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HAZMAT REGISTRATION

Don't forget that the 2009-2010 U.S. DOT HAZMAT registration deadline is July 1, 2009. If you operate a placarded truck, you must have a current U.S. DOT HAZMAT registration certificate. If you do not have a current registration certificate by July 1, 2009, you will lose authority to operate trucks hauling hazardous materials which include all petroleum products. It is not too late to register online at <http://www.phmsa.dot.gov/hazmat/registration>. You can pay online and instantly download the 2009-2010 operating certificate. Keep a copy of the certificate in the cab of each placarded truck and the original on file. Inspectors will ask to see a current HAZMAT registration certificate at roadside inspections. Any truck without a copy of the certificate will be taken out of service. Contact Mark S. Morgan, PMAA Regulatory Counsel by email at mmmorgan@pmaa.org.

SENATE AND HOUSE HOLD FUTURES MARKET REFORM HEARINGS

Yesterday Senate Agriculture Committee Chairman Tom Harkin (D-IA) held a hearing to address the unregulated over-the-counter derivatives markets tied to commodities. Testifying before the Committee were: Gary Gensler, Chairman of the Commodity Futures Trading Commission (CFTC); Lynn Stout, Professor, UCLA School of Law; Mark Lenczowski, Managing Director, J.P. Morgan Chase; Richard Bookstaber, Financial Consultant; David Dines, President, Cargill Risk Management; Michael Masters, Consultant, Partnership Financial Consulting; and Daniel Driscoll, Executive Vice President and Chief Operating Officer, National Futures Association.

Derivatives are financial contracts that derive their value from an underlying asset such as oil commodities. Over-the-counter (OTC) derivatives or swaps are basically paper contracts which have no physical correlation to the commodity and are traded between two parties – sometimes privately negotiated or traded on an exchange such as the Intercontinental Exchange (ICE) located in Atlanta, Georgia. Swaps and other highly leveraged financial derivative products have come under scrutiny by several economists and groups including PMAA because they are not cleared through a regulated clearinghouse. PMAA along with several other groups argue that requiring mandatory clearing of swap contracts would alleviate counterparty risk and bring integrity and stability to commodity markets.

During the hearing, Gary Gensler again endorsed aggregated position limits to minimize excessive speculation and manipulation along with broad regulatory reform to bring greater transparency and accountability to the OTC derivatives market. Specifically, Gensler said that the CFTC would review all hedge exemptions given to swap dealers over the last several years and the CFTC would focus on designated contract markets and exempt commercial markets by requiring that swaps (allowing for some exemptions) be cleared through a regulated clearinghouse and brought onto a regulated exchange. Furthermore, Gensler said that swap dealers should be subject to capital initial margining and reporting requirements.

In his written testimony, Michael Masters supported Gensler's proposal to require OTC derivatives to clear through a Designated Clearing Organization (DCO). He also said that futures markets were not created for Wall Street investment firms to take highly leveraged positions (basically bets), thus taking on risk. Rather, futures markets exist for the benefit of the bona fide physical hedger to reduce risk.

On the other side of the Hill, the House Agriculture Committee Subcommittee on General Farm Commodities and Risk Management held a hearing to address the implications of a legal case involving the Commodity Futures Trading Commission and off-exchange foreign currency futures contracts (CFTC v. Zelner). Specifically, the Zelner case dealt with the legality of certain foreign currency contracts sold to small investors, which is generally prohibited. The court decision held that these look-alike futures contracts were not really futures, but rather were spot contracts and could be legally sold outside of the CFTC's authority because they were not considered "futures contracts." This court decision led to boiler rooms and market contracts in foreign currencies as a way to defraud the public. The 2008 Farm Bill aimed to close this loophole created by the Zelner case.

BROAD COALITION OUTLINES FUTURES MARKET REFORM AGENDA

The Commodities Market Oversight Coalition (CMOC) has sent a letter to all members of Congress urging comprehensive reform of futures markets. PMAA signed onto the letter and many of the recommendations are consistent with priorities defined by PMAA's Futures Market Reform Task Force. We are especially grateful to Jim Collura of the New England Fuel Institute (NEFI) for drafting the letter and keeping CMOC organizations working together. CMOC is a coalition comprised of many trade associations, consumer groups and not for profit organizations with very diverse interests. Specifically, the coalition letter called on Congress to "act decisively to bring full transparency to all trading environments and platforms, to

prevent excessive speculation, and to close the door to potential manipulation” to fully close the “Enron Loophole,” the “Foreign Markets Loophole,” and the “Swaps Loophole,” and to require across the board aggregate speculation limits.

SPCC UPDATE

Still no word from the White House Office of Management and Budget (OMB) or the U.S. EPA on the status of the proposed rulemaking to extend the compliance deadline for the revision and implementation of SPCC plans for bulk plant operations. The EPA announced in May that a proposed rule extending the July 1, 2009 compliance deadline was in the final stages of approval at the OMB and would be published soon. The proposed rule is currently being reviewed by OMB, the last step in the regulatory process before being published. The proposed rule is likely to extend the compliance deadline by at least one year. Since there is little time for a public notice and comment on the proposed extension given the July 1, 2009 deadline, an expedited rulemaking is expected. PMAA has worked closely with the EPA on the proposed extension and receives regular updates from SPCC regulators on the proposed rule’s progress. PMAA will report any new developments as they occur.

VOTE DELAYED ON FDA REGULATION OF TOBACCO BILL

Legislation giving the FDA the authority to regulate tobacco (H.R. 1256) consumed the Senate floor this week. The Senate plan was to amend the House-passed version (H.R. 1256) with a substitute of its own which is almost identical to the S. 982 that passed the Senate Health, Education, Labor and Pensions (HELP) Committee (15 – 8) last month. S. 982 gained several cosponsors this week raising the total to 56, four short of a filibuster proof majority.

Senator Chris Dodd (D-CT), who is managing the bill on the floor this week, and Senator Majority Leader Harry Reid (D-NV) had trouble attracting the necessary 60 votes to avoid a filibuster. Senator Richard Burr (R-NC) and Senator Kay Hagan (D-NC) have a substitute amendment that would create a separate “Tobacco Regulatory Agency” to regulate tobacco products rather than giving the FDA the authority. A cloture vote on Senator Dodd’s substitute is scheduled for Monday which would limit debate (requiring 60 votes) to proceed to a final vote on the bill.

Several Republican amendments that were offered during the HELP Committee markup of S. 982 were withdrawn with assurances that they would be allowed to offer their amendment or their amendments would be included in Dodd’s amendment during Senate floor debate. This has stalled consideration of the bill.

As previously reported by PMAA, the Senate bill includes provisions that would allow the FDA to regulate sales of tobacco on Native American lands and regulate Internet tobacco sales but it still has problems for retailers. The bill would punish retailers if the packaging, labeling or advertising for tobacco products are found to be out of compliance with regulations that are to be determined by the FDA. Retailers are rarely involved with those decisions and should not be punished for manufacturers’ mistakes. Also, the bill does not prohibit states or localities from enacting additional measures on the sale, distribution, possession, exposure and access to tobacco products. During the markup process, an amendment, opposed by PMAA, was adopted and is part of the bill that will be voted on by the Senate that would place new labeling provisions requiring graphic health color photos to cover half of every pack of cigarettes.

S. 982 includes certain protections for retailers. A provision would protect retailers from accidental sales of tobacco to minors by a “good faith” clause. A retailer would be protected if he/she adopted and enforced a written policy about sales to minors, informed employees of relevant laws, established punishments for employees who violate that law and required employees to verify a purchaser’s age using a government-issued photo ID or an electronic scanning device. Additionally, the legislation would clarify that a retailer cannot be held liable for a violation if a minor presents a false government ID.

If passed by the Senate, President Obama is expected to sign the legislation. PMAA remains opposed to the bill.

CONYERS INTRODUCES INTERCHANGE BILL

Yesterday House Judiciary Committee Chairman John Conyers (D-MI) introduced the Credit Card Fair Fee Act of 2009, cosponsored with Representative Bill Shuster (R-PA). The legislation is similar to what Chairman Conyers introduced last year with then-Representative Chris Cannon (R-UT) to curb excessive interchange fees. It would allow retailers to negotiate fees with credit card companies in an accountable and transparent setting.

The bill would provide a mechanism for merchants to balance the market power of Visa and Mastercard and ensure a competitive market-based outcome to determine interchange fees. It would allow merchants to negotiate interchange fees with Visa and MasterCard and the issuing banks as a group. Visa and MasterCard would also be permitted to negotiate separately with individual merchants or groups of merchants and those agreements would be made public and filed with the Attorney General. If the parties fail to reach a negotiated agreement, the Attorney General would monitor the process and recommend to the House and Senate Judiciary Committees how Congress should respond to the conduct of the negotiations.

PMAA supported the Credit Card Fair Fee Act of 2008, which received bipartisan approval in the House Judiciary

Committee last year with nine Democrats and nine Republicans joining Chairman Conyers in passing the bill 19-16. PMAA also supports the Credit Card Fee Act of 2009, as well as the Credit Card Interchange Fees Act introduced several weeks ago by Representatives Peter Welch (D-VT) and Bill Shuster. 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. PMAA and 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.

GENSLER TESTIFIES BEFORE SENATE

On Tuesday Gary Gensler testified in his first Congressional hearing as chairman of the Commodity Futures Trading Commission (CFTC). The hearing, held before the Senate Appropriations Subcommittee on Financial Services and General Government, focused on fiscal 2010 appropriations for the Securities and Exchange Commission (SEC) and the CFTC. In Gensler's testimony, he endorsed aggregated position limits to limit excessive speculation and manipulation along with calling for a broad regulatory reform to bring greater transparency and accountability to the over-the-counter derivatives market. Specifically, Gensler also said that the CFTC is reviewing all hedge exemptions under its weekly Commitment of Traders report. In regards to CFTC staffing levels, Gensler stated that with an environment that has changed from an open outcry pit trading to highly sophisticated electronic markets, more staffers will be needed at the CFTC to combat excessive speculation.

During the hearing, Senator Susan Collins (R-ME) mentioned a meeting that she had with the Maine Oil Dealers Association who highlighted their concerns with the futures markets and the extreme volatility in oil prices over the last few months which was not based on fundamentals, but rather the influx of investment money in oil markets.

NEW PMAA PAC COMMITTEE MEMBERS

PMAA Small Business Committee (SBC) PAC Committee Members Sam Bell and Gary Harris have established a new PAC Committee membership made up of PMAA President Dan Gilligan who will continue to serve as PAC treasurer, Bill Wise of Wise Oil & Fuel, Inc., Jim Buhmaster of Buhmaster Energy Group, Ronna Alexander of the Montana Petroleum Marketers and Convenience Store Association, Ron Leone of the Missouri Petroleum Marketers and Convenience Store Association, Michael Fields of the South Carolina Petroleum Marketers Association and PMAA's Sherri Cabrera. PMAA's Sabrina Pitcher will continue to serve as PAC Administrator.

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

June 9-11, 2009 – MPMCSA Convention, Trade Show & Golf – Hilton Garden Inn, Missoula, MT
June 18, 2009 – UPMRA Golf Classic – Wasatch Mountain State Park, Midway, UT
June 23-25, 2009 – WOMA Convention and Golf Tournament – Suncadia Resort, Cle Elum, WA
July 29-30, 2009 – IPM&CSA Convention and Golf Tournament – Sun Valley Resort, Sun Valley, ID
August 30-31, 2009 – NMPMA Convention and Golf Tournament – Embassy Suites, Albuquerque, NM
September 20-22, 2009 – UPMRA Convention and Golf Tournament – Courtyard Marriott, St. George, UT

Petro Pete: "Before you criticize someone, you should walk a mile in their shoes. That way, when you criticize them, you're a mile away and you have their shoes."

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