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OMEGA
west virginia oil marketers & grocers assoc.

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From the President ...



By now you should have received your copy of the *State Journal Supplement* that we prepared for insertion with *The State Journal*, which was distributed to subscribers on November 20th.

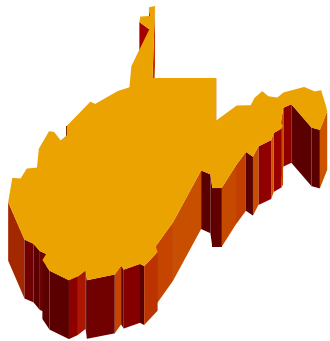
Traci and I are so proud of the publication and hope that you are as well. It certainly is an excellent tool for our industry. It has been sent to all legislators, agencies and administrative personnel, with whom we work on a regular basis. We have sent it to other media outlets as well. The feedback has been very positive. If you would like to distribute copies to your employees, customers or associates, please let us know and we will be happy to provide them to you.

I was proud to be on hand Sunday at the Inauguration of Governor Earl Ray Tomblin. He is a great leader for WV. If you would like to read his Inaugural Address, it can be found at: <http://www.governor.wv.gov/newsroom/pressreleases/Pages/InauguralAddressofGovernorEarlRayTomblin.aspx>.

As we reflect on the many blessings we have in our lives, Marti, Traci and I would like to wish your family, friends, and employees a very Happy and Safe Thanksgiving.

Jan

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West Virginia News

WV Government Changes

On Sunday, November 13th, Governor Tomblin resigned from the Senate on Sunday to take the Oath of Office to become West Virginia's 35th Governor. OMEGA President Jan Vineyard was on hand at his Inaugural. On Monday afternoon, Governor Tomblin appointed Arthur "Art" E. Kirkendoll to fulfill the remainder of the governor's term as a member of the West Virginia State Senate. Art Kirkendoll served a total of 30 years on the Logan County Commission and served as President of the Commission during his tenure. Kirkendoll was a Regional Coordinator for then-Gov. Wise and is a former member of the South Western West Virginia Region 2 Workforce Investment Board. He plans to run for election for the seat next year. On Monday night, the Senate elected Marshall County State Senator Jeff Kessler as the President of the Senate.

Economist: State Still Has Work to Do

West Virginia's economy may not be recovering as quickly as most hoped. But a national economic expert says the state has two major industries helping it get back on track.

Andy Bauer works for the Federal Reserve out of Richmond, VA. He was a guest speaker Tuesday at the West Virginia Economic Outlook Conference in Charleston.

When it comes to energy, Bauer says West Virginia can count on coal and natural gas to bring jobs and money into the state.

He stresses alternative sources of energy are still in the planning stages and those two resources are a key to keeping the country up and running.

However, the economist says Washington, especially Lisa Jackson with the EPA, isn't making it easy on the industry to prosper.

But Bauer doesn't believe it will dramatically change the need for coal in the near future.

However, he says a better long-term energy source investment is coming from the Marcellus shale. Natural gas is in great demand across the country. And West Virginia has plenty stored underneath the state to capture and sell from coast to coast.

"We're going to continually have a demand for energy. It's only going to grow over time," Bauer predicted. "Marcellus shale, natural gas, is something that people think is a very viable and important source of energy going forward."

However, Bauer says the state just can't rely on the energy industry to get thing back to where they were pre-recession. He says other sectors of West Virginia's economy, like manufacturing, are still weak and need to recover before the state experiences lower unemployment numbers.

Bad Faith Reforms Save Millions in WV

According to a recent report from the Insurance Research Council, the impact of third-party bad-faith reforms adopted in 2005 by the WV Legislature has reduced underlying insurance coverage costs in the Mountain State by about \$200 million in the past five years. The WV Chamber and the WV Business & Industry Council worked alongside the WV Insurance Federation in the effort to eliminate the right of third-party insurance claimants to file lawsuits against another person's insurer if the claimant believed the company treated them unfairly in the settlement of their claim.

West Virginia Business Court

(NOTE: This is the first in a series of briefings on critical government issues of interest to WV business.)

The West Virginia Chamber of Commerce and the WV Business & Industry Council were active participants in the recent informal review of the proposed rules to create a business court to be added to the state's judicial system. Chamber Vice President & General Counsel Brenda Nichols Harper represented the membership at the day-long review of the draft rules presented by the Supreme Court's Business Court Committee. The Business Court Committee was established in June 2010 in response to House Bill 4352, which the Legislature passed in March 2010.

The draft rules envision a Commercial Litigation Court with seven regional judges appointed by the WV Supreme Court Chief Justice to staggered terms of seven years. A chief judge will be appointed to oversee administrative matters. Currently, eighteen states have business courts. Economic developers in those states report the business tribunals are proving to be of great assistance in job creation.

All judges on the Court will have special training in business litigation matters that could include participation in the American College of Business Court Judges training programs. The Court will abide by West Virginia Trial Court Rules, and will seek to conclude every case within eighteen months or less.

According to Wayne County Circuit Judge Darrell Pratt, chairman of the Business Court Committee, rules for West Virginia's proposed Commercial Litigation Court are largely modeled after similar courts in Maryland and North Carolina because the three states have similar types of businesses.

Harper commented, "The Business Court Committee should be complimented for their dedication and hard work. To have more than one set of eyes on a work product before it is completed gives high credibility to the end result. The addition of the use of real time transcripts is an excellent example of the committee's diligent work."

In addition to Chairman Pratt, other members of the committee include: Judge Donald Cookman (22nd Circuit - Hampshire, Hardy and Pendleton counties); Judge Rick J. Murensky II (Eighth Circuit - McDowell County); Judge James J. Rowe (Eleventh Circuit - Greenbrier and Pocahontas Counties); Judge Susan B. Tucker (17th Circuit - Monongalia County); and Judge Christopher Wilkes, (23rd Circuit - Berkeley, Jefferson, and Morgan Counties).

U. S. Senate Approves Appropriations Bill, Several WV Projects to be Funded

The U.S. Senate recently approved an appropriations bill that would fund several transportation projects in West Virginia. House Resolution 2112 passed the Senate 69-30, with West Virginia's two Democratic Senators, Jay Rockefeller and Joe Manchin, supporting the measure. Rockefeller, who chairs the Senate Committee on Commerce, Science and Transportation, praised the Senate's actions, saying the funding is important for the economy. The FY 2012 Transportation-Housing and Urban Development Appropriations Bill would grant \$460 million in federal funding for ADHS, with \$33 million of that dedicated to Corridor H. It also funds Amtrak, which operates the Cardinal and Capitol Limited lines through West Virginia several times a week. The Small Community Air Service Development Program will also see restored funding. Airports in Parkersburg, Clarksburg and Huntington depend on that program for air service improvements. Funding was also protected for the Experimental Program to Stimulate Competitive Research, or EPSCoR. Rockefeller joined 18 Senate colleagues in a letter to the Senate Appropriations Committee regarding EPSCoR funding for fiscal year 2012. The program aims to increase the nation's competitiveness in the global marketplace and promote economic development. Rockefeller said the funding of these projects will make West Virginia more competitive through a strengthened education system and workforce.

Legislative Committee To Vote On Marcellus Bill This Week

A vote from the Legislature's Joint Select Committee on Marcellus Shale will come Wednesday.

On Monday, committee members worked through most of the remaining amendments to the proposed framework for how natural gas drilling in the Marcellus shale is regulated in West Virginia.

"I am anticipating, with 99.9 percent certainty, we will pass the bill out of here Wednesday and be done with our work," Jefferson County State Senator Herb Snyder, a member of the committee, said.

(Continued from Page 5)

Snyder said the amendments Monday covered a series of rights for surface owners, inspector pay and dealt with some details about attorney fees a dispute reached litigation in court.

Once approved Wednesday, Snyder says it will be up to Governor Earl Ray Tomblin to determine whether the issue will be taken up in a December Special Session or wait until the 2011 Regular Legislative Session.

Senator Snyder says taking up the legislation in a Special Session would allow lawmakers time to focus on it alone.

The Joint Select Committee on Marcellus Shale was formed after lawmakers failed to approve a regulatory bill during this year's Regular Legislative Session.

Senator Manchin Leads Field Hearing On Marcellus Shale

U. S. Senator Joe Manchin brought federal and state officials along with natural gas experts together Monday for a hearing on the potential for Marcellus shale. Manchin is a member of the U.S. Senate Energy and Natural Resources Committee. Also on hand for the hearing were all three of West Virginia's U.S. House Representatives.

Manchin stressed the goal of the hearing was to answer some questions that are affecting the process. One of the most important is, when it comes to regulating the industry, who is in charge? Manchin says teamwork is important, but he doesn't want to see federal agencies like the EPA set out impossible standards that no one can meet. John Capacasa, with the federal Environmental Protection Agency's Water Protection Division, who testified at the hearing, agrees.

James Coleman with the U.S. Geological Survey testified that, even though states should be the ones to set the regulations, it's important that they share new findings with federal agencies. Also testifying before the committee was Marion County Delegate Tim Manchin, the co-Chair of the Legislative Joint Committee on Marcellus Shale.

Third District Congressman Nick Rahall pointed out what West Virginia leaders don't want to see is another battle between the EPA and the state like the one that's being waged over the coal industry.

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Federal Issues

U. S. Court of Appeals Upholds Healthcare Law

On November 7th, a three-judge panel of the U. S. Court of Appeals for the District of Columbia affirmed the constitutionality of the healthcare law in a 2-1 vote. The court dismissed the challenge from the American Center for Law and Justice that the individual mandate violates the constitution. Two judges, one appointed by President Carter, the other by President Reagan wrote in the opinion that Congress can “forge national solutions to national problems.” The dissenting Judge was appointed by President George W Bush wrote that the court does not have jurisdiction until 2014 when the mandate kicks in. He did not comment on the merits of the law.

This issue is the subject of many lawsuits. Several federal Appeals Courts have ruled differently on the constitutionality of the individual mandate. The Supreme Court has announced that it will review President Barack Obama's health reform law, setting the stage for a showdown over his signature legislative accomplishment months ahead of the 2012 election. Oral arguments are expected to take place sometime this spring.

Senate Passes Three Percent Withholding Repeal Bill

On November 10th, the Senate approved the House-passed, H.R. 674, that repeals the withholding tax on contractors doing business with federal, state, and local governments by a vote of 95 - 0, with one voting present. This is a big victory for PMAA and small businesses across the country.

Before final passage, an amendment to H.R. 674 was approved to include tax credits for veterans hiring and a Treasury study of tax delinquency among federal contractors. Because the Senate amended H.R. 674, the bill must go back to the House for final approval before going to President Obama for his signature. Given that the House overwhelmingly passed H.R. 674 by a vote of 405 - 16 recently, it's likely that the House will pass the bill. H.R. 674 is deficit neutral because House Leadership was able to combine H.R. 674 with H.R. 2576 that has bipartisan support, into one measure. H.R. 2576 offsets the three percent withholding mandate by adjusting the income qualifications for purposes of determining eligibility for certain healthcare-related programs, such as Medicaid.

Although chances of passing look great, please continue to email the House of Representatives or call the Capitol Hill switchboard at 202-224-3121 to urge them to repeal the 3 percent withholding mandate. The House will be in session next week and will likely take up the 3 percent withholding bill. The Obama Administration has indicated its support for H.R. 674.

Senate Committee Passes Transportation Spending Bill

Recently the Senate Environment and Public Works Committee approved the “Moving Ahead for Progress in the 21st Century” (MAP-21) (S. 1813) by a vote of 18 - 0 which would authorize \$85 billion for FY 2012 - 2013 for transportation spending programs. The measure maintains transportation spending at current levels for two years. Other Senate Committees have jurisdiction over transportation spending which is expected to total \$109 billion. The Senate Finance Committee will still need to find an additional \$12 billion to offset the gap between funding authorization and actual revenues expected from the Highway Trust Fund.

More importantly, there were no amendments to the transportation spending bill which would allow for the commercialization of rest areas. Only one amendment by Senator Bernie Sanders (I-VT) would require the Department of Transportation to submit a report on the viability of an electric car charging network. PMAA, along with the Partnership to Save Highway Communities, are opposed to any kind of electric car charging at rest areas and support a private sector solution.

(Continued from Page 7)

Also included in S. 1813 was an amendment which would provide additional places for truckers to park and sleep by allowing state to spend a portion of their federal highway allocations on rest stops for truckers. Although no authorization funding level was specified in S. 1813, the provision was mirrored after Rep. Paul Tonko's (D-NY) bill in the House which would provide upwards of \$120 million in grants for truck parking facilities.

The current short-term extension of transportation spending programs including the motor fuels excise tax and the leaking underground storage tank (LUST) tax expires on March 31, 2012.

Federal Judge Puts FDA Tobacco Advertising Rule on Hold

Recently, U.S. District Judge Richard Leon issued a temporary injunction blocking the Food and Drug Administration (FDA) from requiring tobacco companies to use graphic warning labels on tobacco packaging and advertising. The rule was set to take effect September 22, 2012. The injunction stays the effective date until 15 months after the final resolution of the legal challenge.

The rule requires the warning labels appear on cigarette packaging and advertising. The new warning labels will replace the Surgeon General's warning on cigarette packaging and advertising.

Beginning October 22, 2012 (30 days from the effective date), cigarette manufacturers will no longer be permitted to put into commerce cigarettes without the new warnings on their packaging and retailers will no longer be allowed to advertise cigarettes without the new warning labels. Retailers may continue to sell their existing stock of cigarettes that do not include the warning labels without penalty.

The five tobacco companies charge that the rule is an abridgement of their First Amendment. The tobacco companies would not have to comply until the courts can review it, likely setting up a final decision from the Supreme Court.

The federal government has required warning labels on tobacco products since 1966 with the "Cigarettes May Be Hazardous to Your Health" label. Judge Leon said that the images and warnings went beyond the federal government's authority to require companies to disclose information. He wrote that the labels would amount to a "mini-billboard" for the FDA's "obvious smoking agenda."

IRS Delays Penalties for Good Faith Efforts to Implement Section 6050W Rule

The Internal Revenue Service (IRS) has just announced a one year delay of the penalties for good faith efforts to implement the Section 6050W Rule, which requires electronic third-party processors and acquirers to match up a businesses tax payer identification number (TIN) with the business name and verify this information with the IRS. If the match was not made or verified by the IRS before January 1, 2011 the merchant would face a daily backup withholding of 28% of electronic receipts.

On October 7, 2011 N.G.A. wrote IRS Commissioner Douglas Schulman requesting that the IRS provide penalty relief and delay backup withholding for one year. The IRS has granted this request.

What Merchants Should Do:

Although penalties of 28% backup withholding will not be assessed before January 1, 2013 N.G.A. strongly recommends merchants continue to work with their third-party processors or acquiring banks to verify that each TIN matches with the company name and that this information is verified with the IRS.

Text of Notice 2011-88 is at [http://op.bna.com/dt.nsf/id/emcy-8n2q6g/\\$File/N-11-88.pdf](http://op.bna.com/dt.nsf/id/emcy-8n2q6g/$File/N-11-88.pdf). Text of Notice 2011-89 is at [http://op.bna.com/dt.nsf/id/emcy-8n2q6m/\\$File/N-11-89.pdf](http://op.bna.com/dt.nsf/id/emcy-8n2q6m/$File/N-11-89.pdf).

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Convenience Store News

Food and Drug Administration Announces 1,200 Warning Letters Sent to Retail Outlets Who Aren't in Compliance

The U.S. Food and Drug Administration (FDA) announced recently that just 1,200 warning letters were sent to retail outlets that were not complying with regulations of the Family Smoking Prevention and Tobacco Control Act – the majority of which for selling tobacco to minors.

During the more than 27,500 compliance checks, the FDA's inspections focused on sale and distribution restrictions, including:

- Age and ID verification
- Requirements for labeling and advertising of smokeless tobacco products
- Restrictions on the sale of single cigarettes
- A ban on certain candy and fruit-flavored cigarettes
- Prohibited self service displays and vending machines

"Most of the retailers are in compliance with the law," said Dr. Lawrence Deyton, director of FDA's Center for Tobacco Products, during a press call. "They understand that selling [tobacco products] to kids is wrong."

Ann Simoneau, director of the Office of Compliance and Enforcement in FDA's Center for Tobacco Products, noted that the agency's website is keeping track of all retailer warning letters as well as inspections where no violations occurred. The list is exportable from the site into an excel file.

The FDA however is not keeping track of which types of retail establishments have undergone a compliance check (i.e., convenience stores versus drug stores).

According to the law, the FDA has given \$24 million to 38 states, including the District of Columbia, to conduct compliance check inspections of tobacco retailers.

Inspected Retailers on FDA Website

On its website, FDA posts the names of retailers who were inspected, whether or not a violation was observed. The list is contained in a searchable database that is updated monthly and found here: www.accessdata.fda.gov/scripts/oce/inspections/oce_insp_searching.cfm.

The search screen gives you the option of looking for retailers that have no violations observed or retailers with violations. Warning Letters are also posted on the FDA website, located at:

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/Tobacco/default.htm>

FDA's Center for Tobacco Products Plans \$600 Million Public Education Anti-Tobacco Campaigns

The FDA's Center for Tobacco Products (CTP) has announced two contract solicitations totaling \$600 million dollars over the next five years to support the CTP in planning, producing and delivering consumer-based communication programs and strategies for national, state and local multimedia public health education campaigns. These public health education campaigns will target at-risk and underserved groups and underage youth.

The first contract solicitation is for \$210 million dollars and will focus on preventing tobacco use among minority racial and ethnic groups, GLBT individuals, people with disabilities, people within the military, veterans and their families, pregnant women, people living in rural areas, and people with low socio-economic status.

The second contract solicitation is for \$390 million dollars and will focus on preventing tobacco use among young people and encouraging those who use tobacco products to quit. This contract will require multiple national, large-scale public education media campaigns targeting audiences of up to 40 million people.

The CTP intends to use public education campaigns incorporating digital technologies for message delivery including traditional paid media, social media, websites, news media events, and outreach to the entertainment industry.



The We Card Program - Refresher Course

Following the successful launch of the award-winning Employee Training Course in February 2011, The We Card Program rolled out its Refresher Training Course this week and also announced plans to offer its Manager Training Course in the coming months. The 20-minute Refresher Training Course requires employees to complete a set of interactive exercises focused on key elements of federal and state law - effectively requesting ID from customers who are under 27 years of age, thoroughly examining an ID, correctly calculating a customer's age and responsibly refusing tobacco sales when it is appropriate to do so. Upon completion of the exercises in the Refresher Training Course, learners receive a certificate of completion.

With an award-winning foundation that includes FDA content, We Card's Employee Training is a prerequisite for the Refresher Training Course and both courses are available for purchase at the We Card eLearning Center. Retailers interested in licensing We Card Training and loading it onto their own learning management systems or PCs are encouraged to contact Doug Reed at dreed@wecard.org for more information. Go to www.wecard.org for the training, to order your 2012 We Card materials, or get the latest information on the FDA regulations and how to best comply.

NACS Members Now Have Access to ServSafe Food Handler Guide

NACS members now have access to the ServSafe® Food Handler Guide, an affordable solution for in-store food safety training that easily integrates food safety into any existing onboarding training program.

NACS CAFÉ (The Center for Achieving Foodservice Excellence) has co-branded this new training booklet developed with the National Restaurant Association's education group. The ServSafe Food Handler Guide uses the same principles and instructional design as the ServSafe Manager Certification Program, and covers the following key areas: food safety, personal hygiene, cross-contamination and allergens, time and temperature, and cleaning and sanitation.

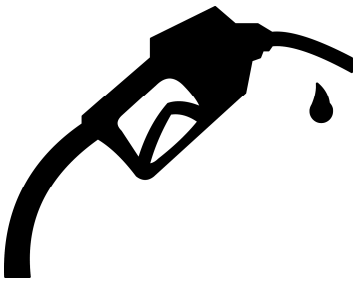
The 53-page ServSafe Food Handler Guide (5th edition) can be purchased for \$5 and is only available to NACS members. The booklet includes real-world workplace scenarios to help users apply classroom lessons to the work environment. Content is based on the 2009 supplement to the 2005 Food and Drug Administration Food Code update and a recent employee job task analysis. The program has been designed to be completed in two hours or less; the booklet includes a 40-question, non-proctored exam to measure knowledge and understanding of food safety. It also comes with a certificate of completion suitable for framing.

"The ServSafe Food Handler Guide is a cost-effective solution for use by all convenience retailers that provide foodservice offerings," said Dr. Nancy Caldarola, education director for NACS CAFÉ. "This Guide is the best educational value for food safety training available to NACS members."

Although not required in most states and regulatory jurisdictions, the ServSafe Food Handler Guide meets the requirements of California's food-handler training law.

"While not a replacement for the mandated ServSafe® Food Protection Manager Certification that is required in many jurisdictions across the country and in Canada, this program allows all employees at a company to work together to raise the bar on food safety and show our customers that we care about the service and safety of the foods and beverages we sell," noted Dr. Caldarola.

NACS members can order the ServSafe Food Handler Guide booklets (SKU number10080023) for \$5 each. While companies may elect to order one booklet for the entire company, it is recommended that each person taking the assessment use a new booklet.



Oil Marketers Update

CFTC Approves Speculative Position Limits Rule

The Commodity Futures Trading Commission (CFTC) approved a long-delayed final rule that would mandate speculative position limits on 28 listed commodities, including crude oil, heating oil, gasoline and natural gas. The vote was 3-2 among CFTC Commissioners. The position limits rule has been among the most contentious provisions of the financial overhaul which gave the CFTC the authority to limit trading in the \$600 trillion over-the-counter (OTC) commodity swaps as well as exchange-traded futures. In a press release earlier this week, PMAA and NEFI called the new rule a major step forward and said they have “guarded optimism” that it will help bring fairness and transparency to oil futures markets, but also expressed reservations about the inadequate limit levels and the delay in the implementation date for spot-month limits.

While we would like to see lower limits imposed on the market, we know that the CFTC walked a fine line in negotiating the agreement and that greater position limits can be imposed further down the road. Furthermore, the CFTC staff has been diligent in following all procedures which should help minimize lengthy litigation which would greatly delay reform. Once the CFTC captures the data on the \$600 trillion dollar swaps market (probably late in 2012) it will apply position limits to those currently unregulated instruments. These combined steps are critical for a fully functioning futures market.

PMAA has always supported fair and transparent speculation, but no one trader can control up to 40 percent of the deliverable supply. This is excessive, and can unduly influence prices at the terminal rack. Unlike futures contracts, which trade on regulated exchanges and fall under CFTC jurisdiction, swaps trade on the OTC market where the Commission had no authority, allowing traders to take large unregulated positions. Now the CFTC has authority over the OTC market under the final rule. The proposal will limit the number of contracts a single firm can hold in both the regulated and unregulated swaps market. The rule limits traders to 25 percent of deliverable supply in the month nearest to delivery. Deliverable supply will be determined by the CFTC in conjunction with the exchanges, Chicago Mercantile Exchange (CME Group). The outer months position limits traders to 10 percent of the first 25,000 contracts of open interest and 2.5 percent thereafter. The CFTC estimates that the limits will affect 85 energy traders which PMAA believes may not be adequate to address excessive speculation, but will prevent large traders from cornering the market. The caps will go into effect 60 days after the agency defines the term “swap” which will probably occur in early 2012. Limits outside the spot month are likely to go into effect in late 2012. PMAA believes this will likely have the most impact on petroleum marketers.

Ultimately, affordable consumer energy will not result from what the CFTC finalized this week. A number of other factors play into affordable energy including an all of the above approach on energy policy which includes oil exploration, increased use of alternatives such as ethanol and biodiesel, and a sound monetary policy coupled with a well-regulated, transparent, and stable energy futures and swaps market.

The Senate confirmed Mark Wetjen as CFTC Commissioner in a voice vote late last night. He will replace Michael Dunn and serve through June 19, 2016. Wetjen is a former staffer for Senate Majority Harry Reid (D-NV). He supports reforms to the commodities markets but has kept his comments guarded throughout the nominations process

PMAA Echoes Criticism of Obama Keystone Decision

Business and industry leaders across the U.S. are speaking out in unison criticizing President Obama’s decision to delay long awaited approvals of a much needed pipeline to deliver crude oil to U.S. refineries. “The Keystone XL pipeline will dramatically expand Canadian supplies of crude oil to U.S. refiners and subsequently expand gasoline, diesel and heating oil supplies to U.S. consumers” said PMAA President Dan Gilligan. “Increased supply translates into better prices for consumers and it is inexcusable for President Obama to intentionally slow walk necessary approvals.”

Business and labor groups agree that Obama's decision puts politics above jobs and the economy. Canadian oil companies have said they will look elsewhere to sell their oil taking jobs with it. Canadian officials have said that China is prepared to buy the crude oil.

Even *Washington Post* editors who often support Administration environmental policy are questioning the decision. They wrote,

Despite the passion among environmentalists against Keystone XL, Canada's oil will come out of the ground, and someone somewhere will refine it and burn it. Even under optimistic assumptions about greening the world economy, the United States and every other nation will demand immense amounts of oil for decades. Blocking the pipeline helps China lock up more of the world's oil production, cost infrastructure jobs in the United States and offend a reliable ally. More delay after three years of review is insult enough.

PMAA and other industry trade associations including the National Petrochemical and Refiners Association and the American Petroleum Institute oppose the delay and urge the President to stop playing politics with the country's energy and economic security.

EPA Proposes Revisions to UST Regulations

The Environmental Protection Agency recently proposed several changes to the federal underground storage tank (UST) regulations, the first significant revision to the regulations since they were issued in 1988.

EPA said the goal of the new regulations is to increase emphasis on proper operations and maintenance of UST equipment. The proposal will be open for public comment for 90 days, some time after which EPA will issue a final rule.

Among the revisions, EPA's proposal:

- Adds secondary containment requirements for new and replaced tanks and piping;
- Adds operator training requirements for UST system owners and operators;
- Adds periodic operation and maintenance requirements for UST systems;
- Adds new release prevention and detection techniques.

The proposal also updates codes of practice and makes editorial and technical corrections to the regulations.

At a December 15th Regulatory Seminar for OMEGA Members, WV DEP will address the highlights of the changes.

FMCSA Will Not Appeal Court Order on EOBRs; Moving Forward with New Mandate

The Federal Motor Carrier Safety Administration (FMCSA) will not appeal a court order to vacate the rule requiring electronic logs for carriers with significant Hours of Service violations. FMCSA's decision was included as part of an Oct. 7 official notice regarding an upcoming meeting of the Motor Carrier Safety Advisory Committee. Even with the 2010 EOBR rule to be removed from federal regulatory code, the committee said it will continue its work in support of an EOBR rule applicable to all interstate carriers using Records of Duty (RODS) logbooks. FMCSA proposed the broader rule last January, and it was scheduled to take effect in June 2012.

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Grocery Highlights

USDA Delays Single-Ingredient Meat and Poultry Rules

In response to a request by FMI and other associations, the Food Safety Inspection Service of the U.S. Department of Agriculture has delayed the effective date of the final rule requiring nutrition labeling of single-ingredient meat and poultry products. The effective date of the rule has been delayed by two months, to March 1, 2012. The rule requires all retailers to provide nutrition information for the major cuts of meat and poultry to consumers. For major muscle cuts, the information may be displayed on the package or at the point of purchase. FMI has developed a poster for retailers which will allow them to comply with the labeling requirements as they apply to the muscle cuts, available for purchase at the FMI Store. Ground meat and poultry must contain nutrition labeling on the package. Nutrition labeling for ground product must be done on the basis of as packaged (raw). Small businesses (producing less than 100,000 lbs. of each ground product annually and with fewer than 100 employees) are exempt from the requirement to label ground product. Small firms must still however display point of purchase materials or label muscle cuts.

USDA Reopens and Extends Comment Period on Enhanced Meat Labeling

The Food Safety Inspection Service of the USDA announced in the Federal Register on November 8 that it was reopening and extending the comment period on its proposed rule on the common or usual name of raw meat and poultry products containing added solutions. Comments are now due on January 9, 2012. The rule has implications for retailers in that it would regulate signage for items with added solutions in the meat case among other things. For example, a raw chicken breast marinated in teriyaki marinade in the store would have to have signage that reads "Chicken Breast—15% Added Solution of Water and Teriyaki Sauce." A sign reading "Teriyaki Chicken Breast" would not be acceptable. All labels on packaged items will similarly have to be changed under the proposal. FMI intends to submit comments on the proposed rule.



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Where Do Substance Abusers Work? Anywhere They Can!

According to the "2008 National Survey on Drug Use and Health," 72 percent of drug users are employed. Where are they working? Could it be for you?

The following scenario represents an actual Federated claims incident:

A driver for an insured business had a history of drug abuse. He went through a treatment program, so the business owner kept him on, because he thought the rehab was a success. On a Monday afternoon, after a weekend of partying, the insured driver drifted off the road and hit a boy riding his bike home from school with another child on the handlebars. The driver tested positive for drugs.

Value of a drug- and alcohol-free workplace

There are many reasons why a business would initiate this type of program—a bad experience with an employee on drugs, federal regulations, or even just a strong stance against drug and alcohol use at the workplace. No matter what the reason, these programs can help employers create cost-effective, safe, and healthy workplaces.

There are real benefits to creating a drug- and alcohol-free work environment:

- It demonstrates to your employees that their well-being is important to you.
- It encourages a clear thinking, professional workplace.
- It attracts employees who are free of drugs and alcohol.
- It helps prevent bad publicity from being associated with your business.
- Fewer injuries can lead to improved workers compensation modifiers and lower insurance premiums.

A recent survey conducted by Federated revealed that more than half of the small- to medium-sized businesses surveyed already had a program in place. Federated also found that, although our insureds believe drug and alcohol programs would be extremely beneficial, they may believe that they are complicated to implement. Some think that these programs are too costly and time-consuming.

Getting Started

To help streamline this process, Federated—OM&GA's recommend insurance provider—is proud to introduce a new program with the tools and resources you need to help make your business one that is drug- and alcohol-free. If you're interested in starting a program, Federated has the resources available!

Federated's new Drug and Alcohol Free Workplace Program suggests taking the following steps:

1. Educate Employees

Make your entire organization aware of the benefits of your drug- and alcohol-free workplace policy and program. Educate everyone about the problems associated with the use and misuse of substances. They all can benefit from education and training that reinforces and deepens that awareness.

2. Train Supervisors

Customize supervisor training to take into account the particular characteristics of your workplace to maximize the effectiveness of your drug- and alcohol-free workplace program.

3. Consider an Employee Assistance Program (EAP)

Though some EAPs concentrate primarily on alcohol and others on drug problems, most EAPs address a wide range of employee issues. While some companies chose to pay for these services, it is not required. At a minimum, businesses will usually help employees locate this type of service.

4. Administer Drug Testing

Drug testing is one way to protect your business from the negative effects of alcohol and other drug abuse. A drug-testing program can deter employees from coming to work unfit for duty. It can also discourage alcohol and other drug abusers from joining your organization in the first place.

To help support each of these steps, Federated's Drug and Alcohol Free Workplace Program offers our clients access to both employee and supervisor training, as well as discounted pricing on testing devices and laboratory services. Do you know what's required by your state? Federated has access to state-specific information to help guide you to what's needed for your state.

Contact your local Federated representative for more information. Clients can also visit Federated's Shield NetworkSM at www.federatedinsurance.com to get started on their own drug- and alcohol-free workplace program.



Slips, Trips & Falls

Fall is upon us – falling leaves, more precipitation and colder weather all remind us to be particularly careful to watch for potential hazards, and not just due to the season. Slips, trips and falls are common workplace injuries that can sometimes lead to severe consequences. Most slip, trip and fall incidents are preventable with general precautions and safety measures.

Established policies and practices can be implemented to significantly reduce the number of injuries and deaths due to slips, trips and falls. Regular inspections of working and walking areas should be conducted to identify environmental and equipment hazards that could cause slips, trips and falls. Special attention should be given to working and walking surfaces, housekeeping, lighting, vision, stairways and ladders.

So this season and all year, take the necessary precautions to stay safe. If an incident does occur, remember that all slips, trips and falls, with or without injury, should be reported, recorded and thoroughly investigated. Corrective action to prevent a repeat occurrence should be taken immediately. And, if there is an injury, report it to BrickStreet within 24 hours.

Have you checked with your agent to see if you are eligible for a 6.1% discount on your workers' compensation premium through BrickStreet?



Miscellaneous

What is up with the Red Socks

Beginning November 25th through December 24th, Little Red Stocking Fund supporters will help promote the 2011 Campaign by stepping out in their own red stockings. The idea is to wear your very noticeable red stockings when you step out to work, school, church, shopping, community events, or wherever you are headed. When you are asked the question...What's up with the red socks? You have the opportunity to plug the Little Red Stocking Campaign and the mission it supports.



Children's Home Society of WV

www.childswv.org

If you are a retail member and you aren't signed up to sell Little Red Stockings in your stores to support the Children's Home Society of West Virginia, please contact Mary White at 304.346.0795 or via email at mwhite@childswv.org.

Calendar of Events



**Weights & Measures
and DEP Regulatory
Seminar
December 15, 2011
Charleston Civic Center
Charleston, WV**

**2012
Trade Expo &
Golf Outing
May 14 - 16
The Resort at Glade
Springs
Daniels, WV**

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these statistics!**

Federated offers a program with the tools and resources you need to help
make your business one that is drug- and alcohol-free. For more
information, contact your local Federated representative or call

1-800-533-0472.

** American Council for Drug Education
(Printed in EHS Today 10-6-2009)*

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