WPMA
Western Petroleum Marketers Association
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weekly update

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SENATE APPROVES RED FLAG CLARIFICATION ACT

Just before the Senate recessed for Thanksgiving, it passed S. 3987, the Red Flag Clarification Act of 2010. The bill changes the definition of creditor and specifically excludes from the definition persons who "advance funds" by providing services in advance of receiving payment. This change is important because it excludes marketer members who extend credit to customers.

Similar legislation is pending in the House Financial Services Committee. It is not clear if this legislation could move as part of a larger package of bills. PMAA will report on any developments.

PMAA SUBMITS MORE COMMENTS TO THE CFTC AND CONGRESS

This week, the CFTC sought comments on its interim rulemaking (NPRM) on applying aggregate position limits for designated contract market (DCM) physical commodity futures contracts and swaps that are economically equivalent to such energy contracts, and comments on a rule regarding the determination of foreign exchange swaps and forwards. PMAA urged the Commission to apply aggregate position limits for all energy contacts including WTI, RBOB and Heating Oil (HO) traded on designated contract markets (DCMs), and similar energy swaps that are economically equivalent to such contracts. The contracts used on a regulated market are called futures contracts and contracts traded on unregulated markets are called swaps which both serve the same risk-management purposes. Previously, the CFTC lacked statutory authority to enforce speculative position limits on swaps traded on unregulated exchanges. With passage of the Wall Street reform legislation, the CFTC now has the authority to enforce aggregate position limits on energy swaps.

Once CFTC rulemakings are finalized, energy futures markets will deleverage, thereby limiting volatility and preventing excessive price increases. With mandatory clearing of OTC energy and currency swaps, the big banks and hedge funds will be forced to post margin at the end of each trading day which will reduce the amount of leverage in the market thereby reducing prices and soothing extreme volatility. In a regulated futures market prior to passage of the Commodity Futures Modernization Act (CFMAct) of 2000, traders had to settle trades at the end of each trading day, but with the explosion of unregulated swaps markets, hedge funds and big banks are able to become highly leveraged to maximize profits and which causes extreme volatility and excessive price increases at the rack. The big banks have been urging the CFTC for a hedge exemption to avoid margin and capital requirements. PMAA has urged the CFTC not to allow such an exemption.

Additionally, PMAA signed a letter to the CFTC to not exempt the four trillion–dollar-per-day foreign exchange (FX) market from the definition of swap under the Commodity Exchange Act, which ultimately affects all markets, and PMAA circulated a letter to the Commodity Market Oversight Coalition (CMOC) for signers on a letter to Congress urging full funding for CFTC so that the Dodd-Frank derivatives title can be properly implemented.

DEA TAKES ACTION ON SYNTHETIC MARIJUANA

On Wednesday, the U.S. Drug Enforcement Agency (DEA) used its authority under the Controlled Substances Act (CSA) to temporarily ban five chemicals found in synthetic marijuana products. It is expected the DEA will use its authority to impose a one-year ban on the chemicals while it and the Department of Health and Human Services study whether or not these chemicals need be permanently controlled.

The Comprehensive Crime Control Act of 1984 amends the CSA to allow the DEA Administrator to emergency schedule an abused, harmful, non-medical substance in order to avoid an imminent public health crisis while the formal rule-making procedures described in the CSA are being conducted.
This action is in response to a dramatic rise in calls to poison control centers regarding synthetic marijuana products and an increase in the number of states taking action to control the chemicals found in it.

SENATE FAILED TO REPEAL 1099 REPORTING MANDATE

This week the Senate failed to approve two amendments to the food safety bill (S. 510) that would repeal the form 1099 reporting requirement that was included in the 2010 Healthcare law. Because 67 votes were required for procedural reasons, it was presumed a tough obstacle to overcome.

Senate Amendment 4702, sponsored by Senator Michael Johanns (R-NE), that would have fully repealed the form 1099 reporting requirement and offset the cost with unused stimulus dollars failed by a vote of 61 – 35 (four not voting). Senator Max Baucus' (D-MT) amendment 4713, which would have fully repealed the form 1099 reporting requirement but did not include an offset, failed by a vote of 44 – 53 with three not voting.

PMAA strongly supports full repeal of Section 9006 of the "Patient Protection and Affordable Care Act" (healthcare law, P.L. 111-148) which will subject small businesses to onerous 1099 filings on all non-credit card purchases totaling $600 or more with any vendor in a tax year. When the law goes into effect in 2012, the 1099 reporting requirement will impose substantial paperwork and reporting burdens on all small businesses which will dramatically increase accounting costs, impose unjustified audits by the IRS, and subject more small businesses to the challenges of electronic filing. Because the law doesn't go into effect until 2012, PMAA and other business groups will have other opportunities to repeal the onerous law.

Small business groups and PMAA will continue to urge the Senate to repeal the 1099 reporting mandate in legislation that will require 60 votes.

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MIRAGE HOTEL EARLY BIRD RATE CUTOFF DATE HAS BEEN EXTENDED

The cutoff date for the early bird room rate for the Mirage hotel has been extended until December 17, 2010. Take advantage of the early bird rate of $145 now.

Petro Pete: "Great spirits have always encountered violent opposition from mediocre minds. -- ***Albert Einstein"***