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HEARING ON INTERCHANGE FEES

On Thursday, the House Financial Services Committee will hold a hearing on the Credit Card Interchange Fees Act, H.R. 2382, sponsored by Reps. Peter Welch (D-VT) and Bill Shuster (R-PA). The Welch-Shuster bill would eliminate anticompetitive contract rules, such as the Honor All Cards rule that Visa and MasterCard impose on the merchants who accept their cards and require disclosure of interchange fees to the FTC, Federal Reserve, and consumers.

This is the first hearing scheduled on interchange fee legislation this year, and we urge retailers from states who have representation on the Committee to reach out to those Members of Congress to explain that credit and debit card interchange fees are harming our businesses, and to ask them to attend the hearing and support the Credit Card Interchange Fees Act. Click here for the Financial Services Committee's Web site to see which representatives serve on this Committee. You can contact these members by calling the Capitol Switchboard at (202) 224-3121.

H.R. 2382 would eliminate the anticompetitive rules Visa and MasterCard impose on merchants allowing merchants, for the first time in regard to card acceptance, fundamental decision-making rights in how they run their business. This legislation will increase transparency in the payments card industry and make the true cost of card acceptance evident to consumers who have also been deprived of the right to make an informed decision regarding their choice of payment.

Specifically, H.R. 3282 will do the following:

Part 1: Prohibits anti-competitive practices.

- Addresses practices that are banned in the merchant/Visa and MasterCard contracts.
- Prevents credit card companies from charging merchants more when a customer uses a "special" card like a rewards card, a corporate card or internationally issued cards.
- Allows merchants to offer a lower price for customers who pay with lower cost payment types or devices.
- "Honor all cards" rule. This section allows merchants to choose not to accept certain cards that have especially high fees.
- Steering customers. Allows a merchant to ask a customer if he/she is willing to use an alternative payment device.
- Single entity rule. Allows a business to not accept cards at a given location. e.g. a company with a website and a retail store can decide to accept payment types and devices for their online business, but not in their retail location.
- Reason code 96 chargebacks. Relevant mostly at the gas pump where when you swipe a card, a \$75 transaction is authorized. As gas prices rise, these transactions are frequently exceeding the \$75 authorization amount. We've heard reports that Visa is denying any repayment to the merchant in some of these situations. This section prohibits that.
- Allows merchants to set a minimum for purchases initiated with a credit card or other payment device (many places do this anyway, like a \$5 minimum, but it technically violates the rules). Also would allow merchants to set a maximum so that transactions don't exceed the preauthorization amount discussed in the previous section.
- Allows merchant to choose which financial routing network to use (Cirrus, NYCE, Interlink, etc.) based on which is least costly for them.
- Prevents credit card companies from requiring any merchant to conduct a minimum number of transactions for using such network's payment device during any given time period.

Part 2: Requires MasterCard and Visa to disclose all terms, rates and conditions to the FTC and allows the FTC to review and determine if any practices are anti-competitive.

Part 3: Creates mechanism through the Federal Reserve for the disclosure and publication of full terms and conditions of the credit card company contracts.

Part 4: Requires full disclosure in several places of interchange or other merchant-paid fees to consumers.

PMAA and the Merchants Payment Coalition (MPC) continue to urge legislators to pass language that will give retailer groups the opportunity to negotiate interchange fees in a transparent environment. PMAA believes these negotiations will put downward pressure on interchange fees and force credit card companies to provide justification for the rates charged.

SENATORS BOXER AND KERRY RELEASE DISCUSSION DRAFT OF CLIMATE BILL

This week Senators Barbara Boxer (D-CA) and John Kerry (D-MA) released the draft of their long-awaited climate bill known as the “Clean Energy Jobs and American Power Act.” It draws largely from H.R. 2454, the “American Clean Energy Security (ACES) Act” the House narrowly approved in June. There are, however, differences that are significant among them is the 20 percent reduction in CO2 emissions by 2020. The House bill called for a 17 percent reduction by 2020.

But this week’s roll-out is just the beginning of the Senate climate effort. Other important details have been left open for negotiation. The Boxer-Kerry draft does not spell out the distribution of allowances including allowances for the oilheat industry. Even some titles under Boxer’s jurisdiction, such as the “Nuclear Waste Research and Development” section under the nuclear title, have been left blank. Boxer has said those details will be settled before her Environment and Public Works (EPW) Committee marks up the bill next month. It also remains unclear whether the Senate bill will include the House’s climate change version which blocks EPA for six years from considering in-direct land-use changes when implementing the renewable fuels mandate including biodiesel.

The Senate bill calls for an auction of 25 percent of emission allocations every year from 2012 – 2050 compared to the House version which auctions 15 percent. The House’s emission allocations were reduced in order to secure needed moderate lawmakers’ votes for passage. Additionally, the Senate bill includes a “soft price collar” which allows EPA to release allowances into the carbon market through an auction if carbon prices reach \$28 per ton – the carbon credit floor stands at \$11. The inclusion of a carbon collar in the cap-and-trade bills proves that excessive speculation in the carbon markets could play a role in volatile carbon prices. However, the Senate bill has placeholder titles to regulate carbon futures markets, but details are unclear at this time. Furthermore, the American Gas Association has urged the Senate to increase its allowance allocation from nine percent to 12 percent. The heating oil industry was afforded approximately 1.5 percent of allowances under the Waxman/Markey House bill.

It is important to note that this draft is a starting point for discussions and other committees also have jurisdiction over the bill. Much of what is in the draft will change. Finance Chairman Max Baucus (D-MT) has said he plans to mark up provisions of the bill under his jurisdiction, but Baucus is at the center of the battle to craft a health care reform which is the Administration’s top priority, and financial services regulation overhaul is second in line. In addition to the Finance Committee, the Agriculture; Foreign Relations; and Commerce, Science and Transportation Committees have jurisdiction over portions of the bill and may hold markups. Furthermore, Senators from different regions of the country will push for provisions favorable to their interests such as incentives for nuclear power plants. Therefore, it is very unlikely that a Senate climate change bill will pass this year. Senate Majority Leader Harry Reid (D-NV) has acknowledged that obtaining the necessary 60 votes for passage will be an uphill battle.

PMAA will continue to work to educate Senators on the absolute inequities the bill will pose particularly the burden that rural citizens will be subjected to when energy costs rise substantially. Rural citizens are dependent on their cars for basic life functions: working, shopping, education and medical services. Senators need to defend their constituents from the proposed climate change language and its consequent skyrocketing price on gasoline, diesel and heating oil.

PMAA FILES COMMENTS ON PROPOSED CHANGES TO RENEWABLE FUEL STANDARD

PMAA filed comments this week on the EPA’s proposed rule to implement changes to the federal Renewable Fuels Program. Commonly known as RFS II, the proposed rulemaking contains many provisions that directly affect petroleum marketers. The rulemaking is required under the Energy Independence and Security Act of 2007 which specifies the volumes of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that must be blended into fuel each year.

One major change proposed under the rulemaking is to expand the RFS program to off-road fuels. Under the current RFS program, off- road fuels are not counted against the renewable fuel volumes that refiners and upstream blenders must meet each year. However, with an ambitious blending mandate that must reach 36 billion gallons per year by 2022, expansion to off-road fuels was inevitable since on road blending alone would not get the job done. Under the proposed rule, all “transportation fuels” will be included in the RFS II program. While PMAA supports this change, it has been working with the EPA on an exemption for small off road fuel blenders who do not wish to participate in the RFS program and take on the added regulatory burden of trading in RINS. PMAA met with the EPA regarding this matter on several occasions and was successful in winning a provision in the proposed rule that would allow blenders who blend less than 125,000 gallons to escape the complex RINS compliance burden.

PMAA’s comments expressed strong opposition to any attempt by the EPA to transfer obligated party status (parties which must meet mandatory annual renewable fuel blending volumes) from refiners to downstream blenders. While this is not a significant threat, the EPA did discuss the possibility of such a transfer in the proposed rulemaking. PMAA commented that it opposes a move to E-15 blends without liability protection for petroleum marketers for UST equipment failure and consumer misfueling. EPA is considering a move from an E-10 maximum blend for conventional vehicles to an E-15 blend in order to attain the 36 billion gallon per year blending goal established by Congress. PMAA’s comments also opposed the use of faulty EPA green house gas emission models and life cycle analysis that would limit the use of soy based biodiesel. The EPA is expected to finalize the rule early next year.

PMAA SUBMITS COMMENTS ON FDA PROPOSED RULE TO REGULATE TOBACCO PRODUCTS

PMAA filed comments this week on the Food and Drug Administration's (FDA) proposed rule to more closely regulate tobacco products. The FDA was given new regulatory authority over tobacco under the Family Smoking Prevention and Tobacco Control Act passed by Congress earlier this year. The Act grants the FDA new authority to regulate the manufacture, marketing, and distribution of tobacco products and authorizes the FDA to; require disclosure of tobacco product ingredients and additives; create standards for tobacco products, including standards for the reduction or elimination of certain constituents; restrict sales, distribution, advertising, and promotion of tobacco products; and require stronger health warnings on packaging.

PMAA comments opposed any new restrictions on marketing and advertising that would adversely affect sales to consumers who are not minors. PMAA told the FDA that tobacco is a legal product and restrictions should not be adopted that would limit consumers' right to purchase these products with relative convenience. PMAA called for the coordination of federal, state and local tobacco regulations into a single regulatory framework that would limit compliance burdens on small retailers. PMAA expressed concerns that an additional layer of new federal regulations would overlap and conflict with state and local regulations without concerted efforts at coordination.

PMAA comments opposed any attempt to require in-store product ingredient disclosure, moving tobacco display racks below the counter and graphic warning labels on packaging that makes product identification more difficult. PMAA supported a provision in the proposal that would exempt retailers from the responsibility of continually rotating product packages in order to display the array of new graphic warnings on a schedule set by the FDA. Instead, rotation of graphic warnings will be the responsibility of the manufacturer and distributor. PMAA also urged the FDA to crack down on the illegal sale of cigarettes on the Internet as well as black market sales by criminal organizations.

The FDA is expected to move forward with the rulemaking by late 2010.

MARKETER INPUT SOUGHT ON DEF STORAGE AND DISPENSING DOCUMENT

The Petroleum Equipment Institute (PEI) is seeking comments on its proposed changes to RP1100, its document that outlines recommended practices for storage and dispensing of Diesel Exhaust Fluid (DEF). The proposed changes may be viewed at www.pei.org/rp1100. Comments are due October 30.

PEI's review of its Recommended Practices for the Storage and Dispensing of Diesel Exhaust Fluid comes ahead of stricter federal diesel emissions standards set to take effect next year. DEF will reduce nitrogen oxide to near zero levels beginning with 2010 model year diesel trucks using Selective Catalytic Reduction (SCR) technology. Truck stops, cardlock operators and fleet refueling centers will likely be the first to provide DEF.

The proposed changes reflect the consensus of petroleum industry stakeholders. PEI sought input from service and installation companies, equipment manufacturers and DEF producers and distributors including PMAA.

CFTC NOMINATION HEARING; CANTWELL SEEKS MANIPULATION AUTHORITY

On Wednesday, the Senate Agriculture Committee held its first hearing under the helm of Chairwoman Blanche Lincoln (D-AR). Two commissioners – Bart Chilton and Jill Sommers – already serve as commissioners and are up for a second term. The other nominee, former Senate Republican staffer Scott O'Malia, was nominated last year by President Bush, but his nomination was blocked by Senator Maria Cantwell (D-WA) because of his position on regulating futures markets.

All nominees praised the Obama Administration's Treasury proposal to effectively regulate the commodity futures markets. Furthermore, Commissioner Chilton said that Congress needs to grant the CFTC more regulatory authority to review the amount of futures positions held by index investors, pension and endowment funds; change the manipulation standard so that the CFTC can effectively prove that a trader sought to manipulate futures prices; and give the CFTC criminal authority to bring cases against traders who artificially inflate/deflate futures prices.

Finally, Chilton and Sommers both agreed that the CFTC needs at least 100 more staff to effectively regulate futures markets, and this number does not include regulated carbon futures markets which will be created if a cap-and-trade bill passes Congress.

On a related topic, Senator Maria Cantwell (D-WA) recently introduced legislation (S. 1682) which aims to give the CFTC clear anti-market manipulation authority to police futures and swaps markets. The "Derivatives Market Manipulation Prevention Act of 2009 would make it easier for the CFTC to bring cases against individuals who possibly seek to artificially inflate or deflate commodity futures prices. Cantwell is concerned that the CFTC faces a higher burden of proof in manipulation cases than the SEC, Federal Energy Regulatory Commission and Federal Trade Commission. CFTC must currently prove a market participant had "specific intent" to do harm in manipulation cases while the other agencies need only to show there is reckless conduct.

C-STORE 7-ELEVEN FIGHTING INTERCHANGE FEES ON CAPITOL HILL

This week, 7-Eleven's "Stop Unfair Credit Card Fees" petition drive delivered nearly 1.66 million signatures from its customers who are fed up with excessive credit card interchange fees to members of Congress. The signatures were delivered in 130 boxes during a press conference 7-Eleven held on Wednesday. In 2008 alone, credit card interchange fees

cost 7-Eleven franchisees approximately \$160 million. Nearly \$48 billion in interchange fees were collected from all retailers nationwide last year.

PMAA and the Merchants Payments Coalition continue to work with lawmakers to pass credit card interchange fee reform legislation. Recently, Senate Banking Committee Chairman Chris Dodd (D-CT) indicated that he plans to move interchange fee legislation forward in the near future. The legislation is currently being drafted by Senate Banking Committee staff and details are still being worked out.

PMAA PARTNERS WITH TELVENT-DTN FOR WEBCAST

Telvent-DTN will host a webcast October 6 with PMAA staff to discuss the latest developments on legislation important to petroleum marketers. PMAA Vice-President Sherri Cabrera and Brandon Wright, PMAA's Manager of Regulatory Affairs and Communications, will provide updates on issues like climate change, futures market reform, and Congressional efforts to curb interchange fees.

You can register at <https://dtn.webex.com/dtn/onstage/g.php?t=a&d=809286637> for the webcast.

REGISTER FOR NACS BY GOING TO THE LINK ON THE WPMA WEB SITE

If you are planning on attending the NACS show in October and will be registering online, please go to the WPMA web site. We have set up a link on the home page that will take you to the online registration for NACS. Your state association will be given \$5 for each person who registers through this special link. Register today by going to www.wpma.com and click on the link for the NACS Show and help benefit your state association.

NACS SHOW 2009 SET FOR OCTOBER 20-23

The NACS Show 2009 is scheduled for October 20-23 at the Las Vegas Convention Center in Las Vegas, Nevada. PMAA will hold its fall meeting in conjunction with the NACS Show on October 19-20 at the Las Vegas Hilton.

The NACS Show is a buying show and THE place to find the most innovative, profit-building products and services in top categories. This year, you'll be able to explore some 1,300 exhibitors on the expo floor including 20 percent that are brand new to NACS. Additional information can be found by going to <http://www.nacsonline.com/NACSShow/Pages/default.aspx>. Please note that the NACS Show registration is separate from the PMAA Meeting Registration.

PMAA will continue to hold its Fall Meeting in conjunction with the NACS Show on October 19-20 at the Las Vegas Hilton. The PMAA meeting will begin with a Board Orientation mid-afternoon on October 19th followed by a Board Briefing. A welcome reception with NACS to State Association Leaders will follow. On the morning of October 20th, there will be a Buffet Breakfast followed by Regional Meetings and Task Forces / Divisions Meetings. The PMAA Board of Directors meeting is scheduled after lunch. Please view [http://www.pmaa.org/userfiles/file/Fall Meeting/2009/Conference Schedule with Room Assignments.pdf](http://www.pmaa.org/userfiles/file/Fall%20Meeting/2009/Conference%20Schedule%20with%20Room%20Assignments.pdf) for the Conference Schedule with Room Assignments.

If you have not registered to attend the meeting, we would encourage you to do so now to expedite your time during the conference! Please complete a PMAA Fall Registration form by going to <http://www.pmaa.org/pmaameetings/upcomingmeetings.asp> at your earliest convenience.

2010 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2010 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 16-18, 2010.

REGISTER NOW FOR THESE UPCOMING EVENTS IN 2009

October 9, 2009 – Hawaii Petroleum Marketers Association Golf Tournament – Ko Olina Golf Club, Kapolei, HI
October 22, 2009 - Nevada Petro Cup Kart Race - Fast Lap Indoor Kart Track - Las Vegas, Nevada

Petro Pete: “The most terrifying words in the English language are: I'm from the government and I'm here to help.”

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If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.

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USEPA Oil Pollution Prevention Regulation

Public Presentations for the Spill Prevention, Control, and Countermeasure (SPCC) Rule

The United States Environmental Protection Agency (USEPA), within Region 10 (Alaska, Washington, Oregon, and Idaho), will host a series of public presentations to discuss the Spill Prevention, Control, and Countermeasure (SPCC) regulations (40 CFR 112). The purpose of these presentations is to provide a basic understanding of the SPCC requirements, including recent regulatory amendments. The USEPA will provide an overview of the regulations along with examples and explanations helpful in understanding and applying the regulations and amendments. USEPA encourages interested parties to attend, including regulated facilities, SPCC consultants/planners, and any other persons involved with SPCC compliance.

EPA Region 10 Meeting Schedule

City	Date	Event Location	Time
Anchorage, AK	Friday, October 2, 2009	Z. J. Loussac Public Library, Wilda Marston Theater 3600 Denali Street, Anchorage, AK 99503 (907) 343-2975	1:00 p.m. – 5:00 p.m.
Seattle, WA	Tuesday, October 6, 2009	Seattle Public Library - Central Library Washington Mutual Foundation Meeting Room, Level 4, Room 1 1000 Fourth Avenue, Seattle, WA 98104 (206) 386-4636	8:00 a.m. – 12:00 p.m.
Portland, OR	Wednesday, October 7, 2009	Embassy Suites Hotel Portland Airport 7900 NE 82nd Avenue, Portland, OR 97220 (503) 460-3000	8:00 a.m. – 12:00 p.m.
Spokane, WA	Thursday, October 8, 2009	Spokane Convention Center, Meeting Room 207 334 West Spokane Falls Boulevard, Spokane, WA 99201 (509) 279-7000	8:00 a.m. – 12:00 p.m.
Boise, ID	Friday, October 9, 2009	Owyhee Plaza Hotel 1109 Main Street, Boise, ID 83702 (208) 343-4611	8:00 a.m. – 12:00 p.m.

USEPA webpage for SPCC information: <http://epa.gov/oilspill/>