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VICTORY! HOUSE PASSES H.R. 6604, INCREASING OVERSIGHT IN THE COMMODITIES MARKET

Today the bill that PMAA members led the fight to pass, H.R. 6604, the “Commodity Markets Transparency and Accountability Act of 2008,” passed by a vote of 283 to 133. A few technical adjustments were made to H.R. 6604 to keep the bill within the jurisdiction of the Agriculture Committee, otherwise the bill is identical to the version considered under suspension of the rules on July 30, 2008 which failed to obtain the necessary two-thirds votes for passage.

H.R. 6604 will impose critical position limits on non-commercial traders, increase rules and regulations on foreign boards of trade (FBOTs), increase transparency on over-the-counter (OTC) markets, require studies on pension fund investment in commodity markets, and restore the fundamentals of supply and demand to energy commodity markets.

A particularly strong provision is one where PMAA sought changes that are included. The bill includes a Position Limit Energy Group which will be made up with two-thirds commercial players and one-third non-commercial traders. The composition of this group is vital in ending excessive speculation because the group will advise the CFTC on setting appropriate position limits for traders.

Click [here](#) to see how your Representative voted.

In addition to the hard work that state association executives and marketers put towards communicating with Congress to pass this legislation, particular recognition goes to PMAA’s Futures Market Reform Task Force whose members, led by Gerry Ramm, put many dedicated hours towards ensuring passage of this legislation. The Task Force members are: Sean Cota, Vern Kelley, Lea Wilson, Jim Collura, Jim Smith, John Kulik, Mike Rud, Jay McKeeman, Eric DeGesero, Sam Bell, Tom Devine and Glen Muehlhausen. Others who have been highly engaged with the Task Force on this issue are: Craig Eerkes, Matt Bjornson, Steve Turner, and Tim Keigher.

Gerry Ramm made this point regarding excessive speculation, “PMAA has led the effort to rid the oil industry of excessive speculation in the marketplace and to lower gas and heating oil prices. Final passage of this legislation is important but because of our industry efforts the CFTC has already begun to increase regulations and oversight of the energy futures market. Furthermore, the threat of this legislation created a mass liquidation within the industry which led to lower fuel prices in the past two months.”

The Senate has not moved forward to vote on their bill, S. 3268, the “Stop Excessive Energy Speculation Act of 2008. [Senators need to hear from you and your petroleum and heating oil consumers.](#) Please tell your Senators to support passage of S. 3268. To contact your Senators, call 202.224.3121 or go to www.stopoilspeculators.com to send a letter.

SENATE TAX EXTENDER LEGISLATION DELAYED A WEEK

As reported earlier this week, the Senate was expected to take up energy tax extender legislation using H.R. 6049, the House passed version as the vehicle to extend dozens of expiring tax

breaks, but now the measure will have to wait until September 23. Senator John Cornyn (R-TX) prevented the bill from reaching the floor because the legislation did not include additional disaster aid for Hurricane Ike victims in Texas. Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) promised Senator Cornyn that more aid would be available once the government thoroughly assesses the damage in areas affected by the storm.

Senate Majority Leader Harry Reid (D-NV) said yesterday that the energy tax extenders will get 60 minutes of debate on September 23 followed by a vote to fully offset the costs of the bill. The Senate legislation would extend the one dollar per gallon production tax credit for biodiesel and the ten cent per gallon credit for small biodiesel producers through 2009. The bill also extends the one dollar per gallon production tax credit for diesel fuel created from biomass. Diesel fuel created by co-processing biomass with other feedstocks would be eligible for the 50 cent per gallon tax credit. The legislation would also close “splash and dash” loophole.

Gas stations would benefit under the bill. H.R. 6049 would extend the credit for installing non-hydrogen refueling equipment for one year which will allow gas station owners to claim a tax credit for 30 percent of the costs for installation. It would also increase the cap to \$30,000 per location, per year, for refueling installations. Overall, the tax incentives in the bill would cost an estimated \$18.2 billion over ten years most of which would be offset by repealing some of the current manufacturing tax deductions for major oil companies.

HOUSE PASSES THE NEW DEMOCRATIC LEADERSHIP ENERGY BILL

Earlier this week the House passed H.R. 6899, the Comprehensive American Energy Security and Consumer Protection by a vote of 236 – 189. Republicans, who objected to the bill because it would not open up all areas for offshore drilling, used a procedural motion to stall the measure, but that vote failed 191 – 226. The legislation permits oil and gas drilling beyond 100 miles and between 50 to 100 miles if adjacent coastal states allow it. New drilling within 50 miles would not be permitted and H.R. 6899 does not lift the current ban on drilling off the coast of Florida. The measure requires the U.S. government to exchange 70 million barrels of light, sweet crude oil from the Strategic Petroleum Reserve (SPR) and swap it with heavier crudes. House leadership drafted the legislation to provide political cover for moderate Democrats who needed to go on the record to say that they support offshore drilling.

H.R. 6899 extends for one year the one dollar-per-gallon production tax credit and the ten cent-per-gallon small biodiesel production credit. The measure also extends the one dollar-per-gallon production tax credit only for renewable diesel created from biomass. However, diesel fuel created from co-processing biomass with other feedstocks would be eligible for the 50-cent-per-gallon credit.

Gas stations would benefit under the bill. H.R. 6899 extends the credit for installing non-hydrogen refueling properties for one year which will allow gas station owners to claim a tax credit for 50 percent of the costs for installation. It would also increase the cap to \$50,000 per location, per year, for refueling installations. Overall, the tax incentives in the bill would cost an estimated \$19 billion over ten years most of which would be offset by repealing the current manufacturing tax deduction for major oil companies.

H.R. 6899 has a long way to go before it reaches the President’s desk. It is highly unlikely the measure will reach the President’s desk this year and even if it does, the President is likely to veto it.

SENATE ENERGY SUBCOMMITTEE HOLDS HEARING ON ENERGY SPECULATION

Energy Subcommittee Chairman Byron Dorgan (D-ND) of the Senate Energy and Natural Resources Committee held a hearing earlier this week on the role of speculative investment in energy markets. Testifying before the subcommittee included: Michael Masters, Masters Capital Management, LLC.; Robert McCullough, McCullough Research; Dr. Jeffrey Harris, Chief Economist, Commodity Futures Trading Commission; Blythe Masters, Securities Industry and Financial Markets Association; Terry Duffy, CME Group; and Fadel Gheit, Oppenheimer & Co. Inc. Senator Dorgan challenged the Commodity Futures Trading Commission (CFTC) staff report issued last week which downplayed the significance of institutional investment in commodity markets.

Michael Masters also issued a report last week which countered the CFTC report. Masters' report highlighted the need to impose strict position limits on non-commercial commodity traders which would reduce the amount of speculative positions held by those who have no physical connection to commodities. Senators Dorgan and Cantwell (D-WA) have indicated that they will push for the inclusion of excessive speculation language in the Senate's comprehensive energy bill.

PMAA CHALLENGES BUSH COMMENT ON GOUGING

Monday PMAA President Dan Gilligan sent a letter to President Bush expressing disappointment with the President's September 13, 2008 comments about gas gouging. The President said the Department of Energy and the Federal Trade Commission will be monitoring gas prices for gouging giving credence to the notion that gas gouging is occurring or is somehow a significant concern. "It may appear to the average consumer that the retailer is gouging when in fact the only choice is to dramatically raise prices or turn off the pumps," the letter said.

For a copy of the letter, please [click here](#).

HOUSE PASSES THE AMERICANS WITH DISABILITIES ACT

On Wednesday, the House passed the "Americans with Disabilities Amendments Act of 2008" (S. 3206) by an overwhelming majority. The measure is intended to redefine the term "disability," including by defining "major life activities" and "being regarded as having such an impairment."

From the time of passage of the original ADA, everyone realized the courts would have to fill in many of the blanks regarding implementation of the law particularly the scope of many of the definitions. The bill deletes two findings in the ADA which led the Supreme Court to restrict the meaning and application of the definition of disability. These findings were that there are "some 43,000,000 Americans have one or more physical or mental disabilities" and that "individuals with disabilities are a discrete and insular minority." Second, the bill affirmatively provides that the definition of disability "shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." It retains the term "substantially limits" from the original ADA definition but makes it clear that this is intended to be a less demanding standard that the terms "substantially" and "major" in the definition of disability must "be interpreted strictly to create a demanding standard for qualifying as disabled" as well as the Court's interpretation that "substantially limits" means "prevents or severely restricts."

Furthermore, the bill prohibits consideration of mitigating measures such as medication, assistive technology, accommodations, or modifications when determining whether an impairment constitutes a disability and the bill provides new instruction on what may constitute "major life activities." It provides a non-exhaustive list of major life activities within the meaning of the ADA. In addition, the bill expands the category of major life activities to include the operation of major bodily functions. Finally, the bill removes from the third "regarded as" prong of the disability

definition the requirement that an individual demonstrate that he or she has, or is perceived to, have an impairment that substantially limits a major life activity.

REMINDER: ADA DOES NOT REQUIRE CALL ASSIST BUTTONS ON DISPENSERS

An important reminder - the Americans with Disabilities Act (ADA) **does not** require installation of call assist buttons on dispensers for use by disabled persons. The issue is important because a marketer recently received a letter purported to be from a “law firm” stating that their disabled client was unable to pump gas at a certain location because the dispenser lacks a “handicap assist button”. The letter went on to demand that the marketer send a check in the amount of \$50 directly to the client within 12 days or face further legal action. The letter is incorrect. While the ADA requires marketers (in most but not all cases) to provide equal access to their customers with disabilities, it **does not** require call buttons on dispensers.

The ADA guidelines regarding equal access to service stations and c-store dispensers are as follows:

- A service station or c-store operator must provide refueling assistance upon the request of an individual with a disability. **However, the operator is not required to provide such service at any time that it is operating on a remote control basis with a single employee.**
- A service station or c-store operator must notify customers (e.g., using signs on or near dispensers) that individuals with disabilities can obtain refueling assistance by honking their horn or otherwise signaling an employee. The ADA requires no specific wording for the notification. Service stations and c-stores operating on a remote control basis with only one employee are not required to post a notification.
- A service station or c-store operator must provide the refueling assistance without any charge beyond the self-serve price if the customer wants only fuel. The attendant may provide assistance at a self-service pump or at a full-service pump. In either case, the customer must be charged the self-service price.

Compliance investigations by disability advocate groups, news reporters and state officials often find that employees are generally unaware of these ADA requirements even where notifications or non-mandatory call assist buttons are used. Retailers should review their operations to determine if the ADA guidelines apply. Enforcement on this issue has not been vigorous but a violation can bring up to \$50,000 for a first offense and may include additional court ordered monetary damages and other legal remedies.

ENVIRONMENTAL GROUPS SUE CITY OVER REFINERY UPGRADE PERMIT

Environmental groups have asked a California court to revoke a permit issued by a local municipality in July to Chevron for the modernization of its Richmond, CA refinery. The groups alleged that Richmond officials illegally certified the environmental impact report prepared for the project because the report failed to disclose that the refinery upgrades would allow Chevron to process heavier crude oil that would increase refinery emissions of mercury, selenium, and toxic sulfur compounds in surrounding neighborhoods.

CRUDE HITS \$99 AS STORM DAMAGED REFINERIES CLOSE & DEMAND DROPS

Crude prices on the New York Mercantile Exchange dropped below \$100 in a special trading session on Sunday. The falling price of crude is due to a drop in demand caused by the closure of 17 Gulf Coast refineries damaged by Hurricane Ike. U.S. crude for October delivery briefly traded at \$99.25 a barrel on the floor of the New York Mercantile Exchange, the first time oil has fallen below the \$100 a barrel mark in since April 2, when it hit \$99.84.

Prices have fallen nearly \$50 from the record high price of \$147.27 a barrel set on July 11 due to a flagging global economy. However, with nearly 20 percent of the nation's refining capacity temporarily closed, average national gasoline prices jumped 12 cents per gallon in just 48 hours. The AAA reported on Sunday that the states with the highest one-day increases were: Georgia - 17 cents, South Carolina - 15 cents, Tennessee - 15 cents, Alabama - 12 cents, Kentucky - 11 cents, and Arkansas - 11 cents. In Texas, the average price rose five cents to \$3.65 a gallon. Prices had already been rising in the Midwest and Southeast partly due to production delays caused by Hurricane Gustav. Gas remains about 31.1 cents below the record high average of \$4.11 a gallon on July 17.

Only four of the 17 storm-shuttered refineries remained closed and both the Colonial and Plantation pipelines that feed much of the Eastern Seaboard are back online and fully operational. Despite the relative lack of damage, supplies of finished product will remain very tight with suppliers moving to allocation.

PMAA MEMBER SERVICES SPOTLIGHT FEATURING: STAPLES BUSINESS ADVANTAGE

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PLEASE PRE-REGISTER NOW FOR PMAA'S FALL MEETING OCTOBER 3-4

The NACS Show 2008 is scheduled for October 4-7 at the McCormick Place in Chicago, Illinois. PMAA will hold its fall meeting in conjunction with the NACS Show on October 3-4 at the Hilton Chicago. The NACS Show registration is separate from the PMAA Meeting Registration! **Please note that NACS Housing is now closed and you will be required to call the hotels directly. The Hilton Chicago is sold out and only one-third of the hotels have any availability.** Please [view](#) for additional information.

We encourage pre-registration to expedite your time during the conference. For those who have hotel reservations, please be sure to complete a registration form at your earliest convenience. Please view the [Conference Schedule](#) and [register](#) for PMAA's Fall Meeting. Please note that there is a NORA Board meeting being held the afternoon of October 2nd. The PMAA meeting will begin with a Board Briefing in the late afternoon on October 3rd. A welcome reception with NACS to State Association Leaders will follow. On the morning of October 4th, there will be a Continental Breakfast followed by Regional Meetings and Issue Groups. The PMAA Board of Directors meeting is scheduled after lunch. There will be two special events taking place on Saturday which require separate registration. **On-site registration will not be available for these events.**

FROM THE ENERGY INFORMATION ADMINISTRATION

U.S. Average Retail Price for Gasoline - U.S. retail price for regular gasoline fell for the ninth consecutive week dropping another 3.2 cents to 364.8 cents per gallon. Unlike last week when prices increased slightly in the Gulf Coast and the Lower Atlantic portion of the East Coast, this week prices declined in all regions of the country. The price on the East Coast fell 2.2 cents to 360.9 cents per gallon. The average price in the Midwest slid 3.7 cents to 363.6 cents per gallon. Reversing a portion of last week's increase, the price in the Gulf Coast dipped by 2.7 cents to 355.1 cents per gallon, and remained the lowest average price of any region. The price in the Rocky Mountains fell for the seventh consecutive week dropping 4.6 cents to 376.7 cents per gallon. On the West Coast, the average price has now fallen for eleven straight weeks sliding another 4.6 cents to hit 381.3 cents per gallon. That price has plunged 64.7 cents since its record high set on June 23. Although the West Coast price remains the highest average regional price in the Nation, the differential between the national average and the average price on the West Coast has narrowed by more than 21 cents since that June 23 all-time regional high. The price in California dropped 4.6 cents to 385.9 cents per gallon.

U.S. Average Retail Diesel Fuel Prices - For the eighth week in a row, diesel prices dropped in all regions of the U.S. The average U.S. retail diesel price slumped 6.2 cents to 405.9 cents per gallon, a cumulative plummet of more than 70 cents from the all-time high set on July 14. Nonetheless, the price remained 113.5 cents higher than a year ago. The average price on the East Coast dropped 6.9 cents to 410 cents per gallon. The price in the Midwest slipped 5.1 cents hitting 401.5 cents per gallon. The price in the Gulf Coast dropped 5.3 cents to tie with the Midwest for the lowest price in the Nation at 401.5 cents per gallon. The price in the Rocky Mountains tumbled 7.9 cents to 410.5 cents per gallon. Plunging 9.2 cents, the average price on the West Coast reached 415.6 cents per gallon. In California, the price fell to 418.5 cents per gallon, a drop of 9.7 cents.