

# SOGGDA NEWS

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Southwestern Ohio Garage & Gasoline Dealers Association, Inc.



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Volume 38, No. 4

July/August 2010

## Interchange-Fee Reform

The excitement is palpable, but retailers cannot yet assume they have won interchange-fee reform. That is the message as Congress nears a crucial vote this week on the Wall Street Reform & Consumer Protection Act (H.R. 4173) and the Durbin Amendment on the reform of debit swipe fees.

A couple recent developments have placed a problem in the situation. A proponent of the so-called Financial Services Reform Bill—Senator Robert Byrd (D-W.V.)—passed away, and Sen. Scott Brown (R- Mass.), who had voted in favor of an earlier version of the bill, has withdrawn his support because of objections to a recently added \$19 billion bank-fee provision, which would have paid for the bill’s regulatory framework. Members of a House-Senate conference committee are planning to reconvene to determine an alternative means of funding. The banks, credit unions, and credit card companies have not given up on defeating this bill.

“That, combined with Sen. Byrd’s passing, makes the vote count possibly not there,” warned Beckwith, who says there is “no margin for error” in the House and Senate votes taking place later this week.

Although the Durbin Amendment still directs the Federal Trade Commission (FTC) to write rules ensuring that debit interchange fees are “reasonable and proportional” to the cost of processing transactions, and still exempts banks and credit unions with less than \$10 billion in assets from these rules, a few key changes were made in committee to secure crucial votes.

*New exemptions.* Government program prepaid and debit cards would be exempt from swipe-fee rules, as would be other prepaid cards.

*New discount guidelines.* An earlier provision in the Senate version that would have allowed merchants to offer discounts based on credit-card network was replaced with a provision that prevents VISA and MasterCard from limiting the number of networks upon which a debit transaction can be processed. Meanwhile, although merchants can still offer consumers a discount based on form of payment—e.g., debit, cash, check—new language states that they cannot offer discounts particular to a credit-card network or the bank issuing the card.

*New minimum and maximum guidelines.* A provision allowing merchants to set minimum amounts for credit transactions was modified to transactions of \$10 or less. At the same time, a provision that enables merchants to set maximum credit transactions was restricted to government entities or universities.

*Interchange wiggle room.* Individual banks can ask for special dispensation to change their interchange rates to reflect spending on fraud prevention, although they would need to prove that they were effectively preventing fraud, spending the money efficiently, and would have to comply with rules on fraud prevention.

Beckwith seemed confident that the bill’s supporters would be able to bring Brown back on board, but he warned of a “number of votes in play.” With this in mind, he urged retailers to call their local Senate and House representatives in support of the financial reform bill and specifically the Durbin Amendment.

“There is a great need for our industry, for more than just to vote, but also to show we were going to stand up for

*Continued on page 9*

# THE SOGGDA NEWS

Official publication of Southwestern Ohio Garage Gasoline Dealers Association is published 12 times yearly and dedicated to the betterment of the position of independents in the automotive and petroleum industry.

**Patricia S. Booker** Executive Director  
**Vonnie Schriml** Accountant

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## SOGGDA

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**Patricia S. Booker** Editor

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## Thefts of ATMs are on the rise.

Thefts of ATMs, where people walk away with an entire machine, are increasing infrequency, NPR reports. Four years ago, there were 120 reported ATM thefts nationwide. Two years later, Texas alone exceeded that number.

The thefts occur in pocketed clusters, as thieves hit multiple locations within a region. In California; Oakland reported four ATM thefts last month, while San Diego County encountered nearly twice that number in the past few weeks. An ATM theft can result in the loss of tens of thousands of dollars, as a fully stocked ATM can hold as much as \$200,000.

"The amount of money in some of these machines would blow you away," said Gary Akey, operations director with the Security Center in Dallas, a bank surveillance and security company. He added that two robberies last summer near Dallas together yielded \$250,000. "That's a pretty good payday for a couple of minutes work."

Removing an ATM is not easy, as thieves either physically batter a bank island with a truck or drive through a store window and then "lasso" the machine with a chain. In many instances, they also use a forklift.

"We do see banks targeted in the vicinity of construction sites," said Doug Johnson, vice president of risk management policy for the American Bankers Association. "Folks would find construction equipment or a backhoe that can dig the ATM out, theoretically."

Penalties for stealing ATMs are less severe than for bank robbery. An armed robbery, for instance, could lead to federal charges, but stealing an ATM is generally considered simple theft.

Merchants and banks are trying new precautions to protect their machines. One device called the Raminator incorporates a pair of steel plates that bolt machines in place. It has reduced ATM thefts in Australia by 95 percent. However, such equipment is expensive.

Other merchants employ steps that are common for preventing almost any type of crime, such as improving the lighting around the machines, and moving ATMs deeper into their stores.

Despite the theft risk, few are considering getting rid of ATMs.

"It's less about the money you make by having the ATM and really about the customers you gain." "The ATM's job is to give the customer money - and the rest of the store is designed to give customers a chance to spend the money."

## Are you online?

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## Ohio Commercial Activity Tax Information

### CAT Tax on consignment fuel

When a wholesaler of motor fuel delivers gasoline to various retailers for sale to consumers, the wholesaler maintains ownership & title to the gasoline while stored at the retailers location. The wholesaler will have a contract to protect against bankruptcy of the retailer, so that he may recapture the fuel to sell to another retailer.

Retailers pay the wholesaler for fuel they sell based on a price set on the date of delivery and this has not changed to accommodate for the Cat Tax. In most agreements the wholesaler will deliver fuel to retailers with the understanding that payment for the fuel will be made once the retailer sells the fuel.

A ruling states that retailers only need to pay CAT on the commission they retain from retail fuel sales made to customers of the service station. In other words, retailers are not subject to CAT on the portion of the gross receipts they collect from retail fuel sales that is remitted back to the wholesaler.

Thanks to Vonnie Schriml and Duncan Oil for providing information for this article.

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## General Counsel Corner

By: Peter H. Gunst, Esq.  
pgunst@aggt.com

### A Morality Tale

Equilon Enterprises trading as Shell Oil Products (“Shell”) had a problem with a service station that it owned in Riverside California. The local watershed project authority informed it of a significant groundwater contamination problem at the station that could require extensive remediation, and threatened to cause a spill that would result in millions of dollars of liability to Shell.

When the authority demanded that it enter into an indemnification agreement, Shell concluded that it would cost it between \$300,000 and \$500,000 to install a containment system; that it would be required to spend \$40,000 a year to maintain the system; and that a spill could result in a liability to Shell of between twenty million and fifty million dollars.

What to do? Shell was already in negotiations to sell the station to its dealer, Elias Atallah, for a sum of \$759,575. So why not unload the environmental landmine on its unsuspecting dealer?

It is undisputed that Shell never told Mr. Atallah about the groundwater problem, the cost of remediation or the potential environmental liability. It also failed to advise Mr. Atallah that Shell had allowed the conditional use permit for the station to lapse.

After the sale to Mr. Atallah had closed, he learned that the permit had lapsed when he started to install new underground storage tanks. When he sought to obtain a new permit, its issuance was opposed successfully by the watershed authority, which revealed the site’s significant environment problems. Mr. Atallah then learned that the station was inoperable.

Mr. Atallah sued for fraud in state court, and Shell adamantly resisted his right to obtain any remedy even though it conceded that it had concealed from him obviously significant information concerning the station’s environmental problems.

Ultimately a jury ruled in Mr. Atallah’s favor, awarding him \$1,700,000 in damages attributable to his inability to operate the station. Mr. Atallah’s claim for punitive damages, however, was dismissed by the court for technical reasons.

Rather than let things ride, Shell appealed citing technical arguments that only a lawyer could love. Mr. Atallah countered by appealing the trial court’s dismissal of his request for punitive damages.

In a non-published opinion released in late 2008, *Atallah v. Equilon Enterprises*, the California intermediate appellate court affirmed the jury’s finding of liability and remanded the case to permit Atallah to present his case for punitive damages.

Rejecting Shell’s contention that there was “no evidence of any intent to conceal” the station’s true condition, the

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appeal courts found its argument to be “remarkable” given the “campaign of deception” that Shell had pursued against Mr. Atallah.

The appeals court concluded  
In many ways, this case is a paradigm fraudulent concealment case. There is no doubt about what was concealed, no doubt that what was concealed was not merely material but crucial — a literal deal-breaker — and no doubt that [Shell] intended to deceive Atallah. There simply was no other way of unloading the gas station as a gas station, especially for the sum of \$759,575.

The subsequent trial of Mr. Atallah’s punitive damage claim in March, 2010 resulted in the award of an additional fifty million dollars in punitive damages.

In a statement released after the trial, Mr. Atallah’s attorney described his client as “the quintessential little guy fighting for his rights.” And indeed he is, having to pursue his claim through a legal battle that lasted many years.

But what of Shell? Why did it embark upon what the appeals court labeled a “campaign of deception” intended to exact \$759,575 from Mr. Atallah? That sum does not even amounting to a rounding error on Shell’s massive multi-billion dollar financial statement.

Is it surprising that Shell engaged in behavior more befitting a cheap con artist than a major corporation? Given what we have learned about corporate morality over the past year and a half, maybe it is not so surprising at all.

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To access the latest articles by the Service Station Dealer’s legal counsel, please visit the “Service Station Dealers: Legal Issues” section of the Astrachan Gunst & Thomas P.C. website at:  
[http://www.agtlawyers.com/resources/pet\\_roleum.html](http://www.agtlawyers.com/resources/pet_roleum.html).

## Ohio BWC News

### Check out our new, incentive programs!

Recently, BWC unveiled a host of new and improved discount and incentive programs for employers. We are excited about them and encourage you to examine the benefits they can offer your business.

Offerings such as our Deductible Program and Group-Retrospective-Rating Program give employers the opportunity to lower their workers compensation costs by agreeing to take on a level of risk that works best for them.

We revamped our Drug-Free Workplace Program into our new Drug-Free Safety Program (DFSP). The new program gives employers the tools they need to make their workplaces safer by reducing the chances of a work-related injury. It is easier to understand and implement, more actuarially sound, and offers improved measurement and evaluation tools to maintain effectiveness. Private employers are eligible for DFSP beginning July 1, 2010.

These BWC programs and others like them can provide a financial benefit for employers. More importantly, they can also help employers sharpen their focus on safety and claims management. To learn more, visit [ohiobwc.com](http://ohiobwc.com), click on Ohio Employers, then choose the Programs link.

### Private employer base-rates reach lowest level in two decades

Private employers will realize an overall premium rate decrease of 3.9 percent effective July 1, 2010. This

means 2010 private employer rates are 35 percent lower than policy year 2007, and they are at their lowest level of the past two decades.

BWC Administrator Marsha Ryan said, "The overall premium rate decrease represents another milestone in setting fair, equitable and competitive workers' compensation rates for Ohio. The lower rates being paid by the majority of Ohio's private employers are providing savings they can now invest in their operations, supporting future job growth and economic development in Ohio."

BWC's actuarial staff recommended the decrease in private employer rates, consistent with the recommendation of actuarial consultant, Deloitte Consulting LLP. The change meets a requirement that BWC establish rates at the lowest level possible to maintain a solvent State Insurance Fund.

The average rate change will impact employers based on the various manual classifications reported. Some manual classifica-

tions will realize a rate reduction higher or lower than 3.9 percent.

### A notice about coverage for acts of terrorism

Coverage for acts of terrorism is currently included in your policy. Under your existing coverage, any losses resulting from certified acts of terrorism would be partially reimbursed by the U.S. government using a formula established by the Terrorism Risk Insurance Act and the Terrorism Risk Insurance Program Reauthorization Act of 2007. Under this formula, the U.S. government generally pays a percentage of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

BWC does NOT include any additional assessment for this coverage for acts of terrorism. In addition, BWC does not include any charges for the portion of losses covered by the U.S. government under the Act. This notice is for your information only and does not require any action on your part.

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# SOGGDA SAFETY

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## Facility Parking Lots

### What hazards exist in our parking areas?

- Lack of lighting
- Lack of marked walkways
- Lack of signage and traffic control information
- Space availability
- Heavy pedestrian and vehicular traffic at specific times
- Weather
- Workplace violence issues

### What types of personal behaviors can contribute to incidents in parking lots?

- Failure to stop, look and listen
- Walking and talking
- Hurrying
- Parking in tight or improper spaces or where visibility is poor
- Backing without looking
- Not using inside and outside mirrors
- Not warning others with your horn
- Talking to passengers or on cell phone
- Lack of courtesy
- Making assumptions about other drivers (for example, that they see you and will stop)
- Lack of awareness of a change in the situation
- Large crowds in the parking area

Large numbers of people, people in a hurry to leave, limited exits/entrances, bad weather and poor lighting equal a disastrous outcome both for pedestrians and drivers.

### Strange surroundings

When in an unfamiliar parking lot, follow these safety rules:

- Walk in pairs or small groups, especially at night and in commercial parking lots like malls or shopping centers;
- Familiarize yourself with the parking lot. If uncomfortable, find another place to park;
- Park in well-lighted areas and next to poles, if possible, for easy identification and location of your vehicle;
- Be aware of everything and everybody around you at all times;
- Look inside before entering your vehicle;
- Lock your vehicle after entering,

and turn the lights on;

- Have your keys in hand before you reach the vehicle.

The key to safety in parking lots is for every person to look out for the other person, be courteous, do not be in a hurry, and have a little patience.

### Quiz

Circle the correct answer.

1. A pedestrian and vehicle can collide, resulting in serious injury for the vehicle operator. True False
2. Most accidents result from personal behaviors or acts. True False
3. Hurrying and large groups of people can lead to potential hazards and accidents. True False
4. Pre-planning when entering a parking lot can reduce problems and the likelihood of an accident when leaving. True False
5. Lighting, awareness of surroundings, looking before entering your vehicle, and having your keys ready when reaching your vehicle are of no concern in unfamiliar parking areas. True False

Answers:

1. F, 2. T, 3. T, 4. T, 5. F



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## BP Struggles in Big Picture...

### As shares sink, analysts suggest company may be broken up, purchased

Shares in BP plunged again in London after yet another selloff in New York Wednesday, wiping out more than \$82 billion in value from the London-based oil and natural gas firm, said ABC News. The latest selloff came after oil industry analyst Matt Simmons speculated for *Fortune* that a bankruptcy filing was likely within a month. "They're going to run out of cash from lawsuits, cleanup and other expenses," he told the magazine.

Its shares have fallen more than 40% since the April 20 spill, said ABC News, and there has been chatter about a possible bankruptcy filing by BP amid U.S. political pressure on the company to halt dividend payments and pay even more compensation for the Gulf of Mexico oil spill. That might be extended to include unemployment benefits for thousands of U.S. workers affected by the spill.

The stock had dropped as much as 11% to a 13-year low at the London opening, although it recovered some ground by midmorning, trading 4.3% lower at 374.50 pence (\$5.47), said the report, as analysts suggested the selloff was overdone.

"One really smart thing that Obama did was about three weeks ago he forced BP CEO Tony Hayward to put in writing that BP would pay for every dollar of the cleanup. But there isn't enough money in the world to clean up the Gulf of Mexico. Once BP realizes the extent of this, my guess is that they'll panic and go into Chapter 11," Simmons added.

Meanwhile, BP appears to be mystified about the share decline, ABC News said. "The company is not aware of any reason which justifies this share price movement," it said in a statement on its website yesterday. "BP faces this situation as a strong company. In March, it was

indicated that the company's cash inflows and outflows were balanced at an oil price of around \$60/barrel. This was before the costs of the incident. Under the current trading environment, we are generating significant additional cash flow. In addition, our gearing is currently below the bottom of our targeted range."

The firm added: "Our asset base is strong and valuable, with more than 18 [billion] barrels of proved reserves and 63 [billion] barrels of resources as at the end of 2009. All of the above gives us significant capacity and flexibility in dealing with the cost of responding to the incident, the environmental remediation and the payment of legitimate claims."

In a widely circulated research note cited by ABC News, Abuthnot analyst Dougie Youngson wrote last week: "The key question now is whether BP, and not just BP CEO Tony Hayward, can survive."

Lysle Brinker, co-head of the equity department at IHS Herold, agreed that the oil giant is staggering. "In any scenario, from worst case to best case, there is a strong likelihood that BP will emerge from this situation with a much changed corporate and ownership structure than it had before," Brinker said, according to the media outlet. "You can't rule out bankruptcy or a takeover, but we think it is more likely that to compete going forward BP will need to take on some form of minority equity partner. A closer relationship with a large national oil company,

possibly of Chinese origin, is a percentage-play scenario."

Most analysts, including those at the global banking concern Barclays Capital, steadfastly rejected the notion that BP could be "toast," said the report, with some industry players even viewing BP's shares as attractive and already priced to reflect worst-case liability costs.

BP's liabilities are likely to exceed \$20 billion, the report said, factoring in the Justice Department's criminal probe, which could bring heavy fines, as well as a gusher of class-action lawsuits. Some estimates have reached as high as \$40 billion, and are based on assumptions that the leak continues through the end of the summer, possibly worsened by hurricanes.

It is unlikely another Western oil company, such as ExxonMobil or Shell, would attempt to takeover BP because of the daunting and uncertain liability questions, said the report, and also because of antitrust laws. But BP and other Western oil companies have already been facing intense, possibly game-changing competitive pressures from Chinese oil companies, such as PetroChina and Sinopec, which are mainly government-owned, added ABC News.

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## Toxic Undersea Oil Plumes Lurk in Gulf of Mexico

Undersea clouds of oil that kill marine life have spread for miles in the Gulf of Mexico from BP's leaking Macondo well, according to data released by the National Oceanic and Atmospheric Administration today.

Water samples collected by the R/V Weatherbird II vessel have confirmed biodegraded crude oil in two undersea layers as far as 40 nautical miles northeast of BP's seabed leak, NOAA Administrator Jane Lubchenco said at a press briefing. The vessel's samples show oil as deep as 3,300 feet in the water, Lubchenco said.

"The bottom line is that yes, there is oil in the water column, it's at very low concentrations, and we will continue to release those data as soon as they are available," Lubchenco said at a press conference held jointly with Coast Guard Admiral Thad Alien. "That doesn't mean that it does not have significant impact."

Researchers have said the oil slick washing ashore is a small portion of what has leaked and the undersea crude can wipe out marine life while remaining invisible from the surface. Lubchenco said not enough data is available to determine the quantity of oil below the surface. However, she said oil was found at volumes of 0.5 parts per million in the cloud to the northeast of the leak.

### 'No Evidence'

The tests are the second confirmation of the existence of oil plumes in the Gulf, which BP Chief Executive Officer Tony Hayward has disputed. Research by Samantha Joye at the University of Georgia, and analyzed at Texas A&M University, also confirmed the presence of undersea oil.

Hayward said June 6 that there was "no evidence" of the plumes in the Gulf of Mexico. The company is waiting for confirmation from NOAA and the Environmental Protection Agency, Robert Wine, a BP spokesman in Houston, said in a telephone interview yesterday.

NOAA and the University of South Florida held a joint press conference this afternoon with more information on the undersea oil. NOAA Chief Science Advisor Steve Murawski said the oil is not in continuous plumes, but is broken up in cloud-like patterns.

### 'Invisible' Oil

Ernst Peebles, a University of South Florida professor who was aboard the Weatherbird, said oil was found in the water across 22 nautical miles of sampling area. While the oil was 'invisible' to the naked eye, it was detectable with analysis, he said.

The university's scientists found oil in two layers of the ocean at 400 meters and 1,000 meters. They tracked the plumes for tens of kilometers, starting 35 kilometers north-northeast of the well, said Vickie Chachere, a university spokeswoman.

BP didn't immediately return a phone call seeking comment on NOAA's confirmation of the new data.

The concentrations at more shallow depths were identified as having come from BP's leaking well, Lubchenco said. The scientists were not able to find conclusive evidence that the deeper concentrations came from the well, she said. Water samples taken 142 nautical miles to the southeast of the well were not consistent with the spill, she said.

"These are huge volumes of oil,

many kilometers of oil, and to have oil in many cubic kilometers of water suggests a very significant total amount," said Ian MacDonald, an oceanographer at Florida State University in Tallahassee, who is doing separate research on the spill.

### Ocean Slices

MacDonald estimates the well is leaking 26,500 barrels to 30,000 barrels a day, six times more than the figure that BP and the government used from April 28 to May 27. The company has captured 14,842 barrels in the last 24 hours, Allen said.

Additional data will allow researchers to produce images of slices of the ocean similar to those produced by magnetic resonance imaging machines used by doctors. The data will allow the scientists to determine crude concentrations in the different slices, Lubchenco said. The NOAA vessel Gordon Gunter has returned to shore and is analyzing its findings. A second research ship, the Thomas Jefferson, is collecting additional samples, she

Hayward said June 6 oil naturally floats in water, and that crude seen deep in the water was in the process of making its way to the surface, according to reports in the Associated Press.

### Chemical Dispersants

Scientists maintain that oil could have become trapped in the water due to the company's unprecedented application of chemical dispersants, natural phenomenon, or a combination of the two.

BP has applied more than a million gallons of dispersant to the spill, and has almost another half-million gallons on hand to apply if needed, according to a statement from the Unified Command made up of BP and U.S.

Coast Guard officials. The dispersants have been applied to oil at the surface, as well as to crude gushing out of the well on the sea floor.

The dispersants may have caused the crude oil to sink more than it normally would have.

"There would be a threshold

*Continued on next page...*

SOGGDA News



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## Undersea Oil Plumes Con't

where putting dispersant in the oil would modify the viscosity,” said Nicholas Wienders, a professor in the oceanography department at Florida State University. If the viscosity of the oil was changed, it could react differently to the ocean’s circulation, and behave in ways not normally expected, he said.

### Trapped Oil

Natural density differences in water layers could also have trapped the oil, said Nancy Rabelais, executive director of the Louisiana Universities Marine Consortium.

The pressure being applied to crude surging out of the well may also change its dispersion, said MacDonald of Florida State University.

As the oil is forced out of the broken pipe at hundreds of miles an hour, it hits the relatively lower-pressure area near the sea floor that breaks the oil into particles about the thickness of a human hair, MacDonald said. Their small size, exposure to significant pressure, and cold temperatures near the sea floor may all contribute to oil sinking, he said.

### ‘Derelict’ in Duty

“There is no scientific doubt about the processes that would form mid-water plumes,” he said. BP and the Coast Guard haven’t gauged the pressure of the leaking oil, making it more difficult for scientists to predict and track plumes, said MacDonald. “It’s another example of both BP and the government being derelict in their duty,” he said.

Captain Brent “Hollywood” Shaver, 59, who operates a charter fishing boat in Florida and Alabama waters, laughed when asked about BP’s comment that there aren’t underwater oil plumes.

“They’re crazy,” he said in a June 7 interview. “You know, when you spill diesel fuel in the water they always tell you not to put dish soap on it because it just makes it sink. That’s what is happening here. It’s sinking.”

To contact the reporter on this story: Jessica Resnick-Ault in New York at [jresnickault@bloomberg.net](mailto:jresnickault@bloomberg.net).

[www.bloomberg.com](http://www.bloomberg.com)

## Interchange-fee Reform Continued from Front Page

this—a great need for our industry to weigh in on final passage of the bill,” he said, noting that some of the bill’s Congressional supporters believe the Durbin Amendment imperils its passage. “It is incumbent on us to make up for opposition put forward by credit unions to come forward and make the Durbin Amendment a net positive for the bill, rather than a negative.

For this bill and future bills, and our industry’s credibility, that is very important.”

One of the banks and credit

union’s arguments against swipe-fee reform is the contention that retailers will not pass on any fee reductions to consumers.

You do see the cost savings passed along in the form of cash discounts at the pump and rewards.

The banks who oppose the bill over bank fee provisions are also saying it will be passed on to bank customers in all the prices they pay in bank services.

## Federal & State Poster

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## Tornado Information

Tornadoes are nature's most violent storms. Spawned from powerful thunderstorms, tornadoes can cause fatalities and devastate a neighborhood in seconds. A tornado appears as a rotating, funnel-shaped cloud that extends from a thunderstorm to the ground with whirling winds that can reach 300 miles per hour. Damage paths can be in excess of one mile wide and 50 miles long. Every state is at some risk from this hazard.

Some tornadoes are clearly visible, while rain or nearby low-hanging clouds obscure others. Occasionally, tornadoes develop so rapidly that little, if any advance warning is possible.

Before a tornado hits, the wind may die down and the air may become very still. A cloud of debris can mark the location of a tornado even if a funnel is not visible. Tornadoes generally occur near the trailing edge of a thunderstorm. It is not uncommon to see clear, sunlit skies behind a tornado.

The following are facts about tornadoes:

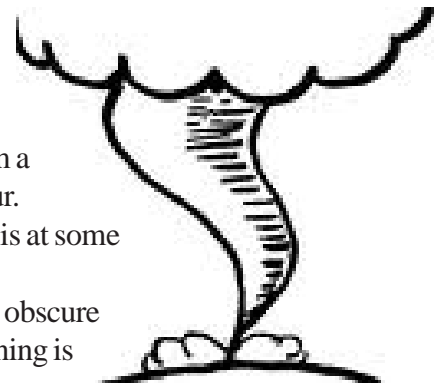
- They may strike quickly, with little or no warning.
- They may appear nearly transparent until dust and debris are picked up or a cloud forms in the funnel.
- The average tornado moves Southwest to Northeast, but tornadoes have been known to move in any direction.
- The average forward speed of a tornado is 30 MPH, but may vary from stationary to 70 MPH.
- Tornadoes can accompany tropical storms and hurricanes as they move onto land.
- Waterspouts are tornadoes that form over water.
- Tornadoes are most frequently reported east of the Rocky Mountains during spring and summer months.
- Peak tornado season in the southern states is March through May; in the northern states, it is late spring through summer.
- Tornadoes are most likely to occur between 3 p.m. and 9 p.m., but can occur at any time.

## What to do Before a Tornado

Be alert to changing weather conditions.

- Listen to a commercial radio or television newscasts for the latest information.
- Look for approaching storms
- Look for the following danger signs:
  - Dark, often greenish sky
  - Large hail
  - A large, dark, low-lying cloud (particularly if rotating)
  - Loud roar, similar to a freight train.

If you see approaching storms or any of the danger signs, be prepared to take shelter immediately



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# FDA “Color Guard”

## Federal rules on cigarette packaging, sales, marketing poised to take effect

The U.S. Food & Drug Administration’s (FDA) final rule containing a broad set of federal requirements to curb access to and the appeal of cigarettes and smokeless tobacco products to children and adolescents, issued in March, goes into effect June 22, 2010. “Regulations Restricting the Sale & Distribution of Cigarettes & Smokeless Tobacco to Protect Children & Adolescents” restricts the sale, distribution and promotion of these products.

Also, the FDA said cigarette packs no longer can feature names such as “light,” “mild,” “medium” or “low,” which many smokers wrongly think are less harmful than “full-flavor” cigarettes, reported the Associated Press. Cigarette makers are replacing those words with colors such as gold, silver, blue and orange on brands that make up more than half of the smokes sold across the country.

New requirements relating to sales and distribution:

- Prohibits the sale of cigarettes or smokeless tobacco to people younger than 18.
- Prohibits the sale of cigarette packages with fewer than 20 cigarettes.
- Prohibits the sale of cigarettes and smokeless tobacco in vending machines, self-service displays, or other impersonal modes of sales, except in very limited situations.
- Prohibits free samples of cigarettes and limits distribution of smokeless tobacco products.

New requirements relating to marketing (labeling, advertising and promotion):

- Prohibits tobacco brand name sponsorship of any athletic, musical or other social or cultural event or any team or entry in those events.
- Prohibits gifts or other items in exchange for buying cigarettes or smokeless tobacco products.
- Requires that audio ads use only words with no music or sound effects.
- Prohibits the sale or distribution of items, such as hats

and tee shirts, with tobacco brands or logos.

Enforcement of the new rule will begin once it becomes effective on June 22, 2010. The FDA said that it will work closely with states and territories to ensure that retailers comply with the rule. FDA will also work with the retail community over the coming months to educate them about the new requirements and assist them in understanding how to comply with them and help protect our children and adolescents from these addictive products.

Manufacturers and retailers who do not comply with the rule may be subject to enforcement action, the FDA said. The rule was originally crafted by the FDA in the 1990s. After being set aside by the Supreme Court, it was included as a key provision of the 2009 Family Smoking Prevention & Tobacco Control Act.

Anti-tobacco advocates say the colors are just as bad as the words, but tobacco companies argue they have a right to let smokers know which products are which. Companies insist the words tell smokers about the taste, feel and blend of a cigarette, not health risks. The cigarettes usually feature different filters and milder-flavored blends. Long years of advertising, however, emphasized measurements of lower tar and nicotine in “light” cigarettes, even though those were measured with smoking machines that don’t mirror how real smokers puff.

Studies show that about 90% of smokers and nonsmokers believe that cigarettes described as “light” or have certain colors on the packages are less harmful even though “all commercial cigarettes are equally lethal,” David Hammond, a health behavior researcher at the University of Waterloo in Canada, told the news agency.

Colors shape perceptions of risks on all products, Hammond said. For example, mayonnaise and soda usually use lighter colors on their packaging to distinguish between diet, light and regular products. He called the removal of those few words on cigarette packs “necessary but not sufficient measures” to improve public health or reduce false perceptions.

“This is essentially mopping up the worst excesses of what the courts in the U.S. have judged to be deceptive advertising,” he said. “Tobacco companies are going to need words to distinguish their brands; it’s just a question of identifying what descriptors or words lead to false beliefs.”

He suggested the FDA take the ban even further and restrict

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SOGGDA News

## FDA “Color Guard” Continued

both color and words such as “smooth” and “slim.”

Other countries are considering going even further. The Australian government proposed legislation last month that would make manufacturers sell cigarettes in plain, standard packaging, without colors and logos. More than 40 countries already have laws prohibiting terms similar to what the FDA is banning.

“Absent this information, massive confusion in the marketplace would result,” James E. Swauger, vice president of regulatory oversight for R.J. Reynolds Tobacco Co., wrote in a letter to the FDA cited by AP. He warned that if the FDA were to go as far as banning colors, consumers would not be able to distinguish between brands, and manufacturers could be limited to one type of cigarette per brand because they would have no other way to distinguish their products.

The company, owned by Winston-Salem, N.C.-based Reynolds American Inc., made slight changes to some of its brands’ packs, but for some, it was simply removing the words like “light” on already colorful packages.

Philip Morris USA has made more than 150 packaging changes to comply, said AP. It also has included inserts in packs and displays at retail locations telling customers to “In the Future, Ask For...” the new name or color of their brand.

For example, the company is replacing its Marlboro Light cigarettes with Marlboro Gold Pack; its Marlboro Menthol Milds will be known as Marlboro Menthol Blue Pack. Philip Morris USA is owned by Altria Group Inc., based in Richmond, Va.

While customers may already see some of the new packaging in stores, calling their smokes by their old names may be a harder habit to break than smoking itself. “I’ll ask for Newport Light 100s, and I’ll let them decipher it,” a customer—whose brand made by Greensboro, N.C.-based Lorillard Inc. is now known as Newport Menthol Gold—told AP. “It’s just kind of ridiculous in the sense that you know they’re harmful for you.”

Reynolds American unit Santa Fe Natural Tobacco Co., Santa Fe, N.M., announced that it has changed the packaging for two of its Natural

American Spirit cigarette styles as a result of the new federal requirements. Ultra Light Mellow Taste Cigarettes, formerly in yellow and white packaging, are now in a solid orange pack. Menthol Light Mellow Taste Cigarettes, currently in green and white packaging, are changing to a solid, vibrant green.

Natural American Spirit Menthol Full-Bodied Taste Cigarettes will continue to be a dark green package.

“The products themselves have not changed,” said David DePalma, senior director consumer marketing. “Our tobacco blends use premium quality, 100% additive-free, natural tobacco. That has not and will not change. New labeling requirements would have made it difficult to identify our Natural American Spirit styles with color gradations on the packs; however, the new solid colors for these two styles fit well with the other styles in our line, which are predominantly solid colors, so there is a serendipitous outcome to this change.”

Cigarette brand name, color changes include:

- Marlboro Lights: Marlboro Gold Pack.
- Marlboro Medium: Marlboro Red Label.
- Marlboro Menthol Milds: Marlboro Menthol Blue Pack.
- Camel Lights: Camel Blue.
- Camel Ultra Lights: Camel Silver.
- Camel Menthol Lights: Camel Menthol Silver.
- Newport Lights: Newport Menthol Gold.
- Newport Medium: Newport Menthol Blue.
- Natural American Spirit Ultra Light Mellow Taste: Natural American Spirit Smooth Mellow Taste (orange pack)
- Natural American Spirit Menthol Light Mellow Taste: Natural American Spirit Mellow Menthol Taste (“vibrant” green).



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## Despite Battered Economy, Convenience Store In-Store Sales Grew

Convenience store in-store sales grew 4.9% in 2009, one of the bright spots in a battered economy that saw overall retail sales drop 7.0%, according to figures released today by NACS.

The industry numbers were announced in Chicago at the annual NACS State of the Industry Summit, a two-day conference that reviews and analyzes the industry's key economic indicators.

While in-store sales rose to \$182.4 billion, the sharp decline in gas prices from a record \$4.11 per gallon in July 2008, under \$2 per gallon by the beginning of 2009 led to a dramatic drop in motor fuels revenues for the industry that estimated 80% of the fuels purchased in the United States. The average price for a gallon of gas dropped 28.5% to \$2.28 in 2009, and pulled down motor fuels revenues 26.9% to \$328.7 billion. Still, motor fuels sales continue to dominate industry revenues, accounting for 68.4% of all sales dollars.

While motor fuels revenues plummeted because of the lower price per gallon, total gallons sold rose 1.3% motor fuels gross margins for 2009 were slim—13.8 cents per gallon—and the effect of these tight margins can be seen in motor fuels' contribution to overall gross margin dollars. Only 27.3% of the industry's profit dollars came from motor fuel sales, compared to 72.7% of profits from in-store sales.

Overall, convenience store sales in 2009 were \$511.1 billion, accounting for 3.5% of the total U.S. Gross Domestic Product—one of every 28 dollars spent in 2009. Industry profits fell 7.6% to \$4.8 billion, but were still the fourth largest in the industry's history. The importance of foodservice—a category that includes food prepared on site, commissary items and hot, cold and frozen dispensed beverages – continues to grow, with the category now contributing 20.2% of overall industry profits.

“Our strong industry numbers show that our value proposition of convenience continues to resonate with consumers” said vice chairman of research Greg Parker, president and CEO of The Parker Cos., Savannah, Georgia. “It is astounding that we have grown in-store sales during the worst economic downturn in more than half a century and it shows that our passionate focus on the customer may make us recession resistant.”

Credit card fees continue to be the industry's top

pain point and second largest expense item, only behind labor costs. While overall credit card fees dropped 11.9% to \$7.4 billion, the drop was significantly less than what would be expected with the drop in the industry's revenue dollars. As a percentage of overall sales, credit card actually fees increased from 1.35 to 1.45% of total industry sales dollars, factoring in all forms of payment, including cash and check. Total credit card fees also surpassed overall convenience store industry profits for the fourth straight year.

The bad employment outlook was also reflected in the convenience store industry's employment numbers. Employment dropped 8.7% to 1.58 million. Indicative of the tight employment market, turnover dropped to record low levels in 2009. Manager turnover dropped from 29.0 to 21.8% and non-manager turnover dropped from 109.0 to 82.4%.

Cigarettes once again led in-store sales, and increased share to 35.8% of in-store sales. The increase in sales dollars was driven by the \$1 per pack increase in the federal tax on cigarettes that took effect in April 2009, as well as additional state tax increases. Foodservice had strong growth, rising to first in terms of in-store margin dollars and second in in-store revenue dollars.

More than 75 percent of in-store sales were from the top five categories:

- Cigarettes (35.8 percent of in-store sales)
- Foodservice (17.3 percent)
- Packaged beverages (14.0 percent)
- Beer (7.7 percent)
- Salty snacks (3.9 percent)

Nearly 75 percent of in-store gross margin dollars were from the top five categories:

- Foodservice (29.7 percent of in-store gross margin dollars)
- Packaged beverages (17.7 percent)
- Cigarettes (17.5 percent)
- Beer (4.9 percent)
- Salty snacks (4.5 percent)

The industry's 2009 metrics are based on the NACS State of the Industry survey powered by its wholly owned subsidiary CSX, the industry's largest purpose-designed business development tool, and based on data from 197 firms representing more than 23,000 stores. Complete data tables and analysis will be released in June in the NACS State of the Industry Report of 2009 Data. NACs on-line.com

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