported such programs as “consumer education and communication.”

<sup>13</sup>According to PERC data, state propane associations spent about 49.3 percent of the assessments PERC provided to them on consumer education, 38.5 percent on safety and training, 9.8 percent on industry programs, 0.7 percent on agriculture, 1.1 percent on research and development, and 0.5 percent on engine fuel work.

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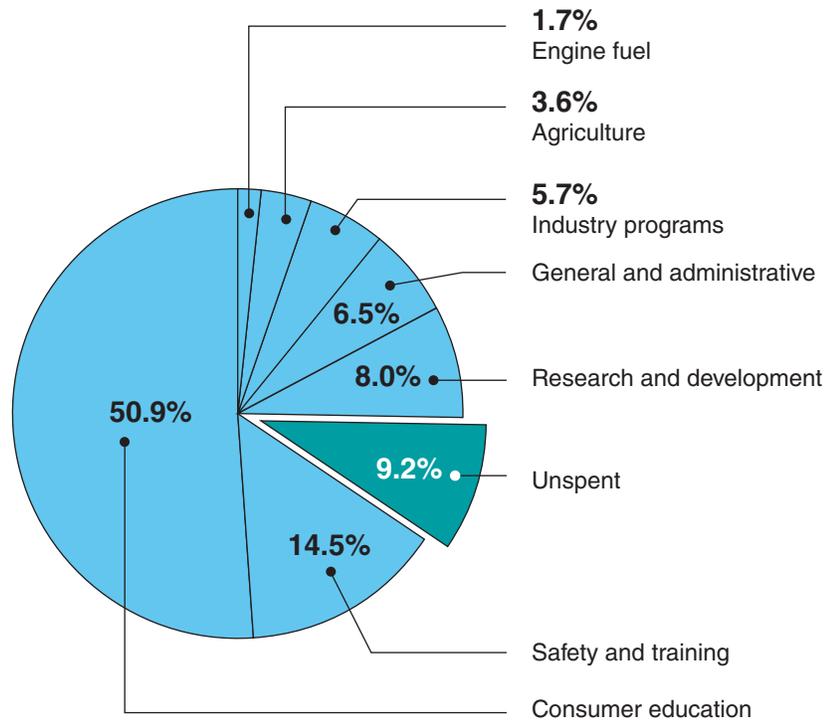
million (5.7 percent) on industry programs, \$12.5 million (3.6 percent) on agriculture programs, and \$5.8 million (1.7 percent) on engine fuel programs. In addition, PERC spent another \$22.7 million (6.5 percent) on general and administrative expenses. According to our analysis of PERC financial data, PERC had not yet spent \$32.1 million<sup>14</sup> (or 9.2 percent of the \$350.6 million collected), but PERC explained that approximately two-thirds of this amount has been designated for future expenditure but has not yet been disbursed. Figure 1 shows PERC spending for this period.<sup>15</sup>

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<sup>14</sup>In estimating PERC's unspent balance, we encountered discrepancies between the rebate totals in its annual financial statements and annual reports, and a requested breakdown of cost data by program area—for example, consumer education and research and development. As a result, the \$32.1 million includes some amount representing the discrepancy involving these data.

<sup>15</sup>In calculating PERC's spending data, we used the best available information at the time we performed our analysis. However, as a result of discrepancies and inconsistencies in the data PERC provided, following direction from PERC officials, we used data from several different documents in order to analyze PERC's spending from 1998 through 2008. Therefore, the data presented in this report do not match some publicly-available information, such as amounts in PERC's annual reports or audited financial statements.

**Figure 1: PERC Reported Spending, Calendar Years 1998 through 2008**



Source: GAO analysis of data contained in PERC 1998-2008 audited financial statements, annual reports, and other PERC information provided us.

Note: Percentages may not add to 100 percent due to rounding.

### NORA Reported Spending Nearly Two-Thirds of the Assessments It Collected on Consumer Education

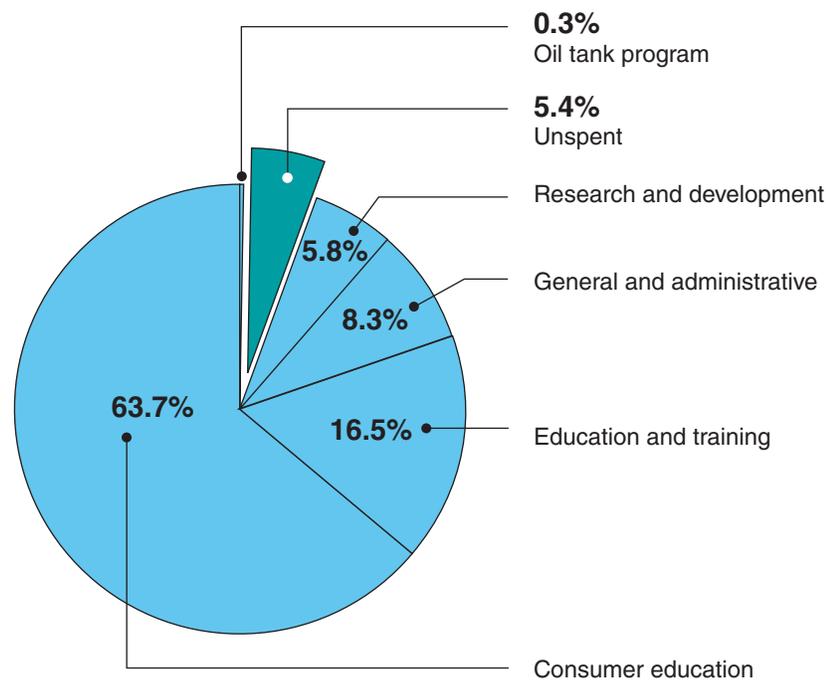
From 2001 to 2008, according to our analysis of NORA’s audited financial statements, annual reports, and other NORA information provided us, NORA collected more than \$107.4 million in assessments.<sup>16</sup> Consistent with its authorizing statute, NORA allocated \$80.4 million (74.9 percent) to state oilheat associations.<sup>17</sup> Together, NORA and the affiliated state associations spent a total of about \$101.6 million, as follows: \$68.4 million (63.7 percent of the \$107.4 million collected) on what it characterized as

<sup>16</sup>NORA’s outside accountant informed us that, of the \$107 million total, NORA had collected approximately \$103 million and had accrued receivables of \$4 million at the end of 2008.

<sup>17</sup>According to NORA data, state associations spent about 81.4 percent of the assessments NORA provided to them on consumer education, 18.0 percent on education and training, and 0.6 percent on research and development.

consumer education programs, \$17.8 million (16.5 percent) on education and training, \$6.2 million (5.8 percent) on research and development and \$300,000 (0.3 percent) on its oil tank program. In addition, NORA spent another \$8.9 million (8.3 percent) on general, administration and special projects. NORA had not yet spent \$5.8 million (or about 5.4 percent of the \$107.4 million collected), but NORA officials explained that approximately two-thirds of this amount has been designated for future expenditure but has not yet been disbursed. Figure 2 shows NORA spending for this period.

**Figure 2: NORA Reported Spending, Calendar Years 2001 through 2008**



Source: GAO analysis of data contained in NORA 2001-2008 audited financial statements, annual reports, and other NORA information provided to us.

A review of its expenditures through 2008 reveals that PERC spending for consumer education (\$178.6 million) was over 6 times greater than its research and development spending (\$28.1 million). Furthermore, it appears that marketing and promotion was an important part of PERC's consumer education activities, because it described the overall increase of propane usage as the strategic goal for PERC's consumer education activities. The disparity between NORA's consumer education spending and its research and development spending was even greater during this period: NORA spent more than 11 times as much on consumer education

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as it spent on research and development (\$68.4 million versus \$6.2 million). As discussed later in this report, it appears that Congress may not have anticipated that such a significant proportion of the organizations' assessments would be spent on consumer education, in comparison to the other statutory priority areas. In addition, it is not clear that Congress anticipated that the organizations would allocate funding (substantial funding, in PERC's case) to communications and other activities related to Congress itself or to politically affiliated entities, particularly when the spending is classified as "consumer education."

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## While PERC and NORA Reported Activities in All Program Areas, in Some Cases It Is Unclear to What Degree Those Activities Have Helped Achieve Results

PERC and NORA both reported spending funds on activities in all program areas—including the priority areas of consumer education, safety and training, and research and development. Some of those activities appear to be consistent with stated strategic goals while, for other activities, the extent of that consistency is less clear. Because both PERC and NORA officials advised us that their annual reports alone do not provide a complete picture of their accomplishments, we asked both entities to provide us an aggregate summary of their reported activities and compared that information to goals outlined in PERC and NORA strategic plans. For PERC, we could not determine how some activities under certain program areas achieved desired results as defined by their strategic goals. NORA lacked strategic goals for some program areas, so we could not determine the extent to which activities under these program areas achieved desired results.

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## PERC Program Area Activities and Results

PERC provided us with summaries of activities by program area. PERC's activities under the research and development and agriculture program areas appear to be consistent with its stated strategic goals. However, for PERC's activities under the consumer education, safety and training, engine fuel, and industry program areas, it is unclear the extent to which some activities helped PERC achieve the desired results identified in its strategic goals.

*Research & development:* PERC stated that, among other things, its research has led to the commercialization of additional propane-fueled engines, vehicles, and equipment; improved energy efficiency; and reduced

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emissions of critical pollutants and greenhouse gases.<sup>18</sup> Those activities generally are consistent with the desired results identified in PERC's strategic goals for research and development which, as stated in its strategic plan for 2008 to 2012, are to expand markets, reduce costs, enhance safety, and/or improve environmental performance.

*Agriculture:* PERC stated that, among other things, its funding had contributed to the development and commercialization of stationary engines for agricultural applications—now approved for sale in all 50 states—and provided for funded research on propane use for poultry house sanitation, weed control, and cotton defoliation. Those activities seem to generally be consistent with the desired results identified in PERC's goal for agriculture which, as stated in its 2008 to 2012 strategic plan, is to establish propane as a preferred energy source in the U.S. agriculture industry.

*Consumer education:* PERC stated that its consumer education activities included, among other things, a builder-focused Web site that attracted 30,000 unique visitors in its first year of operation (2008), and a consumer-focused Web site that attracted over 900,000 visitors in 2008. In addition, a PERC-commissioned 2006 report credited PERC's advertising and outreach efforts with increasing propane demand in one of PERC's six market sectors—residential propane-heated housing.<sup>19</sup> It is unclear, however, whether such activities resulted in increased overall propane usage, which is the strategic goal for consumer education. In attempting to identify PERC's potential impact on increased overall propane usage, we found that a 2007 propane consumer impact analysis prepared by the Department of Commerce under authority of the Propane Act determined that PERC's operations may have led to a slight increase in consumer demand for propane. In contrast, a 2010 study commissioned by PERC reported that total sales of propane, after peaking in 2003, had actually fallen by more than 10 percent through 2006. The study further noted that, although propane demand had increased somewhat in 2007 and 2008 due to colder weather, propane demand appears to have declined again in 2009.

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<sup>18</sup>PERC explained that some separate program areas—such as engine fuel and agricultural programs—also qualify as research and development applications.

<sup>19</sup>Propane's other markets include resellers, agriculture, commercial, industrial, and internal combustion.

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*Safety and training:* PERC stated that its safety and training activities included, among other things, its Certified Employee Training Program (CETP) for propane industry employees that has certified more than 120,000 people since the late 1990s and is a required course in eight states. PERC also indicated that it had created the Safe Grilling Campaign, which utilizes advertisements, brochures, and partnerships with food and agriculture organizations to teach 60 million consumers annually to safely use and manage propane grills. It is unclear, however, whether such activities helped to reduce propane incidents and accidents, which is one of PERC's stated strategic goals for safety and training. In attempting to identify PERC's potential impact on incidents and accidents, we found that PERC contracted for a study on propane-related incidents and accidents in 2006, and the PERC contractor reported that the number of propane incidents and accidents had increased annually from about 31,500 in 1998 to about 34,800 in 2000. However, the PERC council took no action on a contractor's proposal to continue this study, nor, according to the contractor, did it support the contractor's desire to publish various data from the study, including information on the causes of the accidents and incidents. In the contractor's view, the propane industry needed to see this information so that propane training could be modified, as necessary, to address those causes.

*Engine fuel:* PERC stated that, among other things, its funding had contributed to the introduction of several new propane-fueled products for over-the-road and off-road use. For example, in 2009, PERC approved a \$1.4 million grant to help the Blue Bird Corporation secure financing to buy 1,800 engines for its Blue Bird buses from General Motors Corporation. Because General Motors had announced it intended to stop making these engines, Blue Bird plans to stockpile these engines for use over the next 2 to 3 years. Also, in 2008, PERC approved a \$4.8 million grant with Roush Industries to produce and market propane-fueled engines in Ford F-150 and F-250 trucks and E-250 vans. Expenses included in that program were PERC funding for floor mats and other marketing materials. PERC's strategic goal for engine fuel, as stated in its 2008 to 2012 strategic plan, is to conduct research with a commercialization focus to advance propane sales for vehicle and other engines. It is not clear how the purchase of engines and production and marketing of propane fueled engines involved the conduct of research. In discussing this matter with DOE officials, they said that the acquisition and placement of engines into vehicles, in their view, was neither research nor development.

*Industry programs:* PERC stated that it has created an industry program area which, among other things, had distributed millions of dollars to state

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PERC associations; participated in industry trade shows, meetings, and conventions; and funded various communication tools, including a quarterly newsletter, a weekly e-mail newsletter, and active outreach to trade publications. PERC also stated that its industry programs have expanded the reach and frequency of its consumer education, and that by encouraging states through matching funds to use resources developed by PERC, rather than leaving each state to develop its own resources, PERC helps to improve efficiency and ensure there is no duplication of costs. Two of PERC's strategic goals for industry programs are to (1) maximize the impact of PERC dollars distributed to state associations and (2) coordinate activities to avoid unnecessary duplication.<sup>20</sup> It is unclear, however, the extent to which these reported activities maximized the impact of PERC dollars distributed to state associations or coordinated activities to avoid unnecessary duplication. In fact, coordination to avoid duplication is a requirement of the Propane Act, and as discussed in the next section of this report, it is not clear that PERC is meeting this requirement.

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## NORA Program Area Activities and Results

Similar to PERC, NORA officials provided us a summary of activities by program area. While NORA's activities under the research and development program area appear to be consistent with its stated strategic goals for this area, NORA's strategic plan lacked goals for the consumer education, education and training, and oil tank program areas. We therefore could not determine the extent to which activities under these program areas achieved desired results.

*Research & development:* NORA stated that it had helped develop several energy efficient products currently on the market, including a condensing furnace and a condensing boiler that received an Energy Star rating. NORA also indicated that it has helped to develop a Fuel Saving Analysis Calculator that allows consumers considering purchasing a new oil- or gas-fired home-heating system to assess the cost savings of an upgrade. Those activities generally are consistent with NORA's goal for research and development which, as stated in its most recent (2007) strategic plan,

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<sup>20</sup>PERC's third goal for industry programs is to provide support, data, and other services to the propane industry and its organizations.

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is to grow technology in three pathways—fuel, core technology,<sup>21</sup> and new technology.

*Education and training:* NORA stated that it had developed training manuals (including a new manual that is now the industry standard) and manuals on topics ranging from storage tanks to efficiency. NORA also manages a technician training program, which has certified more than 16,500 technicians. NORA's 2007 strategic plan contains no goals for the education and training program area, however; therefore, we could not determine whether NORA activities were achieving desired results. Further, we found that NORA has produced no studies evaluating the frequency and causes of oilheat safety accidents and incidents in the United States. Without such an evaluation, NORA has no way of knowing whether its training efforts are succeeding or need to be modified. Our review of Internet-available data identified only one source of information on oilheat-related accidents and incidents, namely, data gathered by the Consumer Product Safety Commission. While we did not evaluate the accuracy of these data, the data showed that incidents increased from 3 incidents involving 3 individuals in 2001 to 7 incidents involving 21 individuals in 2008.<sup>22</sup> NORA officials said the Commission's information was the only oilheat accident and incident data currently available and that some of the incidents had been mischaracterized by the Commission.

*Consumer education:* NORA stated that its activities have included advertisements, direct mail, and a Web site aimed at changing consumer perception of oilheat as an outdated, unclean fuel and reducing customer energy consumption. Again, however, NORA's 2007 strategic plan contains no goals for the consumer education program area; therefore, we could not determine whether NORA activities in consumer education were achieving desired results. Somewhat related to consumer education, NORA's 2007 strategic plan does contain a "public awareness" strategic goal to increase public awareness of the unique properties, uses, and benefits of heating oil. However, NORA officials said that NORA has not conducted any studies to ascertain whether NORA-specific activities have

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<sup>21</sup>Under the core technology pathway, NORA's strategic plan indicates NORA intends to take advantage of non-condensing high performance characteristics of fuel oil and further develop new engineered plastic or other cost effective venting systems to take advantage of liquid fuel combustion properties.

<sup>22</sup>A NORA contractor concluded that, since the Commission information did not indicate the reasons for the incidents, no conclusions could be reached from the information.

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increased public awareness of oilheat. They said that such studies, if comprehensive, could cost more than \$200,000 but said that NORA has been involved in smaller studies to evaluate oilheat consumer usage and public attitudes, among other things.

*Oil tank program:* NORA stated that it had also developed a tank education program that includes a 300-page tank manual; tank installation, oil delivery, and spill prevention videos; and tank certification seminars attended by more than 1,500 technicians. Again, however, NORA's 2007 strategic plan contains no goals for tank insurance; therefore, we could not determine whether NORA tank insurance activities were achieving desired results.

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## Certain PERC and NORA Activities Appeared to Meet Key Statutory Requirements, While Others Raise Issues about Coverage of the Acts and Other Matters

We did not make a determination as to whether PERC and NORA complied with specific requirements of the Propane and Oilheat Acts, as it is the primary jurisdiction of the Department of Justice, as part of its enforcement responsibilities, to make such determinations regarding non-federal entities. Nonetheless, a number of PERC's and NORA's activities appeared to meet the requirements of the Acts. Other activities, such as certain activities involving Congress or politically affiliated entities, raised issues such as whether they are covered by the Acts' specific lobbying restrictions. Assuming that these latter activities were permitted, issues remain about whether Congress anticipated that assessment funds would be used for these types of activities, particularly when PERC and NORA have classified this spending as "consumer education," one of the functions that the Acts actually require PERC and NORA to carry out. Issues also remain about whether Congress anticipated that PERC and NORA would allocate the majority of their funding to education activities over the past decade, in comparison to the relatively little financial support given to research and development, an activity that was a key area of congressional interest as the laws were debated prior to enactment and that ultimately was reflected as both a mandatory "function" and a high-focus "priority" when the laws were enacted. Finally, issues exist about areas such as PERC's coordination with federal agencies; NORA's monitoring of the expenditures of its funds by state associations; and PERC's activities previously designated as "consumer education" but designated as "residential and commercial" matters after price-based restrictions on consumer education restrictions were triggered in 2009. A complete listing of the areas we examined and the results of our review can be found in appendix II for PERC and appendix III for NORA.

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A Number of PERC Activities Appeared to Meet the Key Requirements of the Propane Act

We found that a number of PERC activities appeared to meet key requirements of the Propane Act. For example, as called for by the statute, PERC maintains a 21-member council, has submitted its annual budget to the Secretary of Energy each year from 2000 through 2009, and has had its financial records audited by a certified public accountant at least annually since 1998. PERC has also prepared and issued annual reports, and submitted notices of its meetings to DOE. A listing of PERC activities that appeared to meet key requirements of the Propane Act is included as part of appendix II.

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Other PERC Activities Raised Issues about Coverage of the Propane Act and Other Matters

Other PERC activities raised issues about coverage of the Propane Act and other matters. As discussed below, these activities include communications and expenditures related to Congress and to politically affiliated entities; activities previously designated as “consumer education” but designated as “residential and commercial” matters after price-based restrictions on consumer education restrictions were triggered in 2009; and actions to ensure PERC’s coordination with key federal agencies. A detailed listing of these activities is included as part of appendix II.

Issues Regarding Communications and Expenditures Related to Congress and Politically Affiliated Entities

As noted above, the Propane Act prohibits the use of assessments collected by PERC to conduct certain “lobbying” activities. The statute provides little guidance on exactly what those prohibited activities are, however. The Propane Act provides:

“LOBBYING RESTRICTIONS.

“No funds collected by the Council shall be used in *any manner for influencing legislation or elections*, except that the Council may recommend to the Secretary [of Energy] changes in this Act or other statutes that would further the purposes of this Act.”<sup>23</sup>

(As discussed later in this report, the Oilheat Act contains similar, although not identical, language.)

The Act does not define what is meant by the key phrase “in any manner for influencing legislation or elections.” In addition, there is little

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<sup>23</sup>Propane Act section 8, 15 U.S.C. § 6407 (emphasis added).

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legislative history on this provision;<sup>24</sup> no court has addressed what this language means as used in this statute; and similar language in other federal statutes,<sup>25</sup> which a court might use as guidance in interpreting the Propane Act, has been interpreted in different ways. The Internal Revenue Code, for example, cited as relevant guidance by PERC and one of its grantees, prohibits the deduction as a business expense of private monies spent for “influencing legislation.”<sup>26</sup> The Code defines “legislation” as an “action with respect to Acts, bills, resolutions or similar terms by the Congress, any State legislature, . . . or by the public in a referendum [or] initiative,”<sup>27</sup> and Internal Revenue Service regulations likewise define “influencing legislation” to pertain only to influencing a specific bill or specific legislative proposal.<sup>28</sup> Similarly, the Lobbying Disclosure Act, another law cited as relevant guidance by PERC, pertains to registration and reporting of “lobbying contacts,” defined in relevant part as “communication . . . to . . . a covered legislative branch official . . . with regard to . . . the formulation, modification, or adoption of Federal legislation (including legislative proposals) . . .”<sup>29</sup> Using these statutes as analogies, PERC stated that it complied with the Propane Act because it spent no assessment funds advocating for or against a specific bill or a specific legislative proposal. To the extent PERC funds were spent to communicate with Members of Congress or their staffs, PERC stated that the communications were in the context of responding to congressional requests for information, providing information about how the Propane Act was being implemented, or promoting propane generally—activities

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<sup>24</sup>The Senate Energy and Natural Resources Committee report on the bill noted only that the lobbying provision “disallows the use of any funds collected by [PERC] for political activities or to influence legislation. However, [PERC] may recommend [to the DOE Secretary] changes in the Act or other statutes that would further the purposes of the Act.” S. Rep. No. 298, 104th Cong., 2d Sess., at 7. The House Energy and Natural Resources Committee report similarly noted only that the bill “prohibits the use of any funds to lobby Congress.” H. Rep. No. 655, Part 1, 104th Cong., 2d Sess., at 11.

<sup>25</sup>*See, e.g.*, 2 U.S.C. § 441c (prohibition on federal contractors making contributions to a political party or candidate in connection with a federal election during contract); 31 U.S.C. § 1352 (limitation on use of appropriated funds to influence certain federal contracting and financial transactions); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, Division C, § 720 (Dec. 16, 2009) (appropriated funds prohibited from use for publicity or propaganda purposes to support or defeat pending legislation).

<sup>26</sup>26 U.S.C. § 162(e)(1)(A).

<sup>27</sup>26 U.S.C. §§ 162(e)(4), 4911(e)(2).

<sup>28</sup>26 C.F.R. § 1.162-29(b); 26 C.F.R. § 56.4911-2(b)(ii).

<sup>29</sup>2 U.S.C. § 1602(8)(A).

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which, in PERC’s view, do not trigger the restrictions in these other statutes or, by analogy, the restrictions in the Propane Act.

On the other hand, the Justice Department’s Office of Legal Counsel, interpreting a federal law that prohibited agency grantees from using grant funds “to engage in any activity designed to influence legislation . . . pending before the Congress,”<sup>30</sup> suggested that the language applied not only to advocacy regarding specific legislation, but also to general informational and educational contacts with Congress of the type that PERC conducted. Among other things, Justice emphasized the breadth of the language—that it applied to “‘any activity’ designed to influence legislation pending before Congress”—and the fact that the law was “conspicuously silent” about whether grant funds could be used to engage in contacts with Congress akin to the normal informational and educational contacts that routinely and necessarily occur between federal agency employees and Congress. Justice did not resolve whether it believed that such other activities were prohibited as well.<sup>31</sup>

Under these circumstances, although we found that PERC funded or helped to fund certain activities that entailed communications or expenditures related to members of Congress or their staffs or to politically affiliated entities, it is not clear whether or not the Propane Act’s prohibition against the use of PERC funds “in any manner for

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<sup>30</sup>Pub. L. No. 96-536, 94 Stat. 3166 (1980), as amended by Act of June 5, 1981, Pub. L. No. 97-12, 95 Stat. 14.

<sup>31</sup>See *Anti-Lobbying Restrictions Applicable to Community Services Administration Grantees*, 5 Op. Off. Legal Counsel 180 (June 17, 1981). The Justice Department’s legal opinion discussed these additional types of contacts because after the law under review was enacted, the Chair of the Senate subcommittee of jurisdiction told the agency head that the subcommittee did not intend the law to apply to a grantee’s use of funds to respond to congressional information requests, to provide educational information to Congress on the effects of legislative issues, or to provide information to Congress concerning legislative issues directly affecting the continued existence of the granting federal agency or its grantees. Justice did not indicate whether it agreed or disagreed with this interpretation because it found the Chairman’s letter was “subsequent” legislative history that has little legal significance.

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influencing legislation or elections” covers those activities.<sup>32</sup> We found, for example, the following:

- In 2004, PERC paid for a grantee to attend activities associated with the Republican and Democratic national conventions. PERC’s payments also included \$2,500 for lodging during the Republican National Convention. PERC and its grantee stated these activities were not within the Propane Act’s restrictions because the contacts did not involve advocacy about specific legislation.
- Annually between 2005 and 2009, PERC paid for a grantee to contribute thousands of dollars to several politically active organizations. PERC and its grantee stated these activities were not restricted by the Propane Act because the organizations did not advocate a position on specific legislation for PERC.
- Annually between 2005 and 2009, PERC paid for a grantee to spend thousands of dollars to host Senate and House receptions. PERC and its grantee stated these activities were not restricted by the Propane Act because the contacts did not involve advocacy about specific legislation. PERC also noted the grantee’s legal counsel had reviewed the activities in advance and determined they were not restricted.
- Annually between 2005 and 2009, PERC paid hundreds of thousands of dollars to host a portion of an annual event called “Propane Days,” where PERC members and associates could meet congressional members and their staffs. For example, some PERC funds were used to pay for grantee travel and per diem to attend Propane Days, which enabled the grantee to engage in lobbying activities using its separate funds. PERC stated these activities were not restricted by the Propane Act because most PERC funds were used for general advertising, not advocacy about specific

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<sup>32</sup>Based on the two statutes it asserts are most analogous to the Propane Act, PERC disagrees that the Propane Act’s lobbying restrictions apply to anything other than advocacy on specific legislation or elections. It therefore objects to what it asserts is GAO’s implication—because of our citation of the Justice Department’s reading of similar language in another potentially analogous statute—that the Propane Act also applies to the use of PERC funds for general informational or educational contacts with Congress. PERC misconstrues our purpose in citing Justice’s opinion, which was not to imply that the statute under review there is necessarily a better analogy to the Propane Act or that Justice necessarily interpreted that statute correctly—subjects on which we do not express an opinion. Rather, we cited Justice’s opinion to demonstrate that the phrase “influencing legislation” is interpreted differently in different statutes and that its undefined meaning in the Propane Act is not clear.

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legislation, and its grantee used its own funds to address specific legislation.

- In 2009, PERC approved funding for a \$6.2 million grant proposal which stated that its purpose was, in part, to provide education and information to “inside the beltway policy makers.” PERC stated these activities were not restricted by the Propane Act because the grant was for educational purposes, not for advocacy relating to specific legislation.

Assuming that the above types of activities are permitted under the Propane Act, an additional issue is whether Congress anticipated that PERC would use its assessment funds to support such activities. This issue may be of particular congressional interest because PERC has classified these activities as one of the three “function” areas specifically *mandated* by the Act: public education. As PERC stated, it “has always seen policy makers as members of the public to whom PERC had a legitimate right and responsibility to provide education and information so long as PERC stayed out of legislative or elective matters.”<sup>33</sup>

Finally, assuming that PERC’s activities constitute the type of activities that Congress anticipated would be funded as public or consumer education, an additional issue is whether Congress anticipated that PERC would allocate such a substantial portion of its funding to education (50.9 percent of PERC funding over the last decade), in contrast to its allocation of a relatively small portion of its funding to the priority area of research

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<sup>33</sup>Section 5(f) of the Propane Act requires PERC to “develop programs and projects . . . including programs . . . to inform and *educate the public* about safety and other issues related to the use of propane.” 15 U.S.C. § 6404(f) (emphasis added). The Propane Consumer’s Coalition raised concerns about what activities could properly be considered and funded as “public education” or “consumer education” in 1996, when Congress was considering the Propane Act legislation. The Coalition stressed the need for adequate federal oversight to ensure that propane marketing and promotional programs were not undertaken under the guise of “educational” programs. U.S. Cong., Subcomm. on Energy & Power of the Comm. on Commerce, House of Rep., 104th Cong., 1st Sess. (Oct. 28, 1995). Also regarding the meaning of “public education” under the Act, in PERC’s view, its public information and education mandate also authorized funding of certain activities not directly related to propane, such as the cost of organizational memberships in order to gain the opportunity to highlight propane-related issues (PERC reported funding \$36,000 in membership fees for the U.S. Chamber of Commerce, \$37,000 in such fees for the Ripon Educational Fund, and \$20,000 in such fees for the Franklin Center). PERC also states its public education mission authorized its annual 2005-2009 funding of speakers for Propane Days on non-propane subjects of general relevance to the propane industry, as well as its 2006 funding, through a grantee, of a \$3,000 general motivational speech about effective advocacy. Such activities likewise raise the issue of whether Congress anticipated the use of PERC funds for such activities as “public education” activities.

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and development over the same period (8 percent of PERC funding over the last decade). The legislative history of the Propane Act suggests Congress was particularly focused on research and development as the driving need for the legislation. A June 1996 Senate Energy and Natural Resources Committee report, for example, stated that, unlike assessments imposed under the agricultural check-off programs, which emphasized marketing and promotion, the emphasis of PERC’s propane assessments would be research and development. The Committee also noted the need for legislation to support propane research and development, because of the fact that the propane industry consists of numerous small retailers “has inhibited the creation of a voluntary effort to cooperate on research and development priorities.”<sup>34</sup>

Issues Regarding Potential  
PERC Consumer Education  
Expenditures Following Recent  
Price-Based Trigger of Funding  
Restriction

As noted above, the Propane Act specifies that if, in any year, the 5-year average rolling price index of consumer grade propane exceeds a particular price threshold, PERC’s activities must be restricted to three specific areas—research and development, training, and safety matters—meaning that consumer education and other activities must cease. The Propane Act also requires PERC to notify DOE and Congress of any such restriction in its activities.<sup>35</sup> The Department of Commerce notified PERC in August 2009 that this price composite index threshold had been exceeded, and in September 2009, PERC notified DOE and Congress that it had immediately restricted its activities in accordance with the statute.

We found that after PERC’s September 2009 notification of DOE and Congress, PERC approved three grants (including a no-cost change order to a previously approved grant). These grants were initially proposed and approved as “consumer education” grants (which would be prohibited under the restriction) but were later amended as grants under a new

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<sup>34</sup>S. Rep. No. 298, 104th Cong., 2d Sess., at 2-3 (1996). The primary sponsor of the Senate bill, Senator Domenici, also noted the importance of supporting research as a need for the legislation. As he explained, “A companion bill, H.R. 1514, was introduced in the House of Representatives and currently enjoys broad bipartisan support. This enthusiasm underscores the wide, regional appeal of this innovative approach to meeting our domestic energy *research* needs.” 141 Cong. Rec. E868 (daily ed. April 7, 1995) (emphasis added).

<sup>35</sup>Specifically, section 9 (b) of the Propane Act, 15 U.S.C. § 6408(b), provides in part that “if in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil in an amount greater than 10.1 percent, the activities of [PERC] shall be restricted to research and development, training, and safety matters. [PERC] shall inform [DOE] and Congress of any restriction of activities under this subsection.”

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program area—“residential and commercial” matters. The Propane Act does not define the scope of the three activities permitted under the price restriction (research and development, training, or safety matters), nor the activities, such as consumer education, that must cease under the restriction.<sup>36</sup> The resulting lack of a precise statutory line between permitted and prohibited activities creates difficulty in assessing compliance with the restriction and may require clarification by Congress.

The three grants initially proposed and approved as “consumer education” activities were as follows:

- As part of PERC-approved funding of a \$1.8 million grant for “construction professional communications,” the initial grant proposal stated that PERC intended to “create an ongoing dialogue with construction pros to ensure propane messages stay front-and-center.” PERC states that it complied with the restriction because (1) the grant was reduced in scope and amount to eliminate \$500,000 in funding for consumer education; (2) the remaining funding, \$1.3 million, was for safety and training, which, PERC stated, are permitted activities under the restriction; and (3) the amended grant provided an opportunity to support and promote new technologies entering the marketplace. However, in our view, it remains unclear how promoting new technologies constitutes safety and training.
- As part of PERC-approved continuation of a \$5.9 million grant for “residential advertising,” the initial grant proposal stated that PERC intended to “educate construction professionals about the benefits of propane throughout the home.” PERC stated that it complied with the restriction because once it was triggered, PERC terminated all educational components associated with the grant and the remaining work constituted training. However, PERC records show that, unlike the \$1.8 million grant discussed above, it did not reduce the amount of the grant and, instead, approved a no-cost change order to the grant in October 2009, a month after the restriction was triggered.
- As part of PERC-approved funding of a \$2 million grant for “construction professional training support,” the initial grant proposal stated that PERC intended to provide “marketing activities no longer allowable by direct PERC funding.” PERC stated that it complied with the restriction because

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<sup>36</sup>The Oilheat Act (section 703(2)) contains a broad definition of “consumer education”: “the provision of information to assist consumers and other persons in making evaluations and decisions regarding oilheat and other nonindustrial commercial or residential space or hot water heating fuels.”

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Issues Regarding PERC  
Coordination with Federal  
Agencies

it later amended the grant, terminating the educational component and that the grantee, rather than PERC, inserted the above wording into the proposal.

Section 5(f) of the Propane Act requires PERC to coordinate its activities with industry trade associations and others as appropriate to provide efficient delivery of services and to avoid the unnecessary duplication of activities. We identified DOE and USDA as potentially appropriate agencies for PERC's coordination because both agencies fund propane-related research and development efforts. However, we found that there has been a mixed level of coordination between PERC and those agencies. Specifically, DOE Energy Efficiency and Renewable Energy Office officials told us that PERC had been a good partner in the education and training area, and that PERC had worked with DOE on activities such as fleet-oriented education geared toward maintenance personnel and drivers. However, in the research and development area, these DOE officials said that PERC approached DOE to request funding for a proposed project at the wrong time of the funding cycle, demonstrating a lack of understanding of government cycles and processes. These officials added that PERC, unlike the natural gas industry, had not worked with DOE to develop a research and development strategic plan, and they said they would have welcomed such an effort with PERC. They further said that DOE officials had ideas for propane-related research and development projects but that PERC had never solicited those ideas from DOE. With regard to the PERC safety and training program area, the chairman of the PERC Safety and Training Advisory Committee told us that he was not aware of DOE's activities in this area, while DOE Energy Efficiency and Renewable Energy Office officials told us that DOE had been involved in some safety and training that could have application to the propane industry. PERC records show that DOE officials were contributors to PERC's 2000 strategic plan but were not contributors to PERC's 2007 research and development plan, 2008-2012 strategic plan, or 2009 safety and training plan.

According to an official in USDA's National Institute of Food and Agriculture, PERC's consumer outreach seems to be geared to a middle- to high-income audience. Further, this official said that he had not seen any PERC Spanish-language material. The official said that, in his view, PERC should coordinate its outreach consumer education activities better with organizations, including USDA. Another USDA official with the Agricultural Research Service indicated that if PERC vetted all research and development projects through the department, it could help avoid duplication and foster coordination.

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## A Number of NORA Activities Appeared to Meet the Key Requirements of the Oilheat Act

We found that a number of NORA activities appeared to meet key requirements of the Oilheat Act. For example, as called for by the statute, NORA has coordinated its activities with industry associations and others to ensure the efficient delivery of services and avoid unnecessary duplication. In addition, NORA does not appear to support advertising or promotions, in keeping with the Act's provisions. NORA publishes a budget and an annual report for public review and comment each year, and its council meetings, including those of its executive committee, appear to be open to the public. Also consistent with the Act, NORA's annual financial statements have been reviewed by an independent auditor, and its investments have been reviewed for compliance with the Act's provisions by outside counsel. A more detailed listing of these activities is included as part of appendix III.

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## Other NORA Activities Raised Issues about Coverage of the Oilheat Act and Other Matters

Other NORA activities raise issues about coverage of the Oilheat Act and other matters. Examples of these activities are discussed below and a more detailed listing is included as part of appendix III.

### Issues Regarding Communications and Expenditures Related to Congress and Politically Affiliated Entities

Similar to the Propane Act, the Oilheat Act prohibits the use of assessments collected by NORA to conduct certain "lobbying" activities. Like the Propane Act, the Oilheat Act provides little guidance on exactly what those prohibited activities are. The Oilheat Act provides:

"LOBBYING RESTRICTIONS.

"No funds derived from assessments . . . collected by the Alliance shall be used to influence legislation or elections, except that the Alliance may use such funds to formulate and submit to the Secretary [of Energy] recommendations for amendments to this [Act] or other laws that would further the purposes of this [Act]."<sup>37</sup>

Like the Propane Act, the Oilheat Act does not define what is meant by the phrase "influencing legislation or elections;" there is little legislative

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<sup>37</sup>Oilheat Act section 710. Unlike the Propane Act, which prohibits the use of PERC funds "in any manner for influencing legislation or elections," the Oilheat Act does not include the phrase "in any manner."

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history on this provision;<sup>38</sup> no court has addressed what this language means as used in this particular statute; and other federal statutes containing similar language have been interpreted in different ways. Consequently, as with PERC, while we found that NORA funded or helped fund certain activities that entailed communications or expenditures related to Members of Congress or their staffs or to politically affiliated entities, it is not clear whether or not the Oilheat Act's prohibition against the use of NORA funds "to influence legislation or elections" covers these activities. With respect to expenditure of NORA funds, we found, for example, the following:

- A January 25, 2010, NORA-qualified Maine state association Web site posting contained a link to a Web page entitled, "How We Lobby." NORA stated this was not within the Oilheat Act's restrictions because the referenced lobbying activities were conducted with state funds, not NORA funds. NORA submitted a sworn declaration to us by a Maine state association official attesting to this.
- A January 25, 2010, NORA-qualified New York state association Web site posting asked its readers to take action now by contacting Congress to express support for pending legislation that would control the manipulation of oilheat prices. The Web site included a link to a form letter that readers could use to mail to their senators and congressional representative. NORA stated this was not restricted by the Oilheat Act because the referenced lobbying activities (which might constitute "grassroots lobbying") were conducted with state funds, not NORA funds. NORA submitted a sworn declaration to us by a New York state association official attesting to this.
- A September 24, 2009, NORA-qualified Massachusetts state association newsletter, which indicated that the association is a NORA partner, encouraged its members and friends to send form letters to Congress supporting NORA reauthorization. NORA stated this was not restricted by the Oilheat Act because the referenced lobbying activities (which might constitute "grassroots lobbying") were conducted with state funds, not

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<sup>38</sup>There is no report history for the lobbying restriction in the bill as enacted in 2000. The most recent report that addressed the restriction was in 1999, for S. 348, whose lobbying restriction was identical to the final bill. The report on that bill stated only that it "prohibits lobbying with assessment funds." S. Rep. No. 109, 106th Cong., 1st Sess., at 4 (July 20, 1999). The 1998 House bill, H.R. 3610, contained slightly different language: it included the same "in any manner" phrase contained in the Propane Act. Dropping this phrase in the final bill arguably loosened the restriction.

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NORA funds. NORA submitted a sworn declaration by a Massachusetts state association official attesting to this.

- The minutes of an August 2008 NORA executive committee meeting indicated that the NORA president said that he was going to try to persuade state senators to support NORA reauthorization, and a December 2008 NORA-qualified Massachusetts state association newsletter indicated that the NORA president traveled to Washington to urge both Massachusetts senators to support NORA reauthorization. NORA stated this was not restricted by the Oilheat Act because, contrary to the minutes and the newsletter, which they said were in error, NORA’s president did not attend the senators’ meeting in his capacity as president of NORA, but rather in his dual capacity as president of the National Association for Oilheat Research and Education (NAORE). NAORE is a separate organization that pre-dated the creation of NORA; it is funded by its own membership dues; and its president is officially registered under the Lobbying Disclosure Act to conduct lobbying activities.<sup>39</sup> (NAORE is also the “qualified industry organization” under the Oilheat Act required to carry out various statutory functions.)
- A spring 2008 New York NORA-qualified association newsletter, which noted that it was “brought to you in association with ... [NORA],” stated that the New York association was “actively involved in a campaign to ask Congress to take action and take control of energy prices.” NORA stated this was not restricted by the Oilheat Act because while NORA had paid for the newsletter, the newsletter was only reporting information, it was not advocating a “call to action.” We nevertheless note that under NORA’s own policies, rules, and procedures, it “shall not approve grant or rebate funds to state entities to support those aspects of *newsletters*, web sites, and other means of communication that *report* on or advocate industry policy and/or political positions—with respect to legislation or elections.” (Emphasis added.)

Assuming that the above types of activities are permitted under the Oilheat Act, an additional issue is whether Congress anticipated that NORA or its qualified state associations would use assessment funds to support such activities. As with PERC’s activities, this issue may be of particular congressional interest because NORA, like PERC, has characterized these

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<sup>39</sup>Section 705(c)(2) of the Oilheat Act allows NORA board members to also be employed by NAORE or by an industry trade association. In this case, the same person is the president of both NORA and NAORE, creating the potential for confusion and uncertainty as to which organization or function that individual is serving at any given time.

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types of activities as constituting “consumer education,” one of the functions expressly *mandated* by the Act.<sup>40</sup>

Finally, as with PERC’s similar activities, assuming that these and other NORA-funded activities constitute the type of activities that Congress anticipated would be funded as consumer education, an additional issue is whether Congress anticipated that NORA would allocate such a substantial portion of its funding to education (63.7 percent of NORA’s funding from 2001 to 2008), in contrast to its allocation of a relatively small portion of its funding to the priority area of research and development over the same period (5.8 percent). The legislative history of the Oilheat Act suggests that Congress was equally if not more focused than it was in enacting the Propane Act on the need for research and development funding as a driving force behind the legislation. At a hearing about a predecessor bill to the Oilheat Act (H.R. 380, the National Oilheat Research Alliance Act of 1999), House Energy and Power Subcommittee Chairman Barton began the hearing by identifying several concerns with creating an oilheat federal check-off program, including that federal involvement might not be necessary to encourage greater oilheat use and that such programs have the potential for abuse. Chairman Barton observed, however, that the legislation would “give the industry greater resources to undertake *research and development activities*.”<sup>41</sup> This focus was reinforced at the hearing by the testimony of industry representatives, who maintained that the legislation was needed to facilitate pooling of resources for research and development as the industry’s foremost need. As the Vice President of the Petroleum Marketers Association observed, the oilheat industry is comprised of 7,000 small businesses, none with “enough market share to fund these needs,” and “check-off funds will

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<sup>40</sup>Section 706(a)(1)(A)(iii) of the Oilheat Act requires NORA to “develop programs and projects . . . including programs . . . for consumer education . . .” As with the public education mandate in the Propane Act, concerns were raised during Congress’s consideration of the Oilheat Act about whether activities not strictly for consumer benefit would nonetheless be paid for as “consumer education” using NORA funds. Representative Waxman, after criticizing the bill as “an anti-consumer mandate that consolidates power in an entity [NAORE] controlled by the biggest interests [that] will favor their concerns over those of consumers and small businesses,” and as effectively imposing a new tax on consumers, raised concerns that assessment funds would go to support advertising and promotions rather than consumer education. Noting that the bill prohibits advertising and promotion funding, Mr. Waxman observed that “there is no precise line between advertising and consumer education.” *See* 146 Cong. Rec. H 10565 (1999).

<sup>41</sup>U.S. Cong., Subcomm. on Energy and Power of the Comm. on Commerce, House of Rep., 106th Cong., 2nd Sess. (April 5, 2000) (“Hearing”)(emphasis added).

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Issues Regarding NORA's  
Monitoring of State  
Associations

support *research and development* of new technologies and more efficient equipment and appliances.”<sup>42</sup> Against this background, Senators Bingaman and Murkowski sponsored the legislation in the Senate, and it was enacted as part of the Energy Act of 2000.<sup>43</sup>

The Oilheat Act provides that NORA shall monitor the use of funds it provides to state associations and “impose whatever terms, conditions, and reporting requirements that [it] considers necessary to ensure compliance” with the Act.<sup>44</sup> The Act further provides that NORA shall establish policies and procedures for auditing compliance with the Act.<sup>45</sup>

We conducted reviews and inquiries to better understand the nature of any monitoring controls NORA has in place over the expenditures and activities of NORA-qualified state organizations. NORA's president told us that NORA's monitoring practices included the following:

- Inclusion of terms and conditions in grant agreements with the state associations that specify the authorized and unauthorized use of NORA assessment funds. These terms include that the grantee's work must be in compliance with the Oilheat Act and, with respect to the Act's lobbying restrictions, that the grant may not be used “for any campaign, legislation, or other political purpose.” The agreements also provide that the grantee must comply with NORA's Policies, Procedures, and Practices document, which includes a statement that the Act prohibits use of NORA funds “to influence legislation or elections” and that NORA shall not approve funds to support portions of state newsletters, Web sites, or communications that “report on or advocate industry policy and/or political positions with respect to legislation or elections.”
- Establishment of policies and procedures to review state grants and disbursements.
- Reporting by state associations that describe how disbursements align with the purpose of grant proposals.

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<sup>42</sup>Hearing at 4, 6 (emphasis added).

<sup>43</sup>146 Cong. Rec. S10809 (Oct. 19, 2000).

<sup>44</sup>Oilheat Act section 707(e)(2)(A)(ii)(IV). The Propane Act contains no similar explicit monitoring requirement for PERC.

<sup>45</sup>Oilheat Act section 706(f)(2)(C).

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- Reporting by state associations that show the balance of grant accounts, including the source and application of grant funds.
  - General ledger entries and other available financial information.

Based on our review of general ledger entries, financial statements, and certain other reports and information prepared by selected state associations, however, we were unable to determine whether spending by state associations of NORA funds met the requirements of the Oilheat Act. For example, based on our review of the general ledger expenditure entries for 2006 to 2008, we found that hundreds of entries indicated only that a purchase was made. The entries provide no details as to the type of or reason for the purchase. Although the Oilheat Act provides NORA with broad discretion to determine what monitoring measures it considers “necessary” to ensure compliance with the Act’s requirements, it is unclear whether NORA’s monitoring procedures are adequate to detect non-compliance if it occurs. As noted in both public and private sector internal control guidance, “monitoring” is one of the five standards or components for internal control that should be performed continually and includes activities such as comparisons and/or evaluations.<sup>46</sup> Without effective monitoring, NORA cannot reasonably ensure that state association spending is in accordance with the Act.

We asked a NORA representative whether having state associations establish separate accounts for NORA funds would help prevent the use of those funds for unauthorized purposes, such as the use of NORA funds for the lobbying activities identified under section 710 of the Oilheat Act, and would assist NORA in overseeing how state associations spend those funds. The representative said that while such an arrangement might work, it could also constitute a heavy administrative burden for such a small organization. The representative added that NORA is evolving to an accounting arrangement where each state NORA-affiliation purchase voucher must be submitted to NORA prior to payment. NORA officials further noted that each NORA-affiliated state association is required to enter into an agreement specifying that the state association will provide NORA with proper quarterly accounting and that, as noted previously, all expenses will comply with the Oilheat Act. Also as noted above, NORA provided us with sworn declarations from representatives of the state

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<sup>46</sup>GAO, *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1, Nov. 1999; and *Internal Control – Integrated Framework*, available through the American Institute of Certified Public Accountants, 1992.

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associations whose activities we believed raised issues about the coverage of the Act's lobbying restrictions. Those declarations stated that any lobbying activities had been carried out with non-NORA funds, from dues or other non-NORA revenue sources, and thus complied with the Act. We agree that the grant agreements and NORA's Policies and Procedures provide some "front-end" assurance ("preventive controls") that state association spending is in compliance with the requirements and restrictions of the Act. Without a stronger "back-end" monitoring process ("detective controls") to review how the state associations actually spent the funds, however, such as through comparisons and/or evaluations cited in public and private sector internal control guidance, we believe NORA cannot have reasonable assurance that the states' spending is in accordance with the Act. The sworn statements by the state association representatives that NORA provided to us do provide a level of back-end assurance, but they were prepared especially for our review, rather than in the normal course of business, and thus are not indicative of a standard NORA operating procedure.

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## Commerce and DOE's Oversight of PERC and NORA Has Been Limited

The Department of Commerce has taken steps to meet its statutory obligations under the Propane Act and the Oilheat Act. Conversely, DOE has not taken steps to exercise the authority that Congress provided in the Propane and Oilheat Acts to oversee PERC and NORA activities.

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## The Department of Commerce's Statutory Obligations Under the Propane and Oilheat Acts

The Department of Commerce has taken steps to meet statutory obligations under the Propane and Oilheat Acts. The Propane Act requires the Department of Commerce to prepare two reports relating to PERC, and we found that Commerce has fulfilled this requirement. One report is an annual analysis of changes in the price of propane relative to other residential energy sources.<sup>47</sup> As discussed above, if, in any year, the 5-year average rolling price index of propane exceeds the composite price index of other residential energy sources by more than 10.1 percent, the Propane Act requires PERC's activities to be restricted to research and development, training, and safety matters. In 2003, we reported that

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<sup>47</sup>These other residential energy sources are residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil.

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Commerce had not been preparing this analysis.<sup>48</sup> In response to our recommendation, the Secretary of Commerce directed his staff to prepare propane price analyses according to the annual reporting cycle established in the Act. Since then, Commerce has prepared five propane price analyses.

In its most recent analyses issued in August 2009 and April 2010, Commerce identified that the price of propane relative to other residential energy sources was at 117 percent in 2007 and 122 percent in 2008, respectively, exceeding the 110.1 percent price threshold contained in the Propane Act.<sup>49</sup> After completing the August 2009 analysis, Commerce notified PERC of its finding, and PERC, in a September 2009 letter to the Secretary of Energy, indicated that it had taken action to restrict its activities and comply with the statutory restriction. The second report required of Commerce is an analysis done at least every 2 years examining, among other things, whether PERC's operation had an adverse impact on propane consumers and propane prices. Since 2005, Commerce has prepared two propane consumer impact analyses, with its most recent (2007) analysis showing that PERC's operation may have led to a slight increase in consumer demand for propane, and hence no adverse impact on the propane market.

Commerce is also required by the Oilheat Act to prepare an annual report relating to NORA. Beginning in 2002 and every year thereafter, the Oilheat Act requires Commerce to prepare an annual oilheat price analysis similar to its price analysis of propane. At the commencement of our current review, the department had not completed the required analyses because it was unaware of this requirement and only became aware of it after meeting with us. Commerce subsequently issued a 2008 oilheat price analysis in April 2010, which showed that oilheat prices were at 96 percent, below the 110.1 percent price threshold contained in the Oilheat Act. NORA's president told us that NORA had also completed an oilheat analysis which showed that 2008 oilheat prices were likewise below the price threshold.

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<sup>48</sup>GAO, *Propane: Causes of Price Volatility, Potential Consumer Options, and Opportunities to Improve Consumer Information and Federal Oversight*, [GAO-03-762](#) (Washington, D.C.: June 27, 2003).

<sup>49</sup>According to the statute, if PERC's activities are restricted under this provision, the Secretary of Commerce is to conduct the price analysis again 180 days later. PERC's activities are to be restricted until the price index excess falls to 10.1 percent or less.

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Neither the Propane Act nor the Oilheat Act gives Commerce oversight responsibility for the propane and oilheat markets. Under the Acts, Commerce's role is limited to conducting specified analyses using data provided by the Energy Information Administration and other public sources. These analyses are then made available to Congress, the Secretary of Energy, the appropriate entity (either PERC or NORA), and the public.

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### DOE Has Not Taken Steps to Exercise the Oversight Authority Provided by the Propane and Oilheat Acts

DOE officials told us that the Department has not been exercising oversight of either PERC or NORA because they believe that DOE has no oversight role regarding either one. In a 2003 report, we found that DOE's oversight of PERC was lacking and recommended that the Department take corrective action.<sup>50</sup> In its comments on our report, DOE stated that the Commerce Department rather than it had oversight responsibility and, therefore, DOE did not act on our recommendation. We found that DOE's position regarding PERC remains unchanged.

According to the Propane Act,<sup>51</sup> PERC is required to submit notice of council meetings and its annual budget to DOE, and DOE may recommend activities and programs it considers appropriate. DOE is expressly authorized to require reports from PERC on compliance violations and complaints regarding implementation of the Propane Act. DOE is also authorized to request reimbursement of oversight costs incurred by the

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<sup>50</sup>GAO-03-762.

<sup>51</sup>The Propane Act: requires PERC to annually reimburse the Secretary of Energy for costs incurred by the federal government relating to PERC (15 U.S.C. § 6404(j)); requires PERC to annually submit its proposed budget to the Secretary of Energy who may then recommend appropriate programs and activities (15 U.S.C. § 6404(k)); provides that the Secretary of Energy shall receive notice of PERC meetings and may require reports on PERC activities, as well as reports on compliance, violations, and complaints regarding implementation of the Act (15 U.S.C. § 6404(l)); provides that PERC may recommend changes in the Act or other statutes that would further the act's purposes to the Secretary of Energy (15 U.S.C. § 6407); requires the Secretary of Commerce to make an annual analysis of changes in the price of propane relative to other energy sources available to the Secretary of Energy, as well as to the public (15 U.S.C. § 6408(a)); requires PERC to inform the Secretary of Energy, along with Congress, of any restriction of its activities resulting from a propane price index exceeding a certain amount (15 U.S.C. § 6408(b)); and requires the Secretary of Commerce to submit a biannual report (the Secretary of Energy may request a report more often than every two years) examining the effect of PERC's operations to the Secretary of Energy, as well as to Congress (15 U.S.C. § 6411).

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federal government.<sup>52</sup> DOE officials told us, however, that the Department has not conducted any in-depth reviews of PERC's budget, provided any recommendations to PERC regarding its programs and activities, or taken any other action to determine whether propane assessment costs are improperly being passed on to consumers. Finally, DOE officials said the Department has not sought reimbursement for oversight costs incurred by the federal government as stipulated in the Propane Act because no oversight costs have been incurred.

The Oilheat Act contains many provisions similar to those of the Propane Act. Under the Oilheat Act, NORA is required to submit its annual budget to DOE, and DOE may recommend activities and programs it considers appropriate. The Oilheat Act also requires NORA to submit its audited financial statements to DOE. According to a DOE policy analyst in the Office of Policy and International Affairs, NORA has been providing its annual budget to his office largely because he and the president of NORA worked together previously at another organization. This DOE official stated, however, that his office was not the most appropriate DOE office for overseeing NORA's work. This official added that his office has offered neither formal nor informal comments on NORA's budgets and that his office has never received any of NORA's audited financial statements. Consistent with that, NORA was unable to provide us any evidence that its audit reports had been submitted to DOE. According to the president of NORA, DOE has not conducted any in-depth reviews of NORA's budget, has not provided recommendations to NORA regarding its programs and activities, and has never sent comments to NORA on any of its proposed budgets.

In contrast to DOE's limited oversight of PERC and NORA, we found that USDA routinely provides oversight of the various check-off programs authorized by Congress and for which it has mandated responsibilities.<sup>53</sup> We also previously reported that USDA's commodity divisions—such as the Livestock and Seed Division—ensure that check-off programs are in compliance with the authorizing legislation through routinely reviewing

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<sup>52</sup>According to section 5(j) of the Propane Act (15 U.S.C. § 6404 (j)), the reimbursement shall not exceed the amount that the Secretary determines is the average annual salary of two employees of the DOE.

<sup>53</sup>Congress has authorized check-off programs for items such as beef, blueberries, cotton, dairy products, eggs, peanuts, popcorn, pork, and potatoes, and USDA has mandated oversight activities of these programs.

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the check-off boards' budgets, financial statements, plans, projects, and contracts.<sup>54</sup> Our previous report also noted that USDA officials attend board meetings and advise board officials on how consistent their planned activities will be with the authorizing legislation. Likewise, a 2008 USDA report to Congress noted that USDA's Agricultural Marketing Service has day-to-day oversight responsibilities for the dairy and fluid milk promotion programs.<sup>55</sup> In addition to reviewing and approving the Boards' budgets, budget amendments, contracts, advertising campaigns, and investment plans, the Agricultural Marketing Service, among other things, ensures that the collection, accounting, auditing, and expenditure of promotion funds is consistent with the enabling legislation and USDA orders.

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## Conclusions

Through 2008, PERC and NORA had received a total of \$458 million in federally authorized assessments collected from the sale of propane and heating oil. These assessments are authorized by the Propane and Oilheat Acts, which identify consumer education, research and development, and safety and training as priorities. The Acts allow other activities implementing the statutes' requirements to be conducted using assessment funds, however, and because they do not provide for a particular funding level for specific activities or indicate a ranking among the activities designated as priorities, the statutes afford PERC and NORA wide latitude in deciding how and in what amounts they spend assessment dollars collected. Both PERC and NORA reported spending over half their respective portions of the \$458 million in total assessments on consumer education activities, in comparison to a substantially smaller proportion (8 percent for PERC and 5.8 percent for NORA) spent on research and development. Since the legislative history of both Acts indicates that a need for research and development funding was a key factor driving the legislation, PERC's and NORA's spending to date raises the issue of whether Congress anticipated that assessment funds would be allocated in this way. In addition, while PERC and NORA provided summaries of their activities in different program areas, it was not always clear how these activities achieved desired results as defined by their strategic goals.

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<sup>54</sup>GAO, *Agricultural Marketing: Federally Authorized Commodity Research and Promotion Programs*, [GAO/RCED-94-63](#) (Washington, D.C.: Dec. 29, 1993)

<sup>55</sup>USDA Agricultural Marketing Service Dairy Programs, Vol. 24, Report to Congress on the National Dairy Promotion and Research Program and the National Fluid Milk Processor Promotion Program (July 1, 2008).

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In reviewing whether PERC and NORA met key statutory requirements, we found that some PERC and NORA activities appeared to meet the requirements, while others raised issues such as what activities are covered under certain provisions in the statutes. For both entities, for example, a lack of specificity in the language of the statutes creates issues about whether certain types of communications and expenditures related to Congress and politically affiliated entities are covered by the statutes' particular lobbying restrictions, which prohibit the use of assessment funds to "influenc[e] legislation or elections." These statutory interpretation questions, as well as factual uncertainties about some of the activities of PERC, NORA, and their grantees (due in part to shortcomings in NORA's state monitoring practices), raise issues about meeting this requirement. As noted above, we did not determine, and do not express an opinion about, whether or not the lobbying restrictions or other requirements were met. Assuming PERC's and NORA's activities were permitted, the issue remains whether Congress anticipated that assessment funds would be used for these types of activities, and these uncertainties highlight the need to clarify some of the statutes' definitions and requirements.

Compounding the lack of specificity in the statutes is the lack of a specific enforcement mechanism that enhances compliance through proactive federal oversight. First and foremost, the Acts contain no specific monetary penalty or other consequence for noncompliance. The Acts also do not require PERC's funds and NORA's grant funds to state associations to be separated from other funds used by the organizations, thereby making it more difficult to evaluate whether PERC and NORA funds are being used for unauthorized activities. In addition, while the Acts require certain oversight studies by Commerce and allow DOE to take on an oversight role, the Acts do not require Commerce to exercise proactive oversight, and it has not done so. As to DOE, despite our 2003 recommendation that DOE exercise its oversight role regarding PERC, DOE continues to believe it does not have an oversight role for either PERC or NORA. In light of the lack of any specific requirements in the statutes for federal agencies to conduct oversight, federal oversight is likely to remain very limited.

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## Matters for Congressional Consideration

As it considers whether to reauthorize NORA, or if it decides it wishes to amend PERC's authorizing statute, Congress may wish to impose greater specificity on the requirements it has established and to establish mechanisms to enhance compliance with those requirements. Specifically, Congress may wish to consider:

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- Specifying any prioritization of activities it wants to be undertaken (for example, by ranking research and development, safety and training, and consumer education, and specifying the expected range of assessments to be spent on each), and detailing more specifically which activities are prohibited (such as those involving lobbying).
  - Subjecting PERC's and NORA's activities to review, interpretation, and approval by an independent, designated entity that is directed to conduct such review, interpretation and approval. In that regard, Congress may wish to specify a federal oversight role by requiring DOE to monitor and oversee the expenditure of PERC and NORA funds, including authorizing DOE to oversee and enforce, among other provisions, the prohibitions against use of assessment funds for certain lobbying activities and require PERC funds and NORA funds granted to qualified state associations to be segregated in separate accounts, apart from other funds collected and used by those associations.
  - Establishing a specific enforcement mechanism, such as monetary penalties or other consequences of noncompliance, and expressly authorizing DOE to refer any potential violations of law to appropriate enforcement authorities.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of Energy, the Secretary of Commerce, and officials with PERC and NORA for their review and comment. The Secretary of Energy declined to comment on the report. The Secretary of Commerce provided written comments in which he agreed with our findings, conclusions, and recommendations regarding Commerce's statutory obligation to conduct certain analyses and provided technical comments that we incorporated as appropriate (see app. IV).

NORA's president provided written comments, which are reproduced in appendix VI. In general, NORA did not disagree with the report and agreed with some aspects of the report. For example, the president of NORA stated that he will review the final report with NORA's Directors and recommend that they adopt several provisions for "back-end reporting," based on concerns raised by GAO. In particular, NORA's president stated that to ensure compliance with the Oilheat Act's lobbying restrictions on expenditure of NORA funds, NORA has amended its standard contract with NORA-qualified state organizations to require affidavits attesting to compliance. NORA's president also stated that in the past, NORA has been hampered in committing to longer term research and development because of the Oilheat Act's short sunset provisions and said that if the Oilheat Act is reauthorized, NORA will proceed expeditiously to develop a laboratory for such research. However, as our report discusses, oilheat

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industry officials highlighted research and development as a key reason for creation of NORA during congressional debate, and even at that time, Congress anticipated authorization only for 5 years. We acknowledge the planning that has been undertaken to establish a research capacity and that may permit NORA to undertake additional research activities upon reauthorization. However, if the statutory sunset provisions hampered research in the past, it is unclear why they would not continue to do so in the future.

PERC provided two comment letters that are reproduced in appendix V, along with our detailed responses to specific comments. PERC also provided technical comments, which we incorporated in the report as appropriate. In PERC's first letter, its president and chief executive officer (CEO) asserts that its submission of over 5,000 pages of documents to GAO is evidence of PERC's transparency but recognizes that such extensive documentation invites GAO interpretations that may differ from PERC's interpretations. The letter then provides specific comments and PERC's interpretation of the GAO concerns raised with 10 different PERC activities. In general, we agree that differences in interpretation are possible and believe such differences may warrant clarification by Congress, as suggested in our Matters for Congressional Consideration. We have provided responses in appendix V that address PERC's specific comments on each concern we raised. PERC's second letter, written by its legal counsel, provides a more detailed review of PERC's interpretation of the lobbying restrictions in the Propane Act and an analysis of how PERC's expenditures have, in PERC's view, complied with those restrictions. PERC's legal comment letter also stated that our draft implied that the Act's restrictions are broader (i.e., prohibit more activities) than PERC believes, under its reading of the statute. We believe this misconstrues our report, which expressly states that we did not make a determination on the scope of the lobbying restrictions or PERC's compliance with them. Rather, as we state in the report, the key statutory language in the Propane Act's lobbying restrictions ("influencing legislation") is undefined, is used differently in different statutes, and may warrant clarification by Congress. While PERC did not agree that the lobbying restrictions are unclear, it said it welcomes any clarification by Congress. (See app. V, comment 10 for our detailed response.)

Both PERC and NORA provided technical comments, which we incorporated, as appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, Secretary of Energy, Secretary of Commerce, president and CEO of PERC, president of NORA, and other interested parties. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [gaffiganm@gao.gov](mailto:gaffiganm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix VII.

Sincerely yours,

A handwritten signature in black ink that reads "Mark E. Gaffigan". The signature is written in a cursive style with a large, stylized initial "M".

Mark Gaffigan  
Director, Natural Resources and Environment

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# Appendix I: Objectives, Scope, and Methodology

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In our study of the Propane Education and Research Council (PERC) and National Oilheat Research Alliance (NORA), we examined (1) how PERC and NORA have spent the assessments they have collected, (2) the extent to which PERC's and NORA's reported activities help to achieve the results defined in their strategic goals, (3) the extent to which PERC and NORA have met key requirements in their authorizing statutes, and (4) the extent to which PERC's and NORA's activities and spending received federal oversight.

To examine how PERC and NORA have spent the assessments they collected, we reviewed and analyzed PERC's and NORA's financial statements, annual reports, and other information produced by both entities. More specifically, we examined how PERC and NORA spent assessments collected from the propane and heating oil industries, respectively, by obtaining and analyzing PERC's financial data from 1998 to 2008 and NORA's financial data from 2001 to 2008. Because PERC allocates about 20 percent of its assessments collected to state associations and NORA about 75 percent, we requested, obtained, and analyzed state association spending data. PERC, at our request, provided us with a breakout of spending data by priority spending area—for example, research and development, safety and training, and other categories. For almost every year, however, the amounts reported on that breakout did not total to the amount shown on PERC's annual reports or audited financial statements. Therefore, the data presented in this report for PERC do not always match other publicly-available information. In addition, while we were not able to analyze those data in detail on a transaction by transaction basis, we did examine the controls exercised by PERC and NORA over that spending. We did not review PERC's or NORA's 2009 financial data because audited financial statements were not available for timely review. To assess the reliability of the financial data we received from PERC and NORA, we tabulated the data from several different perspectives—for example, across different lines of effort and by national and state level programs. We compared our calculations with those reported by PERC and NORA. Where needed, we met with their accountants and officials to obtain explanations of any discrepancies. Moreover, as appropriate, we asked for and examined documented evidence regarding those explanations. We determined the data to be sufficiently reliable for the purposes of this report.

To examine the extent to which PERC's and NORA's reported activities help to achieve the results defined in their strategic goals, we requested and obtained from these organizations evidence of any claimed accomplishments by line of effort. We queried PERC and NORA officials

about the details of those accomplishments, and we requested additional explanations and documentation as needed. Specifically, we reviewed their strategic plans, road maps, and annual reports. We also discussed PERC's and NORA's performance with officials within both organizations as well as within the Departments of Agriculture, Commerce and Energy—including the Energy Information Administration and Brookhaven National Laboratory. Additionally, we reviewed data produced by the Energy Information Administration and the Consumer Product Safety Commission and reports prepared by the Department of Commerce analyzing PERC's impact on consumers and propane prices. We used information provided by the Department of Commerce to verify the information contained in its 2008 Residential Propane Price Analysis, which is required by the Propane Act. We also spoke with PERC and NORA board members, accountants, and affiliated state associations. To gain an industry perspective, we interviewed officials from the National Propane Gas Association as well as scientists, an industry expert, and former and current PERC and NORA grantees.

To examine the extent to which PERC and NORA met key requirements in their authorizing statutes, we determined PERC's and NORA's respective missions and requirements by reviewing the Propane Education and Research Act, which established PERC, and the National Oilheat Research Alliance Act, which established NORA. We then identified and researched key statutory provisions and requirements for PERC and NORA, obtained evidence regarding actions taken by the organizations to satisfy those requirements, and queried PERC and NORA officials and their legal counsel about any potential discrepancies between actions taken and actions required by the statutes. Because about 75 percent of NORA revenues are allocated to state associations for spending, we also reviewed information on NORA state association Web sites to assess how these state associations were responding to key provisions of the NORA statute, and we reviewed information and sworn declarations by state association officials that NORA provided to us.

To examine the extent to which PERC's and NORA's activities and spending received federal oversight, we obtained documents and interviewed officials at the federal agencies given an oversight role by the Propane Act and the Oilheat Act. To determine the Departments of Commerce and Energy's mandated roles, we reviewed the statutes and our 2003 report on propane and interviewed agency officials regarding their oversight roles and responsibilities. Additionally, we reviewed PERC information provided to the Department of Commerce and PERC and NORA information provided to the Department of Energy and discussed

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with officials within both departments the level of oversight given to that information.

We conducted this performance audit from June 2009 through June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Extent to Which PERC's Activities Have Met Key Requirements and Carried Out Statutorily Prescribed Functions

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Propane Education and Research Council (PERC) activities under 7 of 16 key legislative requirements in the Propane Act appear to meet such requirements and do not raise issues. These activities are:

1. Consistent with section 5(c) of the Propane Act, PERC has 21 members on its council.
2. Consistent with section 5(i) of the Propane Act, PERC has developed rules, procedures, and bylaws.
3. Consistent with section 5(k) of the Propane Act, PERC has submitted its budget to the Secretary of Energy annually.
4. Consistent with section 5(l) of the Propane Act, PERC's financial records have been audited by a certified public accountant.
5. Consistent with section 5(l) of the Propane Act, PERC has submitted notices of meetings to the Department of Energy (DOE).
6. Consistent with section 5(n) of the Propane Act, PERC has prepared and issued annual reports each year since 1999.
7. Consistent with section 6(e) of the Propane Act, PERC has provided the states with an assessment rebate equal to 19.8 percent of the revenue collected for the years 1998 through 2008.

With regard to agriculture spending, section 5(g) of the Propane Act specifies that not less than 5 percent of the assessments collected shall be used for programs and projects to benefit the agriculture industry in the United States, but does not specify whether the 5 percent threshold applies to annual spending or spending over some other period of time. According to PERC's audited financial statements for years 1998 to 2008, about 3.6 percent of the assessments collected have been spent on agriculture activities.

Issues such as the scope of the Propane Act's requirements exist regarding PERC's activities under 8 other legislative requirements or priorities, including: (1) communications and expenditures related to Congress and politically affiliated entities and whether these are covered by the statute's specific lobbying restrictions; (2) grants issued in late 2009 and whether the activities funded by the grants were covered by a statutory propane-price restriction that was triggered in 2009; (3) a reported mixed level of coordination with federal agencies; (4) possible compensation of PERC

**Appendix II: Extent to Which PERC's  
Activities Have Met Key Requirements and  
Carried Out Statutorily Prescribed Functions**

council members for their services; (5) possible spending over statutory formula-based limits on projects related to the use of propane as an over-the-road motor vehicle fuel; (6) providing greater funding to non-priority areas than to some areas designated as priorities in the statute (research and development, safety, education, and training); (7) limitation of public access to executive sessions of PERC council meetings; and (8) investment of PERC funds in non-approved ways. Our questions relating to these 8 requirements or priorities are detailed below.

**Table 1: PERC Activities Relative to the Propane Act and PERC's Responses**

PERC Activities	Provisions in the Propane Act and PERC's Response
<p><b>1. Activities involving Congress or politically affiliated entities</b></p>	<p><b>Sec. 8 "Lobbying restrictions.</b> No funds collected by the Council shall be used <i>in any manner for influencing legislation or elections</i>, except that the Council may recommend to the [DOE] Secretary changes in this [Act] or other statutes that would further the purposes of this [Act]." (Emphasis added.)</p>
<p>PERC grantee records for 2005 show that the grantee used PERC funds to:</p> <ul style="list-style-type: none"> <li>• attend activities associated with the Democratic and Republican National Conventions;</li> <li>• provide \$2,500 for staff lodging during the Republican National Convention;</li> <li>• provide more than \$22,000 to the Ripon Society and the Ripon Educational Fund. The Ripon Society, according to its website, is a Republican public policy advocacy organization.</li> <li>• make a \$375 payment to the Bryce Harlow Foundation. The Foundation, according to its website, is a non-profit organization that seeks to promote the highest standards within the profession of lobbying and government relations.</li> </ul>	<p><b>PERC Response</b></p> <p>General response: PERC stated that the Propane Act's lobbying restriction covers only the funding of advocacy about specific legislation or specific legislative proposals and that it did not fund such activities. PERC also stated that its activities related to Congress constituted public or consumer education, because Members of Congress are "the public." Finally, PERC said its payment to the Ripon Educational Fund was for an organizational membership fee needed to provide opportunities to educate the public about propane-related issues.</p> <p>Regarding the Bryce Harlow Foundation: The PERC grantee stated that this expense was to attend an awards dinner, not to advocate about specific legislation.</p>
<p>PERC grantee records for 2006 show that the grantee used PERC funds to</p> <ul style="list-style-type: none"> <li>• make a \$15,000 contribution to the Ripon Educational Fund;</li> <li>• pay \$6,900 for bus transportation services to transport persons to Capitol Hill;</li> <li>• pay for grantee members to attend Propane Days;</li> <li>• pay \$19,000 for a reception in the Senate restaurant;</li> <li>• pay \$3,000 to Advocacy Associates to make a keynote address at the grantee's conference on Capitol Hill. Advocacy Associates, according to its website, helps organizations and businesses utilize one of the most powerful forces at their disposal to influence public policy – grassroots lobbying.</li> </ul>	<p><b>PERC Response</b></p> <p>Regarding PERC's payment to the Ripon Educational Fund: PERC stated that this was for an organizational membership fee needed to provide opportunities to educate the public about propane-related issues.</p> <p>PERC stated that these were grantee staff members who assisted PERC in carrying out its programs and activities.</p> <p>Regarding the Advocacy Associates keynote address: the PERC grantee stated that the address was a motivational speech on the theme of effective advocacy and that no specific legislation was discussed. In addition, PERC stated that the address provided a training opportunity for its membership which has information and education as one of its missions.</p>

**Appendix II: Extent to Which PERC's  
Activities Have Met Key Requirements and  
Carried Out Statutorily Prescribed Functions**

<b>PERC Activities</b>	<b>Provisions in the Propane Act and PERC's Response</b>
<p>PERC grantee records for 2007 show that the grantee used PERC funds to</p> <ul style="list-style-type: none"> <li>• pay for grantee officials' travel and lodging to attend Propane Days;</li> <li>• pay about \$8,500 for a Senate lunch;</li> <li>• pay about \$29,000 for a House reception;</li> <li>• make a \$10,000 contribution to the U.S. Chamber of Commerce</li> </ul>	<p><b>PERC Response</b></p> <p>PERC stated that these were grantee staff members who assisted PERC in carrying out its programs and activities.</p> <p>PERC stated that this payment allowed the grantee's chief executive officer (CEO) to participate in a group of CEO trade associations. PERC stated that this payment to the U.S. Chamber of Commerce was for an organizational membership fee needed to provide opportunities to educate the public about propane-related issues.</p>
<p>PERC grantee records for 2008 show that the grantee used PERC funds to</p> <ul style="list-style-type: none"> <li>• pay grantee officials' travel and lodging expenses to attend Propane Days, including \$734 for a grantee staff dinner and \$174 in taxi fares;</li> <li>• pay \$34,000 for a Senate reception;</li> <li>• pay \$16,000 for a House reception;</li> <li>• make a \$20,000 contribution to the Franklin Center. The Franklin Center's mission, according to its website, is to direct the attention of U.S. and global policymakers to the need for multilateral solutions to international challenges. The Franklin Center also hosts multiple policy forums annually to discuss legislative issues.</li> <li>• pay \$444 for congressional invitations to Propane Days.</li> </ul>	<p><b>PERC Response</b></p> <p>PERC stated that these were grantee staff members who assisted PERC in carrying out its programs and activities.</p> <p>PERC stated that the Franklin Center is non-partisan entity and the contribution supported the Center's programs. PERC also stated that the payment was for an organizational membership fee needed to provide opportunities to educate the public about propane-related issues.</p>
<p>PERC grantee records for 2009 show that the grantee used PERC funds to</p> <ul style="list-style-type: none"> <li>• pay grantee officials' staff travel and lodging expenses to attend Propane Days, including \$170 for taxi fares;</li> <li>• paid \$46,000 to the D.C. Restaurant Association for various activities including a congressional reception in the new Visitor's Center;</li> <li>• make a \$16,000 contribution to the Franklin Center and a \$10,000 contribution to the U.S. Chamber of Commerce.</li> </ul>	<p><b>PERC Response</b></p> <p>PERC stated that these were grantee staff members who assisted PERC in carrying out its programs and activities.</p> <p>PERC stated that the payments to the Franklin Center and U.S. Chamber of Commerce were for organizational membership fees needed to provide opportunities to educate the public about propane-related issues. PERC also stated that the payment to the U.S. Chamber of Commerce allowed the grantee's CEO to participate in a group of CEO trade associations.</p>

**In addition to the aforementioned grant-related information, we found that:**

The July 1, 2004 issue of a propane trade industry magazine quoted the PERC president as saying about PERC's capital awareness program that "In a nutshell, we want to influence the influencers."

**Appendix II: Extent to Which PERC's  
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<b>PERC Activities</b>	<b>Provisions in the Propane Act and PERC's Response</b>
A 2004-2005 PERC grantee's annual report indicated that Propane Days activities will allow the propane industry to achieve the vision of making the grantee "a powerhouse in the Washington lobbying community."	
The 2006 Propane Days brochure indicated that the purpose of Propane Days, which began in 2005, is to educate Washington policymakers about propane's many uses, its role as a clean, efficient energy source, and the propane industry's contribution to the U.S. economy.	<b>PERC Response</b> PERC stated that Congress is part of "the public" and that educating Congress falls within the required public education function of its statute.
According to the July 2007 PERC meeting minutes, the PERC President stated that the year's Propane Days was the best attended since the event began, and the timing was good as two major pieces of energy and the environment legislation was being debated that week.	
July 2008 PERC meeting minutes noted that a motion to petition the National Propane Gas Association and the Gas Processors Association "to make <i>lobbying</i> Congress to change ... [the Propane Act's] price analysis requirement a priority and also issue a white paper that clarifies the issue was made, seconded, and approved" (emphasis added). According to the minutes of the October 2008 PERC meeting, the PERC council chairman stated that the National Propane Gas Association agreed with those priorities.	
October 2008 PERC meeting minutes indicated that one PERC council member "stressed the importance of participating in the national policy dialogue and said that educating policymakers is the key.... It would happen only as a result of a focused <i>lobbying</i> effort." (Emphasis added.)	
February 2009 PERC meeting minutes recorded that PERC approved a \$6.2 million funding request entitled "National Energy Conversation Initiative." The initiative, according to its proposal, is a plan to provide education and information to "'inside the beltway' policy makers, and 'outside the beltway' private and public influencers." (Emphasis added.)	<b>PERC Response</b> PERC stated that the purpose of the initiative was to inform a national audience, including policy makers, on the use of propane to reduce greenhouse gas emissions and air pollutants. According to PERC, the National Energy Conversation messages did not urge action on specific legislation.
<b>2. Ensuring that PERC activities are restricted to research and development, safety, and training matters once a propane price threshold is exceeded</b>	<b>Sec. 9(b) "Market survey and consumer protection . . . Authority to restrict activities.</b> If in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil in an amount greater than 10.1 percent, the activities of the Council shall be restricted to research and development, training, and safety matters."

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**Appendix II: Extent to Which PERC's  
Activities Have Met Key Requirements and  
Carried Out Statutorily Prescribed Functions**

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**PERC Activities**

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**Provisions in the Propane Act and PERC's Response**

The Department of Commerce determined in August 2009 that this average price composite index had been exceeded and notified PERC. In September 2009, PERC notified DOE and Congress that it had immediately restricted its activities in accordance with this legislative provision. After the price restriction was triggered, PERC approved or modified 3 grant proposals between October and December 2009. When initially proposed, each grant had been identified as a "consumer education" grant that would be prohibited under the September 2009 price restriction. After the restriction was triggered, the grants were identified under a new program area—"residential and commercial" matters.

The 3 grants were as follows:

As part of PERC-approved funding of a \$1.8 million grant for "construction and professional communications," the grant proposal stated that PERC intended to "create an ongoing dialogue with construction pros to ensure propane messages stay front-and-center."

PERC approved a no-cost change order to a \$5.9 million grant for "residential advertising." The grant proposal stated that PERC intended to "educate construction professionals about the benefits of propane throughout the home."

As part of PERC-approved funding of a \$2 million grant for "construction professional training support," the grant proposal stated that PERC intended to provide "marketing activities no longer allowable by direct PERC funding."

**PERC Response**

PERC stated that it amended the grant amount to \$1.3 million by eliminating \$500,000 in funding for consumer education and retaining the remaining funding for safety and training. PERC also stated that the amended grant provided an opportunity to support and promote new technologies entering the marketplace.

PERC stated that after the funding restriction went into place, it terminated all educational components associated with this grant.

PERC stated that the grantee, rather than PERC, had inserted the wording into the proposal.

**Appendix II: Extent to Which PERC's  
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<b>PERC Activities</b>	<b>Provisions in the Propane Act and PERC's Response</b>
<p><b>3. Coordination of PERC activities with key federal agencies</b></p>	<p><b>Sec. 5(f) “[PERC] . . . Functions. . . .</b> The Council shall coordinate its activities with industry trade associations and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.”</p>
<p>DOE officials provided a range of views on PERC coordination. DOE/Energy Efficiency and Renewable Energy officials told us that PERC had been a good partner in the education and training area and had worked with DOE on activities such as fleet-oriented education geared toward maintenance personnel and drivers. However, in the research and development area, these DOE officials said that PERC displayed a lack of understanding of government cycles and processes by approaching DOE at the wrong time of the funding cycle. These officials added that PERC, unlike the natural gas industry, had not worked with DOE to develop a research and development strategic plan, and they said they would have welcomed such an effort with PERC. They further said that DOE officials had ideas for propane-related research and development projects but that PERC had never solicited those ideas from DOE.</p> <p>In addition, according to an official with the U.S. Department of Agriculture's National Institute of Food and Agriculture, PERC's consumer outreach seems to be geared only to the middle- to high-income audience; he had not seen any PERC Spanish-language material; and PERC should coordinate its outreach consumer education activities better with agencies such as his. Another Agriculture official with the Agricultural Research Service indicated that it would be a good idea if PERC vetted all research and development projects through the Department in order to avoid any possible duplication and to foster coordination.</p>	<p><b>PERC Response</b></p> <p>PERC stated that it has worked with federal agencies primarily on a project by project basis and, as a result, had been able to successfully leverage its research investments with government funding for PERC projects totaling \$8.1 million against a PERC share in the projects of \$6.1 million. PERC added that these sums have enabled PERC to expand its research work beyond what would have been possible with only assessment funds.</p>
<p><b>4. Ensuring no compensation of PERC council members for their services.</b></p>	<p><b>Sec. 5(d) “[PERC] . . . Compensation.</b> Council members shall receive no compensation for their services, nor shall Council members be reimbursed for expenses relating to their service.”</p>
<p>July 26, 2000, PERC press release indicated that the Council approved funding for a multi-faceted Trade Show Initiative, which included, among other things, funding for the council to attend 2 national trade shows in 2001.</p> <p>PERC council members attending the July 16-17, 2009, board meeting were provided free meals and an open bar event on the evening of July 16.</p>	<p><b>PERC Response</b></p> <p>PERC stated that the press release was in error and that the PERC staff, rather than the council, attended these shows.</p> <p>PERC stated that free meals were considered to be reasonable expenses and that the open bar event was only of limited duration.</p>
<p><b>5. Restriction on PERC spending on projects related to the use of propane as an over-the-road motor vehicle fuel</b></p>	<p><b>Sec. 5(g) “[PERC] . . . Use of funds. . . .</b> The percentage of funds collected through assessments pursuant to this [Act] to be used for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the total market for odorized propane that is used as a motor vehicle fuel, based on the historical average of such use over the previous 3-year period.”</p>

**Appendix II: Extent to Which PERC's  
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<b>PERC Activities</b>	<b>Provisions in the Propane Act and PERC's Response</b>
A PERC grant stated that about 6.2 percent of PERC's 2009 budget would be spent on over-the-road motor vehicle fuel work, while a 2009 PERC contractor report stated that only about 1 percent of the odorized propane market for years 2005 to 2007 went to using propane as an over-the-road motor vehicle fuel.	<p><b>PERC Response</b></p> <p>PERC stated it interprets the term "motor vehicle fuel" in the Propane Act to include fuel consumed by both off-road vehicles and over-the-road vehicles. Under this interpretation, PERC states that it has never exceeded the authorized level of spending on over-the-road motor fuels.</p>
<b>6. Giving priority to research and development, safety, education, and training activities</b>	<p><b>Sec. 5(h) "[PERC] . . . Priorities.</b> Issues related to research and development, safety, education, and training shall be given priority by the Council in the development of programs and projects."</p>
In 2009, PERC's budget for research and development, safety and training, and consumer education was about \$4.9 million, \$3.2 million, and \$11.2 million, respectively. Other activities were funded at similar or higher levels than PERC's safety and training budget, including \$4.6 million for Industry Programs, \$6.2 million for the National Energy Conversation Initiative, and \$6.3 million for Engine Fuel work.	<p><b>PERC Response</b></p> <p>PERC stated that the industry programs area is cross-cutting and includes work related to research and development, and training; the National Energy Conversation Initiative was a part of the consumer education area; and the engine fuel work was part of the research and development area.</p>
<b>7. Providing public access to all PERC council meetings</b>	<p><b>Sec. 5(m) "[PERC] . . . Public access to Council proceedings. . .</b> . All meetings of the Council shall be open to the public after at least 30 days advance public notice. . . .The minutes of all meetings of the Council shall be made available to and readily accessible by the public."</p>
PERC's Policies, Rules, and Procedures indicate that portions of council meetings ("executive sessions") may be closed to the public for the purpose of discussing sensitive subjects such as personnel matters and contracts.	<p><b>PERC Response</b></p> <p>PERC stated that its executive sessions are closed to the public; it keeps no meeting minutes regarding those sessions; the sessions are largely used to discuss personnel matters; no official action is taken during the executive sessions; and all actions must be proposed and voted on by Council members in open session.</p>
<b>8. Investing PERC funds only in approved entities</b>	<p><b>Sec. 6(d) "Assessments . . . Investment of funds.</b> Pending disbursement pursuant to a program, plan, or project, the Council may invest funds collected through assessments, and any other funds received by the Council, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States."</p>
PERC maintained investments in Freddie Mac and Fannie Mae that PERC acknowledges do not meet the requirements of the Act.	<p><b>PERC Response</b></p> <p>In response to our findings, PERC subsequently indicated that it had promptly divested itself of such investments.</p>

Source: GAO analysis of Propane Act provisions and PERC-provided information.

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# Appendix III: Extent to Which NORA's Activities Have Met Key Requirements and Carried Out Statutorily Prescribed Functions

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The activities of the National Oilheat Research Alliance (NORA) under 11 of the 18 key legislative requirements we reviewed in the Oilheat Act appeared to meet these requirements and do not raise issues. These activities are:

1. Consistent with section 705(d) of the Oilheat Act, NORA has not compensated its members for their service nor for expenses relating to their service.
2. Consistent with section 706(a)(2) of the Oilheat Act, NORA has coordinated its activities as appropriate to provide efficient delivery of services and to avoid unnecessary duplication by, for example, coordinating its activities with the Department of Energy (DOE) through the Brookhaven National Laboratory.
3. Consistent with section 706(a)(3)(A) of the Oilheat Act, NORA does not appear to support advertising, promotions, or consumer surveys in support of advertising or promotions.
4. Consistent with section 706(a)(3)(B)(ii) of the Oilheat Act, NORA's research, development and demonstration activities do not appear to support research, development and demonstration of oilheat utilization equipment with respect to which technically feasible and commercially feasible operations have been verified.
5. Consistent with section 706(b) of the Oilheat Act, NORA appears to allocate its program expenses to education and training; research, development, and demonstration; and consumer education.
6. Consistent with section 706(c)(1) of the Oilheat Act, NORA has adopted bylaws for the conduct of business.
7. Consistent with section 706(e)(1) of the Oilheat Act, NORA has published a budget for public review and comment each year.
8. Consistent with section 706(f)(2)(A) of the Oilheat Act, NORA's annual financial statements have been reviewed by a certified public accountant.
9. Consistent with section 706(g)(2) of the Oilheat Act, NORA's council meetings, including those of the executive committee, appear to be open to the public.

**Appendix III: Extent to Which NORA's Activities Have Met Key Requirements and Carried Out Statutorily Prescribed Functions**

- 10. Consistent with section 706(h) of the Oilheat Act, NORA has prepared an annual report each year since 2001.
- 11. Consistent with section 707(d) of the Oilheat Act, NORA's investments have been reviewed for compliance with legislative provisions by its counsel.

Issues such as the scope of the Oilheat Act's requirements exist regarding NORA's or its qualified state associations' activities under 7 other legislative requirements or priorities, including: (1) communications and expenditures related to Congress and politically affiliated entities and whether these are covered by the statute's specific lobbying restrictions; (2) monitoring of how state associations spend NORA's funds; (3) the absence of formal policies and procedures for auditing compliance with the Oilheat Act; (4) not having the required minimum number of states represented on the NORA council; (5) possible exceedance of term limits of NORA council members; (6) submission of the NORA annual proposed budget to a potentially inappropriate DOE office for review; and (7) possible failure to submit the NORA annual audit report to the Secretary of Energy. Our questions relating to these activities are detailed below.

**Table 2: NORA Activities Relative to the Oilheat Act and NORA's Responses**

NORA and NORA-Qualified State Association Activities	Provisions in the Oilheat Act and NORA's Response
<b>1. Activities involving Congress or politically affiliated entities</b>	<b>Sec. 710. "Lobbying restrictions.</b> No funds from assessments under [this Act] collected by the Alliance shall be used to <i>influence legislation or elections</i> , except that the Alliance may use such funds to formulate and submit to the [DOE] Secretary recommendations for amendments to this [Act] or other laws that would further the purposes of this [Act]." (Emphasis added.)

**Appendix III: Extent to Which NORA's  
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<b>NORA and NORA-Qualified State Association Activities</b>	<b>Provisions in the Oilheat Act and NORA's Response</b>
<p>January 25, 2010, NORA-qualified Maine state association website posting contained a link to a webpage entitled "How We Lobby."</p>	<p><b>NORA Response</b></p>
<p>January 25, 2010, NORA-qualified Massachusetts state association website posting stated that "climate change legislation is one of the many legislative issues that the state association addressed in 2009 and will continue to address in 2010." The website also contained a link to an association letter to one Senator in support of oilheat-related legislation.</p>	<p>General response: NORA stated that the Oilheat Act's lobbying restriction covers only the funding of advocacy about specific legislation or specific legislative proposals and that it did not fund such activities. NORA also provided us with sworn declarations by representatives of four NORA-state qualified associations whose activities we reviewed stating that no NORA funds were used to carry out activities that constituted prohibited lobbying under the Act, as they interpreted it.</p>
<p>January 25, 2010, NORA-qualified New York state association website posting asked its readers to take action now by contacting Congress and expressing support for impending legislation that would control the manipulation of oilheat prices. The website included a link to a form letter that readers could use to mail to their Senators and Congressional representative.</p>	
<p>January 25, 2010, NORA-qualified Pennsylvania state association website posting provided a link to its 2009 year-end report which stated that the association had worked hand-in-hand with the Petroleum Marketers Association of America (PMAA) regarding NORA reauthorization.</p>	
<p>September 24, 2009, NORA-qualified Massachusetts state association newsletter indicated that the association is a NORA partner and the association was encouraging its members and friends to send form letters to Congress supporting NORA reauthorization. The website contained a link to the form letter.</p>	
<p>September 22, 2009, PMAA News from Capitol Hill indicated that "PMAA and ... [NORA] have asked oilheat marketers in the 23 states that belong to NORA to urge their Senators to support legislation reauthorizing NORA."</p>	
<p>The NORA Chairman told us that NORA had asked PMAA to lobby Congress on its behalf.</p>	
<p>August 2008 NORA executive committee meeting minutes indicated that the NORA president said that NORA needed to try to get state senators to support NORA reauthorization. December 2008 NORA-qualified Massachusetts state association newsletter indicated that the NORA president traveled to Washington to urge both Massachusetts senators to support NORA reauthorization.</p>	<p>NORA stated that this was an editing error and that both the NORA executive committee meeting minutes and the Massachusetts state association newsletter should have indicated that these activities were undertaken by the individual acting in his capacity as the president of the National Association for Oilheat Research and Education (NAORE), a separately funded organization for which the individual is a registered lobbyist under the Lobbying Disclosure Act, rather than in his capacity as the president of NORA.</p>
<p>A spring 2008 NORA-qualified New York state association newsletter, which noted that it was "brought to you in association with ...[NORA]," stated that the state association was "actively involved in a campaign to ask Congress to take action and take control of energy prices."</p>	<p>NORA stated that it paid for the newsletter but stated that the newsletter was reporting activity, not advocating a "call to action."</p>

**Appendix III: Extent to Which NORA's  
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<b>NORA and NORA-Qualified State Association Activities</b>	<b>Provisions in the Oilheat Act and NORA's Response</b>
<p>According to a February 2005 New York state association newsletter, NAORE was "in the process of getting NORA re-authorized" in the 109th Congress. NORA therefore requested that associations assist the effort by requesting and collecting from the 22 NORA-qualified states "letters of praise, affirmation, confirmation, thanks, etc., from any and all entities that have been funded with the use of NORA dollars." These materials, according to NORA records, were to be included "in the white-paper packets being handed out to select legislators at NORA's Washington, D.C. Day-On-The-Hill, scheduled to take place immediately after the February 2nd NORA Board meeting."</p>	<p>NORA stated that this was an editing error and the newsletter should have indicated that NAORE rather than NORA was requesting state association assistance.</p>
<p><b>2. Monitoring how state associations spend NORA's funds</b></p>	<p><b>Sec. 707(e)(2)(A)(ii)(IV) "Monitoring; terms, conditions, and reporting requirements.</b> The Alliance shall . . . monitor the use of funds provided under this clause; and . . . impose whatever terms, conditions, and reporting requirements that the Alliance considers necessary to ensure compliance with this [Act]."</p>
<p>The majority of NORA's spending (75 percent) is provided to 20 state associations and NORA implemented certain monitoring procedures so that spending by the association would comply with the Oilheat Act's requirements.</p>	<p><b>NORA Response</b> NORA stated that it includes terms and conditions in all grant agreements with the state associations, which the associations agree to, that specify the authorized and unauthorized use of NORA assessment funds as specified in the Oilheat Act.</p>
<p>However, based on our review of general ledger entries, financial statements, and other information prepared by selected state associations, we were unable to determine whether their spending of NORA funds complied with the Act. For example, based on our review of state ledger expenditure entries for 2006-2008, hundreds of entries indicate only that a purchase was made; they included no details on the type or purpose of the purchase. NORA's monitoring procedures appear to be inadequate to detect non-compliance if it occurs.</p>	<p>NORA stated that its other monitoring practices include: (1) establishment of policies and procedures to review state grants and disbursements; (2) reporting by state associations that describe how disbursements align with the purpose of grant proposals; (3) reporting by state associations that show the balance of grant accounts, including the source and application of grant funds; and (4) general ledger entries and other available financial information.</p>
<p><b>3. Promulgation of formal policies and procedures for auditing compliance with the Oilheat Act</b></p>	<p><b>Sec. 706(f)(2)(C) "Functions . . . Policies and procedures. The Alliance</b> shall establish policies and procedures for auditing compliance with this [Act]."</p>
<p>NORA has no formal procedures for auditing compliance per se.</p>	<p><b>NORA Response</b> NORA provided us information showing that it has procedures for reviewing state association budgets and disbursing NORA funds to those associations.</p>
<p><b>4. Having specified minimum number of states represented on the NORA council</b></p>	<p><b>Sec. 705(c)(1)(B) "Membership. . . . The membership of the Alliance</b> shall be as follows: . . . If fewer than 24 States are represented under subparagraph (A), one member representing each of the States with the highest volume of annual oilheat sales, as necessary to cause the total number of States represented under subparagraph (A) and this subparagraph to equal 24."</p>
<p>At the commencement of our review, 20 states were represented on the NORA council. Subsequently, 3 additional states were added.</p>	<p><b>NORA Response</b> NORA indicated that at various times it had attempted to obtain representation from additional states without success.</p>

**Appendix III: Extent to Which NORA's  
Activities Have Met Key Requirements and  
Carried Out Statutorily Prescribed Functions**

<b>NORA and NORA-Qualified State Association Activities</b>	<b>Provisions in the Oilheat Act and NORA's Response</b>
<b>5. Limiting number of terms of NORA council members</b>	<b>Sec. 705(e) "Membership . . . Terms.</b> — Subject to paragraph (4) [regarding initial appointments], a member of the Alliance shall serve a term of 3 years, except that a member filling an unexpired term may serve a total of 7 consecutive years. . . . A member may serve not more than two full consecutive terms."
NORA annual reports and meeting minutes indicate that 4 individuals have been NORA board members and/or NORA officers for 8 consecutive years.	<b>NORA Response</b> The president of NORA stated that each of the 4 individuals had a break in service during the 8-year period, in compliance with this requirement. NORA also provided sworn declarations to us by each of these individuals attesting to this. NORA stated that any conflicting statements in minutes or annual reports are in error.
<b>6. Submission of proposed NORA annual budget to appropriate DOE office for review</b>	<b>Sec. 706(e)(2) "Functions . . . Budget . . . Submission to the Secretary and Congress.</b> - After review and comment under paragraph (1), the Alliance shall submit the proposed budget to the Secretary and Congress."
NORA sends its proposed budgets to DOE's Office of Policy and International Affairs because, as explained by an official in that office, he and the president of NORA had worked together previously at another organization. The DOE official said there is no evidence that NORA's budget is forwarded to either DOE's Office of Fossil Energy or Office of Energy Efficiency and Renewable Energy, although both of those offices have greater subject area expertise.	<b>NORA Response</b> NORA stated that it provided its annual proposed budget to DOE and it was DOE's responsibility to ensure that that budget was forwarded to the appropriate DOE office for review.
<b>7. Submission of NORA annual audit report to the Secretary of Energy.</b>	<b>Sec. 706(f)(2)(B) "Records; audits. - . . . Availability of audit reports.</b> Copies of each audit report shall be provided to the Secretary, the members of the Alliance, and the qualified industry organization, and, on request, to other members of the oilheat industry."
NORA provided no indication that it had provided its annual audit reports to the Secretary of Energy prior to our review, and officials from DOE's Office of Policy and International Affairs said they were not aware of ever having received these reports.	<b>NORA Response</b> NORA stated that it posts its annual audit report on its web page and that such posting is equivalent to providing its audit report to the Secretary.

Source: GAO analysis of the Oilheat Act's provisions and NORA-provided information.

# Appendix IV: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE  
The Secretary of Commerce  
Washington, D.C. 20230

June 15, 2010

Mr. Mark Gaffigan  
Director  
Natural Resources and Environment  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Gaffigan:

The U.S. Department of Commerce appreciates the opportunity to comment on the United States Government Accountability Office's draft report entitled *Propane and Heating Oil: Federal Oversight of the Propane Education and Research Council and National Oilheat Research Alliance Should Be Strengthened* (GAO-10-583).

We have reviewed the report and agree with GAO's general findings, conclusions, and recommendations regarding the U.S. Department of Commerce's statutory obligation to conduct price and consumer impact analyses, as defined under the Propane Education and Research Act of 1996 and the National Oil Heat Research Alliance Act of 2000. The Department's comments on this report are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Locke".

Gary Locke

Enclosure

# Appendix V: Comments from the Propane Education and Research Council

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



PROMOTING THE SAFE,  
EFFICIENT USE OF  
PROPANE GAS

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June 16, 2010

Mr. Mark Gaffigan  
Director  
Natural Resources and Environment  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

**Re: Comments of the Propane Education and Research Council  
Regarding GAO Report GAO-10-586**

Dear Mr. Gaffigan,

In October 1996 Congress approved the Propane Education and Research Act to foster research and development, training, education, and safety programs for propane consumers and the businesses that serve them. Prior to that action, government programs and funding for propane-related activities were practically nonexistent and the industry, composed overwhelmingly of small businesses, did not have the market share or financial wherewithal to meet the costs of those activities. Through the Propane Act, substantial progress has been made on each of the functions that Congress directed the Propane Education and Research Council (PERC) to perform. PERC began collecting assessments and started full operations in 1998. The Government Accountability Office reviewed PERC's activities for 1998-2008.

PERC strives to be a good steward of the Act. Every program PERC has undertaken, including those reviewed by GAO, share four essential characteristics; they are 1) guided by a reasoned interpretation of the law; 2) managed in accordance with a rigorous set of internal controls to ensure that funds were used only for lawful purposes; 3) well documented and available to the public through the Internet; and 4) broadly supported by the assessment payers.

PERC also strives to be a model of transparency, even though transparency creates a risk that the expansive record, which often includes individual statements and proposals by prospective grantees that do not reflect the position or actions of PERC, will be misinterpreted. During the course of the GAO review, PERC provided more than 5,000 pages of documentation in



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response to more than 200 specific inquiries. PERC's interpretation of that record differs in several instances with that of GAO.

PERC has taken careful note of the GAO's observations in this report and, consistent with these observations, will make a special and concerted effort to improve our operating processes to more efficiently and effectively achieve the goals of the Act.

With respect to specific areas of concern, we offer the following comments:

**Coordination of Activities.**

*"The Council shall coordinate its activities with industry trade association [sic] and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities." 15 USC 6404(f) [Emphasis added.]*

PERC has made a good faith effort to coordinate its activities as required by the Act. As GAO reported, PERC routinely submits to the Department of Energy the mandated reports and proposed budgets. Moreover, on its own initiative, PERC has worked with DOE and other federal agencies on safety, research, technology deployment, and energy efficiency projects, even though the Act does not specifically mandate coordination with federal agencies other than to the extent that they are among the "others" referenced in the Act above. PERC has worked with federal and state agencies on dozens of projects, primarily research projects that significantly leveraged PERC's research and development investments. At PERC's invitation, representatives of DOE, the Environmental Protection Agency, the Department of the Interior, the Department of Agriculture, and other federal and state agencies have participated in PERC-sponsored workshops, seminars, and meetings. PERC has 15 ongoing engine fuel, agriculture, and research projects that are co-funded by federal and state agencies. PERC maintains a high level of coordination with federal agencies and others and welcomes suggestions on how that coordination can be improved. It is gratifying to note that GAO identified no instance where PERC's level of coordination resulted in the inefficient delivery of service or unnecessary duplication of activities, which is the standard under the Act.

**Allocation of Resources.** The GAO report raised the question of resource allocation. PERC constantly reviews how resources are allocated across the Act's four priority activities of research and development, training, education, and safety. Congress did not regulate funding among those priorities, although elsewhere in the Act it did regulate funding levels for agriculture and engine fuel activities, administrative expenses, and reimbursement of federal oversight costs. Absent specific direction in the Act, PERC took on that responsibility and has made funding decisions that were reasonable and appropriate given the circumstances and market conditions that existed at the time they were made. *The overwhelming majority of PERC funding has gone to the priority activities designated by Congress and other mandatory functions under the Act.*

See comment 1.

See comment 2.

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See comment 3.

**Research and Development Programs.** PERC's record on funding research and development is much greater than GAO reported. To advance the research priority, PERC established three advisory committees – research and development, engine fuel, and agriculture – whose primary charge is to advance the research and development of clean, efficient propane utilization equipment. The engine fuel and agriculture advisory committees focus on specialty technologies unique to those markets, and the Research and Development Advisory Committee pursues a more diverse portfolio of technologies and processes. Each advisory committee has leveraged its resources with funding from private and public entities in order to expand the total resources available to pursue PERC's research objectives. The GAO interpretation of PERC's research spending appears to be based solely on projects emanating from the Research and Development Advisory Committee and gives consideration neither to the research projects carried out by the engine fuel and agriculture committees nor to the third-party funding that substantially expanded PERC's research investments.

PERC-funded research has resulted in improved energy efficiency, reduced emissions of criteria air pollutants and greenhouse gas emissions, and more cost-effective propane delivery systems. In addition to research on end-use technology, PERC has investigated the usable life, performance, and safety features of components in the propane delivery system such as cylinders, relief valves, regulators, and tanks – for improved safety and reliability.

PERC has invested a significant amount in developing energy-efficient technology such as combined heat and power systems for residential and commercial markets that use nearly 90 percent of the fuel energy, nearly three times as much as grid-supplied electricity. PERC has worked with U.S. manufacturers on hybrid power systems that combine clean-burning propane generators with solar or wind power sources to offer consumers lower costs and greater reliability than an all-renewable option. PERC also has provided leadership on a global basis to promote research and development of propane utilization equipment, helping found the Global Technology Network in the World LP Gas Association and organizing and hosting the industry's first Global Technology Conference in 2006 in Chicago that attracted hundreds of attendees from more than 40 nations.

See comment 4.

**Consumer Education Programs.** PERC has funded substantial consumer education activities. At the outset, given the level of expenditure, PERC established a detailed set of metrics to benchmark and measure the progress of those activities. Among those metrics were increased awareness of and favorability toward propane among targeted audiences, unique visits to the website [www.usepropane.com](http://www.usepropane.com), consumers' use of the "Find a Propane Retailer" application on the website, manufacturers' shipments of propane utilization equipment, and propane market share in new home construction. Across each of those metrics, as measured by third-party professionals, the PERC consumer education program registered significant gains. Propane space heating share

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of new home construction increased threefold in key residential market segments.

While increased propane usage is an overarching goal, PERC recognizes that its education programs, however successful, are not the most significant influence in propane usage. Residential propane consumption is variable and highly sensitive to weather patterns, because the primary residential use of propane is for space heating. Warmer winters, rising energy prices, increased consumer conservation, improved structural and appliance efficiency, and the significant decline of the manufactured housing sector (where propane space heating once held a 70 percent market share) substantially reduced propane demand over the last decade and continue to exert downward pressure on propane consumption. Nonetheless, the consumer education program's success in increasing propane market share in new home construction helped contribute tens of millions of gallons to residential propane demand, somewhat mitigating the decline while expanding the consumer base. The consumer education program also established high levels of consumer awareness of and favorability toward propane as a clean, reliable energy source, and it saw substantial numbers of consumers initiating contact with local propane retailers through PERC's websites. PERC activities in the residential market today are related solely to research, training, and safety.

PERC's consumer education activities have focused on residential markets and reaching people who are buying, building, or renovating homes through highly targeted television, radio, and print advertising. Initially, these educational efforts focused on the general benefits of propane as a residential energy source and are generally referred to as "generic advertising." However, based on its research findings, PERC determined that adding training programs for construction professionals (developers, architects, builders, plumbers, and HVAC contractors) could increase the effectiveness of PERC's efforts in residential markets. For more than three years, PERC's consumer education initiatives have been multi-functional, with decreased funding for advertising and other educational tactics and increased funding for training for construction professionals. Training programs for construction professionals have been certified by the National Association of Home Builders and the American Institute of Architects.

**Restriction of Education Activities.** After the August 4, 2009, notification of the restriction from the Department of Commerce, when the department concluded that the price of propane exceeded a threshold established in the Act, PERC conducted a detailed analysis of all ongoing education programs and related contracts. Rather than implement the restriction on a prospective basis, PERC determined to implement the restriction as a cease-and-desist order and began terminating contracts and shutting down ongoing education activities that were approved and funded prior to the restriction.

Recognizing that the restriction is likely to be in place for years, PERC reissued its proposed budget for calendar 2010 (it was initially published just days before notification of the restriction). In December, the Council approved the revised budget, which reduced

See comment 5.

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the assessment rate 20 percent to four-tenths of a cent per odorized gallon of propane, eliminated education activities, and expanded funding for research, training, and safety.

With respect to the dockets GAO referred to that were adopted after the restriction, all were approved subject to legal review to bring them into compliance with the restriction; the educational activities were stripped from the measures and only permissible training activities for construction professionals were continued, in some cases at a higher funding level. Regarding GAO's implication that under one of those training dockets PERC intended to pay for "marketing activities no longer allowable by direct PERC funding," the context from which GAO extracted that phrase makes it clear that PERC grantees have to use their own funds – not PERC funds – to conduct any education activities that PERC cannot fund because of the restriction.

Also after the restriction, PERC established the Residential and Commercial Advisory Committee and charged it with implementing training and safety programs for the residential and commercial markets and to collaborate with the Research and Development Advisory Committee to facilitate training for construction professionals regarding propane utilization equipment being developed through PERC's R&D investments.

**Engine Fuel Programs.** PERC has invested in research and development of new, advanced propane engine and vehicle technologies to serve the needs of fleets for both over-the-road and off-road use. PERC's engine fuel activities focus on four key market segments: forklifts, off-road vehicles, trucks and vans for fleet use, and agricultural engines for irrigation and generating electricity.

PERC's engine fuel programs have successfully produced propane engines that compete with gasoline and diesel on economy and performance, and excel in environmental benefits. Compared with gasoline, the propane fuel systems that PERC developed with leading U.S. automotive manufacturers and suppliers yield on average 50 percent less carbon monoxide, 40 percent less hydrocarbons, 35 percent less nitrogen oxides (NOx), and 50 percent less ozone-forming emissions. Propane engines also play an important role in mitigating climate change. The propane engines PERC developed for school buses, for instance, over the full life cycle produce 24 percent less CO<sub>2</sub> emissions than comparable gasoline engines. Compared with like diesel engines, the propane-powered version reduces NOx by more than 50 percent and virtually eliminates harmful particulate emissions.

*"The percentage of funds collected through assessments pursuant to this Act to be used for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the total market for odorized propane that is used as motor vehicle fuel, based on the historical average of such use over the previous 3-year period." 15 USC 6404(g) [Emphasis added.]*

See comment 6.

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The Act limits PERC expenditures for over-the-road motor fuel. During the review, PERC informed GAO of its basis for calculating and accounting for the authorized spending level. The relevant provision (above) contains two key terms describing the cap on over-the-road motor fuel expenditures. The two distinguishing terms are "over-the-road motor fuel" and "motor vehicle fuel." PERC was advised by counsel that "motor vehicle fuel" was a larger universe of motor fuel consumption and included off-road vehicles as well as over-the-road vehicles. That is important for two reasons: 1) propane consumed by off-road vehicles (primarily forklifts) is more than three times greater than that consumed by over-the-road vehicles, and 2) the figure GAO cites in the report reflects only the over-the-road portion of the motor vehicle fuel calculation.

The Act appears to regulate the use of funds to prevent rapid and expansive growth of propane use in over-the-road vehicles that could possibly disrupt traditional propane markets. It is a reasonable interpretation that Congress would have intended some growth in propane use as an over-the-road motor fuel, given that propane is a beneficial alternative fuel under the Clean Air Act that can reduce greenhouse gas emissions and other air pollutants compared with gasoline and diesel.

Because the limitation on over-the-road motor fuel expenditures is based on a three-year rolling average of overall motor vehicle consumption, PERC annually makes the calculation and reports that figure in its financial statement with a treasurer's note that also tracks expenditures against the cap on a cumulative basis. *PERC has never exceeded the authorized level of spending on over-the-road motor fuel.*

**Safety and Training Programs.** PERC has developed an extensive portfolio of safety and training products and programs. Among them are numerous workforce training products, specialized training for firefighters and other emergency responders, compliance guides for federal (Department of Transportation and Occupational Safety and Health Administration) training requirements, safe grilling programs, consumer information on carbon monoxide risks, and instructional materials for construction professionals on safe installations, community tank systems, and energy efficiency, to name a few. PERC's *Propane Emergencies* program was distributed free to every fire department in the country and has been adopted by 35 state fire service training academies. PERC maintains a dedicated safety and training website [www.propanesafety.com](http://www.propanesafety.com) that offers a wide variety of safety and training resources for the public, the industry, and emergency responders.

Of the nearly 200 safety and training projects PERC has conducted since 1998, GAO discussed only one: a contractor's follow-on proposal for new business that PERC declined to fund. GAO's description of that project – "to identify PERC's impact on incidents and accidents" – is erroneous. The contractor's initial study analyzed publicly available data to develop a baseline to be used, in part, to determine if incidents and

See comment 7.

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accidents in propane homes and vehicles transporting propane exceeded the rate of accidents and incidents in homes and vehicles where propane was not present. (The study found no significant difference between propane homes or vehicles and the general population of homes and vehicles.) PERC advised GAO that the contractor's proposed follow-on study was not suitable to measure the effectiveness of PERC's safety and training initiatives because it was to be based on data for a time period before the launch of significant PERC consumer safety programs.

One ongoing PERC safety program that flowed from earlier safety research is the long-standing safe grilling campaign that targets the largest group of propane users, the estimated 50 million consumers who use propane for outdoor cooking. Independently, the National Fire Protection Association recently reported that structural fires associated with propane grills have declined approximately 50 percent since 1998. (Incidents related to charcoal grills were unchanged.) PERC does not claim sole responsibility for these safety improvements, although it believes that its safety and training programs contributed to this positive trend in consumer safety. The Council is presently conducting consumer safety research to determine how best to improve its safety outreach to propane users.

See comment 8.

**Agriculture Programs.** The Act requires PERC to expend not less than 5 percent of assessments on programs to benefit agriculture and to coordinate its activities with agriculture organizations. PERC routinely does so. The GAO report questioned PERC's coordination with USDA. In fact, as PERC demonstrated during the review, for several years PERC maintained a memorandum of understanding with USDA's Agriculture Research Service and worked with the service on several projects. The MOU was not renewed, at USDA's request, based on its preference to work on a project-by-project basis. The two organizations continue to collaborate on research and energy efficiency initiatives and have five jointly funded projects under way.

See comment 9.

**Industry Programs.** PERC's Industry Programs facilitate the efficient implementation of the Act as well as PERC initiatives at the state and local level. Industry Programs activities include the collection of key statistical data and market trends and they support information sharing between PERC and more than three dozen state rebate recipients to maximize the impact of assessment funds, and between PERC and national industry organizations.

Through this program PERC administers the distribution of 20 percent of assessment collections to the states based on propane sales in each state. State propane sales data is not available from government sources, including the Energy Information Administration. To administer the rebate in the absence of publicly available data, PERC contracts through its Industry Programs with organizations with relevant expertise to annually survey and calculate the sales of propane state-by-state.

GAO questioned whether the Industry Programs improved efficiency and avoided duplication. PERC provided GAO with a third-party examination of the effectiveness of

See comment 10. (See also the following letter from PERC's legal counsel Patton Boggs dated June 16, 2010).

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PERC Industry Programs in expanding the reach and frequency of PERC's consumer education program. By encouraging states through matching funds to use resources developed by PERC, rather than leaving each state to develop its own, the coordination program ensured that there was no duplication of production costs. In addition, more than one-third of state rebate funds are used to locally implement the safety and training programs that PERC has developed, improving efficiency and eliminating the need for states to develop their own training products.

**Prohibition on Influencing Legislation or Elections.** PERC has a heightened awareness of the Act's prohibition on the use of assessment funds to influence legislation or elections. PERC has consistently and proactively enforced this provision, incorporating it into PERC's bylaws, its Policies, Rules, and Procedures manual, its contracts, and its memoranda with grantees.

This prohibition also applies to the 20 percent of assessment funds that are rebated to state entities. To ensure that rebated funds are not co-mingled with state trade association funds, which can legally be used for lobbying, PERC by rule requires the states to establish a separate foundation under Section 501(c) of the Internal Revenue Code in order to receive assessment rebates. PERC contractually bars states from using rebate funds for lobbying and pays rebates only for programs and projects approved in advance by PERC in order to provide ongoing oversight of how assessment funds are used by the states.

Before receiving funds from PERC, every recipient must contract not to use Council-provided funds for unlawful purposes. PERC has never knowingly approved funds for any activity intended to influence legislation or elections. Regarding the transactions questioned by GAO, at the time PERC sought and received assurances from the grantee that the specific expenditures had been thoroughly reviewed by legal counsel and determined to be lawful and consistent with the Act and other relevant laws. PERC's own subsequent review of the subject expenditures found no use of assessment funds to influence legislation or elections in any manner. GAO did not identify any legislation or any election that assessment funds were used to influence in any manner. In fact, assessment funds were never used in such manner.

PERC acknowledges that its National Energy Conversation (NEC) education initiative was designed to educate the public about propane's use to reduce greenhouse gas emissions, and that its national advertising campaign included media buys in the Washington, D.C., area. The NEC messages were factual and based on PERC research, were generic in nature, and did not urge action by Congress or encourage the public to contact Congress or take any other action. Similarly, the events and communications activities PERC funded as part of Propane Days were educational, focused on basic statistical data about propane markets and propane utilization equipment, appliances, and vehicles from PERC's three research committees; at no time did PERC support

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directly or indirectly any advocacy or lobbying efforts. As education initiatives, both the NEC and PERC's participation in Propane Days were terminated last year immediately after notification of the restriction of PERC's education activities.

GAO seems to imply that any communication with Congress, even sharing basic educational materials or conveying the results of PERC's implementation of the Act, may not be permissible and may be prohibited by the Act's specific restrictions on the use of PERC funds "for influencing legislation or elections." PERC's view differs on this point and is based on expert legal advice. PERC waived its attorney/client privilege on this subject and provided the information to GAO. (The legal basis for PERC's actions is appended to the GAO report.) Some communication between PERC and Congress is clearly anticipated under the Act. (See 15 USC 6404(k) and 15 USC 6404(b).) Indeed, the very provision of the Propane Act entitled "Lobbying Restrictions" specifically authorizes PERC to "recommend to the Secretary [of Energy] changes in this Act or other statutes that would further the purposes of this Act." (See 15 USC 6407.) PERC seeks to avoid even the appearance of impropriety and welcomes any clarification regarding its communications with Congress and federal agencies. Based on the overarching goals established and program mandates of the Act, PERC believes it is not simply permitted, but is obligated, to communicate regularly to Congress about programs undertaken and progress achieved.

**Conclusion.** The Propane Education and Research Council has diligently pursued the priority activities that Congress authorized it to undertake and has produced results that are beneficial to the public and that further the energy and environmental goals embodied in federal policies.

The unique conditions that prompted Congress to create check-off programs for propane and heating oil still exist today: the small-business nature of the industries, their extremely small share of the energy market, the lack of government programs relevant to the fuels and the technology that use them, and the need for special employee and consumer safety and training. Without Congress' foresight to create PERC, the strides made over the past decade in propane safety, training, and research and development of clean, efficient propane technology would not have been realized.

Additional information about PERC activities is available at [www.percfacts.com](http://www.percfacts.com).

Respectfully submitted,



Roy W. Willis  
President and Chief Executive Officer

**Appendix V: Comments from the Propane  
Education and Research Council**

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June 16, 2010

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Mr. Mark Gaffigan  
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United States Government Accountability Office  
441 G Street, N.W.  
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Re: Comments on GAO Draft Report Entitled, "Propane and  
Heating Oil: Federal Oversight of the Propane Education and  
Research Council and National Oilheat Research Alliance  
Should Be Strengthened"

Dear Mr. Gaffigan:

The Propane Education and Research Council ("PERC" or "the Council") submits the comments below to address the GAO's observations regarding the application of the "Lobbying Restrictions" provisions of the Propane Education and Research Act ("PERA" or "the Act").

Although the Act creates a mandatory framework for collecting industry funds and establishes the processes for governance, it imposes few specific rules with respect to how the funds are spent. As the GAO report states, PERC has expended its funds on a variety of activities that are consistent with the priorities set forth in the Act and for other activities not expressly prohibited. The report questions whether several of these activities are covered by the Act's lobbying restrictions.

To be clear, there is no disagreement that the Act restricts the use of PERC funds, "...in any manner for influencing legislation or elections..."<sup>1</sup> PERC understands the plain meaning of this

<sup>1</sup> Section 6407 of the Act (15 U.S.C. Section 6407), entitled "Lobbying Restrictions" provides: "No funds collected by the Council shall be used in any manner for influencing legislation or elections, except that the Council may recommend to the Secretary [of Energy] changes in the Act or other statutes that would further the purposes of this Act." The phrases "influencing legislation" and "influencing elections" are not defined in PERA. The legislative history of PERA also does not explain Congress' intent. For these reasons, PERC has looked for guidance to the other statutes detailed below which use and define these terms.

Washington DC | Northern Virginia | New Jersey | New York | Dallas | Denver | Anchorage | Doha | Abu Dhabi

See comment 10.

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language to impose a restriction on specific lobbying activities (i.e., influencing legislation or elections) but not to impose a flat prohibition on all activities that are related to any interaction with the Legislative Branch. PERC believes this understanding is consistent with a reading of statutes which explicitly define activities which constitute “influencing legislation”<sup>2</sup> or “lobbying contacts” and “lobbying activities”<sup>3</sup> intended to accomplish the same goal.

Based on this understanding of the Act’s specific lobbying restrictions, PERC believes informational and educational contacts with Congress, such as those identified in the report as potentially prohibited under the Act, are permissible. Further, as explained below, PERC and NPGA believe such contacts are anticipated under PERA.

The GAO Draft Report, however, suggests that PERC’s lobbying restrictions could extend considerably beyond influencing legislation or elections. In the section of the report entitled, “Issues Regarding Communications and Expenditures Related to Congress and Politically Affiliated Entities”, the GAO, relying on a 1981 opinion of the Office of Legal Counsel (“O.L.C.”) of the Department of Justice<sup>4</sup>, suggests that general informational or educational contacts of the type that PERC conducted might not be permitted.<sup>5</sup>

<sup>2</sup> See, e.g. Section 162(e)(1) of the Internal Revenue Code (“IRC”) which defines “influencing legislation” as “any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government employee who may participate in the formulation of legislation.” 26 U.S.C. Section 162(e)(1). See also Section 501(h) of the IRC which defines “influencing legislation” in the same way.

<sup>3</sup> See, e.g. The Lobbying Disclosure Act of 1995, Section 1602(7) which defines “lobbying activities” as “...lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with lobbying activities of others” and Section 1602(8) which defines four categories of lobbying contacts, only one of which involves influencing legislation. More specifically, Section 1602(8)(A)(i) includes in the definition of lobbying contacts “the formulation, modification, or adoption of Federal legislation (including legislative proposals)...” 2 U.S.C. Section 1602(8)(A)(i).

<sup>4</sup> Anti-Lobbying Restrictions Applicable to Community Services Administration Grantees, 5 Op. Off. Legal Counsel 180 (June 17, 1981).

<sup>5</sup> In response to the authorities cited by PERC, the GAO states: “On the other hand, the Justice Department’s Office of Legal Counsel, interpreting another federal law with similar language, suggested that *general informational or educational contacts of the type that PERC conducted might not be permitted*. Like the propane Act, the statute that the Justice Department reviewed provide that the use of federal grant or contract funds “to engage in any activity designed to influence legislation...pending before Congress” was prohibited [citation omitted]. Among other things, Justice emphasized that the breadth of the language – that it applied to “any activity designed to influence legislation pending before Congress” – and that the law was “conspicuously silent” about any exception permitting “*direct contacts with Congress*” akin to *normal informational and educational contacts* between agency officials and Congress. Justice concluded that this language “flatly” prohibited the use of federal funds to influence “specific measures actually pending before Congress” and it raised, but did not resolve whether other activities were prohibited as well.” (emphasis added). GAO Draft Report , pp. 18-19



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PERC strongly disagrees with the suggestion that the Act's specific lobbying restrictions may be read as a restriction on general informational and educational contacts with Congress. The OLC opinion relied on by GAO is distinguishable in significant respects and make its application to PERA questionable. That case involved restrictions applicable to the now-abolished Community Services Administration ("CSA"), an independent Federal agency which coordinated and administered antipoverty programs between 1975 and 1981.<sup>6</sup> The restrictive language interpreted by OLC was contained in an "anti-lobbying" rider which provided:

...No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before Congress."<sup>7</sup>

The GAO appears to argue that because the language of this restriction on "any activity designed to influence legislation or appropriations" is essentially analogous to PERA's restriction on the use of PERC funds "in any manner for influencing legislations or elections" that the broader restriction – possibly reaching informational and educational contacts – also applies.

PERA does not believe that the application of the broader restriction necessarily or even reasonably follows. A more restrictive approach may be argued in the CSA case because of other significant distinctions.

First, the funds at issue in the CSA case were appropriated funds. The operations of the CSA, including the salaries of its employees, were paid for by the U.S. taxpayer. PERC funds are not appropriated funds. PERC is authorized by Congress through PERA to collect assessments and to use those assessments to carry out the mandates of the Act. The U.S. taxpayer, however, funds no part of the cost of PERC's operations.

Further, under the Act PERC members cannot receive compensation for their participation on the Council. Nor can PERC members - other than public members - be reimbursed for expenses (i.e., travel, lodging, or meals) related to their service as a Council member. Regardless of their membership on PERC, however, Council members in their individual capacities have a right to contact Members of Congress on matters of concern, including matters related to the propane

<sup>6</sup> See Records of the Community Services Administration, Record Group 381 1963-81, The National Archives website at <http://www.archives.gov/research/guide-fed-records/groups/381.html>.

<sup>7</sup> 5 Op. Off Legal Counsel 180,181 (June 17, 1981)



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industry. Their status as Council members does not preclude such contacts. The use of PERC funds to do so, however, is.

The circumstances would have been quite different for employees or officials of the CSA. It would have been difficult for those persons to essentially “shed” their status as federal employees in discussing matters of concern to CSA with members of Congress. It would have been understandable in that circumstance for Congress to have placed limits on the ability of salaried government employees to lobby Congress. Whether those limits should extend to informational and educational contacts with Congress would be another matter, however – especially as applied to persons who are not salaried government employees and who receive no form of appropriated fund support.

For these reasons, PERC believes the OLC opinion relied on by the GAO has little or no applicability to the lobbying restrictions set forth in PERA.

PERC next addresses why informational and educational contacts with Congress are in fact anticipated under the Act. First, there is at least one specific mandate in the Act for PERC to communicate with Congress and which clearly would constitute an informational and educational contact. Section 6404 of the Act requires that PERC publish for public comment and review a budget plan which will include, among other information, the probable costs of all programs, projects and contracts. Following public comment and review, PERC then is required to submit the proposed budget to the Secretary of Energy and Congress. Also, Section 6404(n) requires PERC to prepare and make available to the public an annual report which describes all the programs and projects undertaken by PERC in the prior year and those planned for the current year. While this document is not submitted directly to Congress, it is a public document readily available to Congress.

These statutory requirements for PERC to submit a budget annually to Congress and to make available to the public – including Congress – an annual report of programs and projects clearly would be inconsistent with an interpretation of PERA’s lobbying restrictions as including a limitation on informational and educational contacts with Congress.

Finally, it is difficult to accept this interpretation as consistent with overall intent and goals encompassed in the Congressional “Findings” and mandates of PERA.

Section 6401 of the Act, Congress states, in part, that:

- (1) propane gas... is an essential energy commodity...;
- (2) the use of propane is especially important to rural citizens and farmers...;

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**Appendix V: Comments from the Propane  
Education and Research Council**

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**PATTON BOGGS**<sup>LLP</sup>  
ATTORNEYS AT LAW

Mr. Mark Gaffigan  
June 16, 2010  
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(3) propane has been recognized as a clean fuel and can contribute in many ways to reducing pollution in our cities and towns; and

(4) propane is primarily domestically produced and its use provides energy security and jobs for Americans.

Based on these findings, Congress allowed the creation of PERC, and if established, required the Council, pursuant to Section 6404 of PERA to develop, through the collection of Council member assessments and not through the use of appropriated funds, programs:

... to enhance areas of consumer and employee safety and training, to provide for research and development, and to inform and educate the public about safety and other issues associated with the use of propane...

Consistent with the stated finding of public importance and the specific mandates resulting from the establishment of PERC, it has been incumbent on PERC to do more than simply rely on its annual budget submission to Congress and the publication of its annual report to inform and educate Congress about the progress achieved under the Act. As a practical matter, PERC has viewed regular communication with Congress not only as permissible but as necessary to explain how it is fulfilling its requirements under the Act and achieving PERA's overarching goals.

The GAO's suggestion that there may be limitations on the informational and educational contacts between PERC and Congress based on the Act's lobbying restrictions would therefore seem to be at cross purposes with these ends and, in the opinion of PERC, would not be a reasonable interpretation of the Act.

We appreciate the opportunity to offer these comments.

Sincerely,



Michael J. Nardotti, Jr.  
Major General, U.S. Army, Retired

The following are GAO's comments to two Propane Education and Research Council (PERC) letters dated June 16, 2010.

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## GAO Comments

1. **Coordination of activities:** PERC asserts that it has made a good faith effort to coordinate its activities as required by the Propane Act and cites numerous examples of coordination with federal agencies, state agencies, and others across a range of efforts. However, we found that there has been a mixed level of coordination between PERC and those agencies. Department of Energy (DOE) program officials told us that PERC had been a good partner in the education and training area and that PERC had worked with DOE on activities such as fleet-oriented education geared toward maintenance personnel and drivers; however, in the research and development area, these DOE officials said that PERC approached DOE to request funding for a proposed project at the wrong time of the funding cycle, demonstrating a lack of understanding of government cycles and processes. These officials added that PERC, unlike the natural gas industry, had not worked with DOE to develop a research and development strategic plan, and they said they would have welcomed such an effort with PERC. PERC indicates it welcomes suggestions on how coordination can be improved, and our report offers suggestions from DOE that PERC work with DOE to develop a research and development strategic plan. The report also offers suggestions from the U.S. Department of Agriculture (USDA) that PERC coordinate its outreach consumer education activities with USDA.
2. **Allocation of resources:** We agree with PERC's assertion that the overwhelming majority of its funding has gone to priority activities designated by Congress and other mandatory functions in the Propane Act. We further agree with PERC that Congress did not regulate funding across the priorities but did so for agriculture, engine fuels, administration expenses, and reimbursement of federal oversight costs. Our main point is not that PERC did not spend funding on priority activities but that within those priority areas, PERC spent almost 51 percent of its assessments on consumer education and only 8 percent on research and development. We further note that issues remain about whether Congress anticipated that PERC would allocate the majority of its funding to education activities in comparison to the relatively little financial support given to research and development—a statutory priority area that was a key area of congressional interest as the law was debated prior to enactment. However, as we note in our report, the Act did not specify a particular funding level or ranking for research and development relative to the other priority areas of consumer education and safety and training. Therefore, as PERC

notes, absent specific direction in the Act, PERC took on the responsibility of regulating funding levels among the priorities and chose to provide, according to our analysis, almost 51 percent of its assessments for consumer education and 8 percent for research and development. As noted in our report, Congress may wish to consider specifying a prioritization of activities it wants to be undertaken (for example, by ranking research and development, safety and training, and consumer education and specifying the expected range of assessments to be spent on each).

3. **Research and development:** PERC holds that its funding for research and development is actually much greater than GAO found, since its agriculture and engine fuel programs also contain components of research and development. First, it is important to note that the PERC research and development funding outlined in this report is based on PERC's and state associations' reported spending for research and development. We agree that PERC's agriculture and engine fuel programs may contain research and development elements and discussed this with PERC officials during our review. However, PERC officials were not able to provide a breakdown of the research and development spending associated with these other programs. Furthermore, we question the extent to which all funding for agriculture and engine fuel programs is properly categorized as research and development. For example, as stated in our report, under its engine fuel program, in 2009, PERC approved a \$1.4 million grant to help the Blue Bird Corporation secure financing to buy 1,800 engines for its Blue Bird buses from General Motors Corporation. Because General Motors had announced it intended to stop making these engines, Blue Bird plans to stockpile these engines for use over the next 2 to 3 years. Also, in 2008, PERC approved a \$4.8 million grant with Roush Industries to produce and market propane-fueled engines in Ford F-150 and F-250 trucks and E-250 vans. Expenses included in that program were PERC funding for floor mats and other marketing materials. Although PERC's strategic goal for engine fuel, as stated in its 2008 to 2012 strategic plan, is to conduct research with a commercialization focus to advance propane sales for vehicle and other engines, it is not clear how the purchase of engines and production and marketing of propane-fueled engines involved the conduct of research. DOE officials with whom we discussed these matters said that the acquisition and placement of engines into vehicles was neither research nor development. Finally, PERC makes a point that GAO numbers do not include leveraged resources through third-party funding. This report's objective on the use of assessments was focused on the amount of assessments PERC collected and how it spent them; therefore, the amount of third-party spending is not

relevant to addressing that objective. If anything, the availability of third-party financing to be leveraged by PERC funding highlights the potential additional benefits of increased PERC spending on research and development—an activity for which PERC chose to spend 8 percent of its assessments.

4. **Consumer education:** We agree with PERC that it has funded substantial consumer education activities. Our report, in fact, states that PERC spent about 51 percent of the assessments it collected on consumer education. However, as noted above, issues remain about whether Congress anticipated that PERC would allocate the majority of its funding to education activities in comparison to the relatively little financial support given to research and development. Regarding the actual consumer education activities, the report is only trying to make the point that it is unclear whether these consumer education activities resulted in increased overall propane usage, which is PERC's strategic goal for consumer education. We are not aware of detailed metrics to measure achievement of this goal and the examples PERC offers, such as increased awareness and favorability and visits to Web sites, do not directly measure progress toward the strategic goal of increased overall propane usage. As noted in our report, our attempts to identify PERC's impact on this goal found studies highlighting both increased and decreased propane usage. Finally, we note that PERC's response states that "consumer education initiatives have been multi-functional, with decreased funding for advertising and other educational tactics and increased funding for training for construction professionals." The inclusion of funding for training, a separate priority activity, under consumer education, makes it even less clear how training activities support goals under consumer education.
5. **Restriction of education activities:** According to PERC, after the August 4, 2009, notification of the restrictions against further consumer education activities, PERC conducted a detailed analysis of ongoing education programs and contracts, began terminating contracts and activities, reduced its assessment rate accordingly, and subjected its activities to a legal review. PERC states that GAO took out of context a training docket announcement that PERC intended to pay for marketing activities no longer allowable by direct funding, because the funding reference in this case was to PERC grantee funds. The report notes, according to PERC, that it complied with the education restriction because it later amended the grant, terminating the educational component and that the grantee, rather than PERC, inserted the above wording into the proposal. We feel this language is sufficiently comprehensive and needs no further clarification. Importantly, GAO notes that the Propane Act does not define the

scope of the three activities permitted under the price restriction (research and development, training, or safety matters), nor the activities, such as consumer education, that must cease under the restriction. The lack of a precise statutory line between permitted and prohibited activities creates difficulty in assessing compliance with the restriction and may require clarification by Congress. For example, as noted above, PERC's response letter claims that consumer education activities have been multi-functional and have included training, a separate priority activity under the Act.

6. **Engine fuel programs:** We agree that the Act limits the percent of PERC's assessments collected that can be spent on over-the-road motor fuel projects to the percentage of the market for propane used as a 'motor vehicle fuel.' However, different interpretations of what is included in the market for motor vehicle fuel can lead to different calculations of the limit—the more that is included in motor vehicle fuel, the higher the limit for over-the-road motor fuel projects. Based on its counsel's legal analysis, PERC concludes that motor vehicle fuel includes both off-road vehicles (primarily forklifts) and over-the-road vehicles. This is significant, because by including forklifts (which consume three times more propane than over-the road vehicles), the limit on over-the-road fuels is much higher. GAO raised this as an issue because we believe another interpretation of what constitutes motor vehicle fuel is reasonable. That is, that propane for forklifts is not considered as a motor vehicle fuel, and thus the limit on over-the-road motor fuel projects would be much lower, which raises the question as to the standard to be used under the Act. Again, we make no determination on compliance but offer this as another example of different interpretations of the statute that may warrant congressional consideration to provide greater specificity on the requirements it has established and to establish mechanisms to ensure compliance with those requirements. PERC further states that it has invested in research and development for new advanced propane engine and vehicle technologies, and its engine fuel programs have produced engines that compete with gasoline and diesel in economy and performance. Our report discusses PERC's spending for engine fuels; however, as stated under comment 3, some spending on the Bluebird Bus and the Roush engines in Ford trucks and vans may constitute commercialization activities, and those efforts do not appear to constitute research and development.
7. **Safety and training:** PERC's comments pointed out that it has developed an extensive portfolio of safety and training products and programs. Our report already contains discussions of some of those efforts. In addition, a key point PERC makes focuses on GAO's

characterization of the purpose of a 2006 study regarding propane-related accidents and incidents. PERC read the draft report as saying that the 2006 study was an attempt to identify the potential impact of PERC's safety and training efforts and explained that this was not the purpose of the 2006 study. GAO has clarified the final report to make it clear that GAO attempted to identify PERC's potential impact on accidents and incidents and that GAO used the report for those purposes. GAO focused on identifying the impact of accidents and incidents because it was a key strategic goal for PERC's safety and training programs, the impacts against it could be quantified, and it had been studied in a report PERC had commissioned. We found that the other strategic goals for safety and training were so broad and non-specific—e.g., improving safety awareness, enhance the industry workforce, and improve regulatory and consumer confidence—that performance against them was difficult to measure.

8. **Agriculture programs:** PERC points out that the Propane Act requires it to spend not less than 5 percent on programs to benefit agriculture, and PERC “routinely does so.” Actually, as noted in our report, according to PERC's audited financial statements for years 1998 to 2008, only about 3.6 percent of the assessments collected have been spent on agriculture activities. While section 5(g) of the Propane Act indeed specifies that not less than 5 percent of the assessments collected shall be used for programs and projects to benefit the agriculture industry in the United States, it does not specify whether the 5 percent threshold applies to annual spending or spending over some other period of time. Regarding the coordination aspects of PERC's agriculture programs, an official in USDA's National Institute of Food and Agriculture stated that PERC should coordinate its consumer education activities better with organizations, including USDA, while an official with the Agricultural Research Service indicated that if PERC vetted all research and development projects through the Department, doing so could help avoid duplication and foster coordination.
9. **Industry programs:** Our report raises the concern that it is unclear how industry program activities maximize the impact of PERC dollars distributed to state associations or coordinate activities to avoid duplication. According to PERC, its industry programs facilitate the efficient implementation of the Act as well as PERC initiatives at the state and local level. In its comments, PERC did provide additional information about its outreach and frequency of contacts for consumer education purposes and its requirement for state associations to use matching funds, that we will reflect in the report. However, as PERC's comments do not provide measures for assessing the extent to which

its industry program has maximized the impact of PERC dollars or avoided duplication, we still believe is unclear how these activities support these goals.

10. **Prohibition on influencing legislation or elections:** PERC commented that our draft implied the Propane Act’s lobbying restrictions are broader and prohibit more activities than PERC believes they do based on its interpretation of the Act. We explain in the report that PERC misconstrued our draft because as our report stated, we did not make a determination of which specific activities are covered by the lobbying restrictions or PERC’s compliance with them. Rather, in response to PERC’s citation of statutes containing the same “influencing legislation” term used in the Propane Act’s lobbying restrictions, which PERC believed were analogous for purposes of interpreting the Propane Act, we noted an example of another potentially analogous statute using this same term, which had been broadly interpreted in an opinion by the Justice Department. Our point was that the term is interpreted differently in different statutes and that its undefined meaning in the Propane Act is not clear. This lack of clarity may warrant clarification by Congress, as suggested in our Matters for Congressional Consideration, and endorsed in PERC’s comments (although PERC did not agree the current statute is unclear): PERC stated that it “seeks to avoid even the appearance of impropriety and welcomes any clarification regarding its communications with Congress . . .”

# Appendix VI: Comments from the National Oilheat Research Alliance



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Chairman: Jim Townsend

President: John Huber

June 16, 2010

Mr. Mark Gaffigan  
Director, Natural Resources and Environment  
Government Accountability Office  
441 G St., NW  
Washington, DC 20548

Dear Mr. Gaffigan:

Thank you for providing a copy of the recently prepared draft report "PROPANE AND HEATING OIL: Federal Oversight of the Propane Education and Research Council and National Oilheat Research Alliance Should Be Strengthened" for comment.

I have carefully reviewed the report, and will review the final report with the Board of Directors for the Alliance. At that meeting, I will recommend that we formally adopt several of the provisions noted by GAO for back end reporting. We are confident that the monies have been spent not only within the confines of the law, and in accordance with the stipulations in the contracts that grantees have executed; however we understand that greater transparency in that process and more evidenced compliance is appropriate. I am also confident that the members of Congress who have worked to reauthorize NORA will review this report and work to make appropriate changes to the statute to increase and improve federal oversight.

The GAO raised a number of concerns regarding potential lobbying activities. As was noted, many of the organizations that receive grants from NORA participate in government affairs work independent of NORA and are supported by member dues in those efforts. Each of the executives for those associations have been trained and noticed on the legislative limitation. We will continue to monitor this area carefully, and we have amended our contract to require an affidavit indicating compliance as part of the final accountings from the qualified organizations, as recommended by GAO.

Additionally, within its internal operations, NORA has been careful to distinguish work described within the statute and that which is prohibited by the statute. Prior to the creation of NORA, the industry established the National Association for Oilheat Research and Education (NAORE) to provide government relations support to the oilheating industry. That organization files regular lobbying reports with the Congress, and employs a firm for lobbying in Washington. On occasion, John Huber, President of NORA does limited work for NAORE. At such times, he bills NAORE for the time, and reduces his compensation from NORA by a similar amount. This arrangement was developed with assistance of counsel, reviewed by the Board, and is reflected in the minutes of the organization.

GAO has also noted the substantial amounts of funds dedicated to consumer education versus research and development. Budget numbers viewed without context, however, do not present a

**Appendix VI: Comments from the National  
Oilheat Research Alliance**

complete picture of the special challenges of funding meaningful, longer term research and development. As we explained previously, NORA's ability to plan for longer term for research and development projects clearly is hampered by the Act's relatively short sunset provisions. As an example, we would note that NORA entered into talks and after considerable time and effort reached an agreement in principle with the New York State Energy Research and Development Authority (NYSERDA) to develop an operational laboratory in Saratoga, New York. NORA went as far as conducting site reviews for the lab's placement. However, NORA was unable to proceed, due to the timing of its reauthorization, and the significant costs of setting up a laboratory, acquiring appropriate test equipment, and relocating employees, when the statute's expiration was imminent. If the statute is reauthorized, NORA intends to proceed expeditiously to develop a laboratory for oilheating and renewable liquid fuels. The NORA Board is committed to establishing such a platform for research and was disappointed that the prolonged negotiations with NYSERDA during the last short term reauthorization prevented it from occurring.

Nevertheless, notwithstanding the handicap caused of the Act's sunset provision, NORA has made significant progress in its relatively short statutory life. The further development of useful and affordable biofuels, the evolution of oil tank design and maintenance to prevent leaks, and the enhancement of technician training and certification programs are significant and positive improvements which directly benefit consumers.

While the amounts expended by NORA on consumer education have been significant, they have been extremely important as well. During the decade of 2001-2010 decade, energy prices have been both high and volatile. The NORA Board concluded that providing customer's information on ways to save energy by installing new equipment such as automatic setback thermostats, new more efficient equipment, and lifestyle changes would be a vital service to oilheat customers. While developing the next and ever more efficient equipment is extremely important, vital, it was felt that helping customers save with existing technology is essential as well. It should be noted also that time needed to develop and execute an effective consumer education initiative for needs such as these is considerably shorter than the time need to accomplish the same goal in longer term research and development and the positive results of consumer education can be realized more quickly. While NORA unquestionably intends to do have a more expansive research and development program if reauthorized, the need for solid educational initiatives for consumers will continue.

Finally, NORA, and its contractors have spent a considerable amount of time providing and responding to GAO's inquiries, and a significant amount of information has been aggregated which can provide a more nuanced view. We would be pleased to work with any reader of this report who desires additional insight or more detail on our operations.

Sincerely,



John Huber  
President

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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Mark Gaffigan, (202) 512-3841 or [gaffiganm@gao.gov](mailto:gaffiganm@gao.gov)

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## Acknowledgments

In addition to the contact named above, Ernie Hazera (Assistant Director), Bob Baney, Jennifer Andreone, Amanda Cherrin, Robert Dacey, Abe Dymond, Karen Keegan, Alison O'Neill, Kiki Theodoropoulos, Susan Sawtelle, and Barbara Timmerman made key contributions to this report.

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