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**OMEGA**  
west virginia oil marketers & grocers assoc.

December 2011

Number 608



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# From the President ...



2011 is almost a wrap! It's hard to believe that we are at the close of another year.

Recently the staff and executive committee met and completed a year-end review as well as set some goals for 2012. **Legislative priorities** are always at the top of any plan but probably one of the great things that we do is the giving back to our communities. We will once again in 2012 organize the **Mother's Day Campaign for the Children's Home Society** and have the September **Make-A-Wish** drive. As we look forward to 2011 and plan, we ask for your input. We are your association

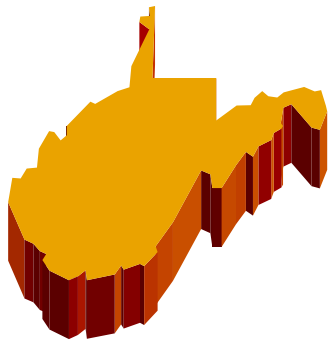
and appreciate suggestions and comments.

**Dues invoices** were mailed out last week and as is customary, we added a yearly summary of our activities and accomplishments. We will be emailing this document to members well. We hope that you are proud of your Association's efforts in 2011.

On January 12th the session will begin. We look forward to working with the Governor, Senate and House of Delegates to move WV forward. Please mark your calendars now to attend our **Legislative Day and Legislative Reception at the Capitol on February 8th**. Activities begin at 11:00 a.m. with recognition of members in the galleries during the floor session. We encourage all members to attend and support our industries on February 8th.

Traci, Marti and I wish you and yours a Very Merry Christmas and health, happiness and prosperity in 2012.

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# West Virginia News

## **Notice Of Increase Motor Fuel Excise Tax and Motor Carrier Road Tax For the period January 1, 2012 through December 31, 2012**

The Motor Fuel Excise Tax is composed of a flat rate of 20.5 cents per gallon plus a variable rate component which is determined annually by the Tax Commissioner. During the period July 1st through October 31st sales data is gathered for purposes of calculating the statewide average wholesale price per gallon; the variable rate component is calculated at 5% of the average wholesale price.

The Tax Commissioner has determined that the single, statewide average wholesale price of motor fuel is \$2.57 per gallon and the variable rate component of the Motor Fuel Excise Tax shall increase from 11.7 cents per gallon to 12.9 cents per gallon for the period January 1, 2012 through December 31, 2012.

The total (flat rate plus the variable rate) motor fuel excise tax and motor carrier road tax becomes 33.4 cents per gallon effective January 1, 2012.

Should you have any questions, please contact the Taxpayer Services Division at (304) 558-3333 or 1-800-982-8297.

## **Premium Changes Cut OPEB in Half**

Changes to state premium payments for retired public employees will immediately cut in half the state's near \$10 billion unfunded liability for promised future health-care benefits to retirees, and could completely eliminate the debt over the next three decades, members of the state Public Employees Insurance Agency said recently.

The PEIA Finance Board voted recently to increase premiums for retirees by 9 percent. Board members also approved a plan that will cap the amount the state pays toward premiums for retirees. The state currently provides a \$343 subsidy toward premiums for every retiree. The board voted to cap subsidies at \$343, with a 3 percent increase each year to account for medical inflation.

Those cuts in benefits will push other post-employment benefits, or OPEB, liabilities to \$5 billion immediately and eventually completely phase out the debt, according to state Department of Administration Secretary Robert Ferguson.

State labor groups, including the American Federation of Teachers-West Virginia, have criticized the proposal, saying increasing premiums for retirees will dissuade many prospective workers from moving to or remaining in West Virginia. The plan would deepen a teacher shortage problem in the state, according to officials with the AFT-WV.

Ferguson said he expects opposition to the changes, which will take effect July 1 of next year.

Ferguson also said the changes will make a significant change to the amount active employees pay toward retiree premiums. At this point, about 70 percent of retiree premiums are funded through costs to active employees. The vote to cap subsidy increases at 3 percent each year will, over time, chip away at costs to active employees, Ferguson said.

If medical inflation rises higher than 3 percent a year, retirees will have to cover the extra costs, meaning premiums could eventually go up more than 9 percent, Ferguson said. For example, if inflation increases 6 percent next year, the state will cover only 3 percent of that increase. Retirees will have to cover the additional 3 percent.

For months, state officials have been looking for a funding stream to help pay down OPEB liabilities. But Ferguson even if no funding stream is found, changes made will get rid of OPEB issues. Still, Ferguson said the state could face health-care issues as costs rise nationwide.

## **Marcellus Bill Approved By Legislature**

The state legislature has overwhelmingly approved a bill that will change regulations for those drilling for natural gas in the Marcellus shale. The House of Delegates approved the legislation on a 92-5 vote Wednesday morning following an hour-long debate on the merits of the legislation. The Senate approved the bill 33-0 a few minutes later with no debate.

Del. Mike Manypenny, D-Taylor, was critical of the bill during the House session and he tried to get delegates to replace Gov. Earl Ray Tomblin's proposal with the bill from the legislature's select committee that went further in most areas. The Tomblin administration took the proposed bill from the select committee and changed it in many areas to try and reach a compromise that all stakeholders could agree with.

Del. Tim Manchin, D-Marion, who chaired the select committee admitted the bill didn't have everything in it that he or others wanted, but it was still worth voting for. Manchin says one positive aspect will be the new public notice requirements. He says any company applying for a permit to drill will have to post the information in a local newspaper. He says the state DEP will also develop a website that will alert residents.

Manchin says the bill, however, doesn't do enough to help surface owners who are concerned about how close drilling sites are to their homes and the damage left behind.

The bill does increase the distance of a drilling site from a residence to 625 feet from the center of the drilling pad. It also requires drilling companies to enter into a highway use agreement with the state DOH. There is also detailed, technical information regarding the casing of drill sites in the legislation.

House Judiciary Committee Chair Tim Miley told House members inaction was not an option. Del. Manchin voted for the bill but admitted the special session setting made it difficult to change much of what Gov. Tomblin proposed.

## **Our Future: Marcellus Shale**

*From The Governor's Desk: A weekly column by Governor Earl Ray Tomblin*

New Year celebrations are often marked with the hope of new and better beginnings. Last week, the businesses and individuals responsible for advancing energy opportunities in West Virginia came together for the 5th annual West Virginia Energy Summit. This year the Summit's theme was West Virginia: Energy Powering Economic Development. The theme accurately reflects our economic future.

Earlier this month, more than 1,300 job seekers attended a job fair with 30 oil and gas employers at the Alan B. Mollohan Training Center in Moundsville. At that same job fair, West Virginia Northern Community College provided information about its training programs to those job seekers in need of the required skill sets to work in the oil and gas industry. WorkForce West Virginia also secured several orders from the job fair's employers requesting assistance in acquiring qualified applicants for their job openings. These are clear indications that a substantial need for skilled workers exists in West Virginia's oil and gas industry. What makes this more exciting is development of the Marcellus Shale is just beginning.

High energy costs continue to eat away at the wallets of many Americans. West Virginia is and will continue to be a key component of our country's energy solution. We power the world and I will continue to promote our energy industries' role in providing for the stability and security of our citizens and the nation. That is why I advocated for passing meaningful Marcellus Shale legislation this week. The regulations are of the utmost importance to our land owners, natural gas companies, and citizens. I worked with legislators to pass regulations that address all stakeholders' interests, including our largest stakeholder of all: the next generation.

West Virginia can help bring an end to our nation's reliance on foreign sources of energy, while being environmentally responsible within our borders. Our children and grandchildren need not be dependent on foreign sources of energy. We have the power today to insure that domestic energy will propel us into the future. I am mindful that the steps we take today will allow our economy to blossom, giving rise to greater educational and employment opportunities for our citizens. These are the long-term benefits directly related to economic stimulation driven by Marcellus Shale development in West Virginia.

I look forward to signing the Natural Gas Horizontal Well Control Act because it is a bill that establishes realistic and reasonable regulations for our oil and gas industry, job opportunities for our people, and energy independence for our nation. As the theme of this year's Energy Summit states, and as the Moundsville job fair demonstrated: Energy is powering our economic development. I am proud that our legislators joined me in exhibiting the hard working, can-do spirit of our constituents by laying the foundation for our future economic prosperity.

## **Houston Company to Build Marcellus Pipeline**

A Houston-based natural gas company announced Tuesday its plan to build a 42-mile pipeline in West Virginia that would carry gas from the Marcellus shale to larger cities in the Mid-Atlantic region.

Crestwood Midstream Partners said Tuesday the Tygart Valley pipeline project will use Pittsburgh-based Mountaineer Keystone as a shipper for 115,000 Mcf/d. The project can handle up to 200,000 Mcf/d. Horizontal drilling in Barbour, Preston and Taylor counties is expected to begin in the middle of next year, according to Crestwood officials.

Gas would move down West Virginia to markets like Washington D.C. and Baltimore.

Producers of shale gas that have been unable to move their supply due to a lack of pipeline infrastructure will be able to use the \$70-million pipeline when it's completed late next year, Crestwood said.

The pipeline will connect into Columbia Gas Transmission's WB pipeline in Randolph County.

## **Former Supreme Court Justice Gets Into Gas Business**

A former state Supreme Court Justice says the goal is for his company to break ground on a new cracker plant near Montgomery in Fayette County within the next two years. Richard Neely says he's getting into the gas business because he does not want to sit by and let the opportunities that could come from natural gas drilling in the Marcellus shale pass West Virginia by completely.

Cracker plants draw on byproducts from drilling and the drilling business is booming right now. That's why, he says, his company, Invictus LLC, has already leased 1,500 acres for its own plant site.

The start date for construction on it, though, will depend on the length of the air quality permit process for the project from the state Department of Environmental Protection. He says it'll take \$3 million, initially, to put together the model for the DEP to consider.

Neely says he has a good plan and good people involved in the plant building process. Eventually, products like ingredients for plastics along with gasoline and diesel fuel could be produced there.

More than 2,000 people could be hired to build the cracker plant on a former strip mining site, according to Neely. In all, it is expected to be a \$1 billion project.

## **WV Lottery Update**

Through October 31, 2011, fiscal year to date sales totaled \$473,043,424. This was up less than 1 percent from fiscal year 2011, an increase of \$698,562. The weekly per capita fiscal average was \$15.00, that remained unchanged from the same period last fiscal year.

October's overall sales were \$117,225,808, an increase of 2 percent from September's sales. Compared to the same month last year, sales were down 1 percent.

### **Traditional Lottery**

Through October 31, 2011, fiscal year to date sales for traditional lottery totaled \$63,371,659. This amount was up 10 percent from fiscal year 2011, an increase of \$6 million. Traditional lottery sales for October 2011 of \$15,656,461 were up 11 percent from September and up 4 percent from October 2010.

## **WVDOL Weights and Measures Performed Over 4,000 Inspections This Year**

WVDOL Weights and Measures has performed over 4,000 inspections so far this year: Testing over 20,000 gasoline meters at 1,300 retail locations, more than 200 propane meters, and over 6,000 commercial scales including 700 truck and rail scales.

The WV DOL Weights and Measures Section acquired 3 new 1K weight movers this year to be used, principally, in the Livestock industry.

The Weights Lab has tested over 5,762 mass and volume standards so far this year for W&M use, as well as, mass and volume standards used by private sector companies. We were fortunate to be able to make more instrument upgrades to the lab this spring.



## State Unemployment Rate Lowest in Three Years

The state's unemployment level has fallen to its lowest level in nearly three years, according to numbers released by WorkForce West Virginia.

New data show West Virginia's unemployment rate dropped two-tenths of a percentage point in November to 7.1 percent. That's the lowest unemployment rate in West Virginia since Jan. 2009 when unemployment was at 6.7 percent.

It also marks the third consecutive month that the number of residents without work has fallen. Overall, the number of unemployed residents fell 2,100 in November to 55,000, according to WorkForce West Virginia. For the year, unemployment is down 16,100, the agency says.

The service-providing sector led the way in November, adding 2,800 jobs. The goods-producing sector lost 700 jobs last month. Within the service-providing sector, trade transportation and utilities added 2,400 jobs; another 900 jobs were added in government and 400 in information.

The state's unemployment rate is 1.5 percent better than the national average of 8.6 percent.

## Federal Redistricting Suit Headed to Southern District

A federal suit challenging the constitutionality of congressional district lines is headed to federal court for the Southern District of the state, according to a Dec. 15 order written by U.S. District Judge John Preston Bailey. Three judges -- 4th Circuit Judge Robert B. King, U.S. District Judge John Preston Bailey and U.S. District Judge Irene C. Berger -- were appointed to preside over the case that is set for a Dec. 27 oral argument hearing.

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# Federal Issues

**The House is scheduled to reconvene for the start of the second session of the 112th Congress on January 17, 2012, but will only be in session 5 days during the month of January. The Senate is scheduled to reconvene January 23, 2012.**

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## **New ATM Accessibility Requirements Effective March 15, 2012**

On July 26, 2010, the U.S. Department of Justice (DOJ) announced rules updating the Americans with Disabilities Act Standards. The 2010 Standards contain new technical requirements for automatic teller machines including speech output, privacy, tactile-discernable input controls, display screens, and Braille instructions. The previous 1991 Standards require ATMs to be accessible but do not contain any specific technical requirements. DOJ does not view the speech capability/communications interface of an ATM as a structural element under the ADA so all ATMs—even those built into the walls of retail stores—must comply with these new requirements by March 15, 2012. ATMs do not enjoy the safe harbor under which structural elements that were built or altered in compliance with the 1991 Standards are not required to be brought into compliance with the 2010 Standards until the elements are subject to a planned alteration. It is our understanding that ATMs manufactured from 2006 on generally comply with the 2010 Standards; however, retailers should still make efforts to ensure all machines are in compliance.

## **Court Hearing Schedule on NLRB Posting Rule**

On October 5, 2011, the National Labor Relations Board (NLRB) issued a final rule requiring employers to post a notice outlining employee rights under the National Labor Relations Act. Originally, this rule was going to be implemented on November 14, but after strong opposition by employer organizations, the rule was delayed until January 31, 2012. A hearing on a lawsuit brought by employer groups, including the Coalition for a Democratic Workplace, will be held December 19, 2011 in Washington, D.C. N.G.A. expects that a decision regarding the suit will be made in the first two weeks of January 2012, before the January 31, 2012 posting deadline.

## **ATRA Publishes Judicial Hellholes Report**

The American Tort Reform Association (ATRA) has published the 2011-12 version of its annual Judicial Hellholes, the report that details the worst places in the country to be sued. Most of the jurisdictions are the same as last year, from the top: #1 Philadelphia, for its special hospitality to class actions; #2 the entire state of California, particularly for the extortionate lawsuits against businesses; #3 West Virginia, perennially considered the worst state in the country as concerns fairness in civil justice; #4 South Florida, for its auto-insurance fraud cases; and #5 Madison and St. Counties, Illinois, for their handling asbestos class actions. The rest of the worst, according to ATRA, are New York City and Albany, New York; Clark County, Nevada, the home of Las Vegas; and McLean County, Illinois. The report also includes a Watch List of places rapidly getting either better or worse. This time, the federal courts in the Eastern District of Texas are on watch for their patent-troll docket. Federal courts rarely appear in the ATRA report. Details are given on each of the bad places, and ATRA also gives credit to what it calls "points of light," places that have done the right thing – such as adopting tort reform legislation – or where courts have made unusually good decisions. The broad tort reforms in Alabama, North Carolina, Tennessee, and Wisconsin are all in this section of the report.



## **IRS Issues Mileage Rates for 2012**

On December 9, 2011, the federal Internal Revenue Service issued the rates it will allow as income tax deductions for miles driven after December 31, 2011 for business and other purposes. For 2012, the rate stays at 55.5 cents a mile, the same as it has been since last July. A deduction of 23 cents a mile will be allowed for medical or moving travel, and of 14 cents a mile on travel for charitable purposes.

## **Unemployment Benefits**

As we go to press, the determination as to whether the temporary UI related measures would be extended, and if so, for how long is not final. Provisions relating to the House version of the "Middle Class Tax Relief and Job Creation Act of 2011", HR 3630, that was passed last week, and the Senate version passed on Saturday, December 17th were considerably different.

The House passed version sought to extend EUC for a year but to limit the potential number of weeks to 79 instead of 99 in the states with the highest unemployment rates and generally 59 in states with lower unemployment rates. The House also included a series of work search standards and reemployment service provisions. The reduction in the potential number of weeks aligned the level of support more in keeping with the number of weeks in previous recessionary periods.

The Senate passed version provided for a two month extension with a continuation of provisions of up to 99 weeks in states with the highest unemployment rates. The list of House passed reforms to assure that individuals are able, available and actively seek work and assistance in work search and reemployment services were not included in the Senate passed version.

The "no-reduction" provision is a continuing issue. The House passed version in Section 2165 repealed the "no-reduction" provision in current law that includes as a condition of a state receiving federal reimbursement for emergency unemployment compensation payments a prohibition that the State law has not been modified in a manner such that (1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement occurring on or after June 2, 2010 will be less than (2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on June 2, 2010.

By choosing not to repeal this provision and continuing its effect for an additional two months, the Senate passed version of the bill creates an issue for states that have enacted solvency measures that reduced the average weekly benefit amount effective after the previous ending date of the EUC program June 11, 2012 and before the new end date of August 15, 2012. States planning to enact provisions in early 2012 affecting the average weekly benefit amounts for claimants on or before August 15, 2012 would also be affected.

If the Senate bill were enacted, states with amendments that were effective since June 2, 2010 that may have had the effect of reducing the average weekly benefit amount are at risk of losing federal reimbursement for emergency unemployment compensation. It is unclear how USDOL would interpret this provision. Unintended consequences of this may be that unemployed workers in states that made changes in average weekly benefits will lose EUC benefits, and/or states will be forced to change state UI law in order to meet the conditions of EUC reimbursement, and/or states may choose not to participate in EUC if it means that their authority to address solvency of the state UI fund is restricted.

UWC is working to disconnect the conditions of any further EUC extensions from the efforts being made by states and employers to address the solvency of state UI trust funds. As a matter of policy, states should be responsible for taking measures to address the solvency of their state UI benefit trust funds without undue federal restrictions.

## **Mica Postpones Highway Bill Until 2012**

House Transportation and Infrastructure Committee Chairman John Mica (R-Fla.) said that plans to produce a long-term surface transportation bill will be postponed until next year because the packed legislative schedule does not leave enough time before the holidays.

The decision to postpone action until next year marks a departure from an earlier promise by House Speaker John Boehner (R-Ohio) to pass a highway bill by the end of the year. Reps. Boehner and Mica said they wanted a five-year bill — three years longer than legislation (S. 1813) unanimously approved by the Senate Environment and Public Works Committee on Nov. 9. The current extension of the surface transportation bill expires in March.

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# Convenience Store News

## Consumers Have Low Tolerance for Debit Card Fees

Consumers are quickly becoming fed up with banking fees. If your financial institution began charging \$2/month for the convenience of having a debit card with your checking account, what would you do? Recent research from Mintel Comperemedia found that only 19% of consumers would pay the fee and continue to use the card, while 56% said they would use another payment method instead.

Not surprisingly, consumer sentiment about bank fees doesn't seem to be subsiding. Almost a quarter of those surveyed (24%) reported that they would switch banks over a \$2/month fee. Moreover, 29% of individuals surveyed for a separate study said they had heard of Bank Transfer Day that took place November 5, 13% actually transferred banks and 8% planned to do so.

"Banks moved customers into new services like debit cards and online banking because they were cheaper and more profitable than cash and checks," said Susan Wolfe, vice president of financial services at Mintel Comperemedia, in a press release. "They can't now backtrack and charge consumers for things they've been offering for years at no additional cost."

It seems banks aren't getting the hint, as the incidence of free checking accounts has plummeted in recent years. In the third quarter of 2007, 75% of checking acquisition offers mentioned free checking. For the same period in 2011, that number dropped to 29%.

"It's clearly been a tough year for banks, but the answer doesn't lie in charging customers for things that the bank wants them to do anyway — like using their debit card," said Wolfe. "A better idea would be offering new products and services they wouldn't mind paying extra for: personal financial management tools, coupons and discounts offered through the online banking system, these are untapped markets that customers would respond to, and wouldn't mind being charged for."



## Responsible Retailer Tips for the New Year

The count down to the New Year has started! Before January 1st, here are some tips on things to do:

- 1) Make sure your employees have the right tools. Order your 2012 We Card materials at [www.wecard.org](http://www.wecard.org).
- 2) Be prepared for underage customers attempting to buy tobacco or alcohol. Once school is out for the holidays, you and your employees need to remain vigilant and prevent sales to minors. Visit [http://wecard.org/index.php?option=com\\_content&task=view&id=158&Itemid=695](http://wecard.org/index.php?option=com_content&task=view&id=158&Itemid=695) to brush up on minor ID characteristics in your state.
- 3) Stay informed on FDA regulations and enforcement . . . FDA is already issuing fines. Visit [www.fda.gov](http://www.fda.gov), and [www.wecard.org/getready](http://www.wecard.org/getready).

- 4) Get employees trained and re-train at least once a year or earlier for those employees not performing well.
- 5) Follow Responsible Retailing Best Practices - Check out We Card's Guide to Best Practices. We've noted which ones FDA recommends as part of their draft guidance on Tobacco Retailer Training Programs.

**Also, as a reminder, WV has received many grants and there is most likely is a 100% possibility that your stores will be checked at sometime in the near future. Make sure your employees are trained in regards to sales of age restricted products.**



## **States Reduce Funding for Tobacco Prevention Programs**

The Campaign for Tobacco-Free Kids, the American Cancer Society, and several other groups released a new report recently that reveals states have reduced funding for tobacco prevention programs 12 percent this year, the lowest level since 1999, the Associated Press reports.

States will collect \$25.6 billion in tobacco taxes and legal settlements from the tobacco industry this year, but they will spend less than two percent of that total, or \$456.7 million, on tobacco prevention programs, far below the \$3.7 billion the Centers for Disease Control and Prevention recommends.

"There are no easy cuts anymore. There's the old expression, tried and true, it's not fat anymore, we're talking about bone," said Debra Miller, director of health policy for the Council of State Governments. "All revenue is looked at as revenue for the highest priority programs. ... They aren't ignoring the whole idea of tobacco cessation and the public health issues, the budgets are just such a problem right now."

Only Alaska is meeting its CDC recommendation for the year, spending \$10.8 million. Meanwhile, Connecticut, Nevada, New Hampshire, Ohio and the District of Columbia did not allocate any funding this year.

"At a time when they're getting as much revenue as ever ... they're spending less than ever," said Danny McGoldrick, vice president of research at the Campaign for Tobacco-Free Kids. "It's really a penny-wise, pound-foolish decision because we're going to pay for it (in the long-term)."

According to the report, states have cut funding 36 percent in the past four years.

## **Bipartisan Legislation Would Crack Down on Cigarette Smugglers**

The Smuggled Tobacco Prevention (STOP) Act, introduced by Congressman Lloyd Doggett (D-TX) and by Senators Frank R. Lautenberg (D-NJ) and Dick Durbin (D-IL) would crack down on tobacco smuggling and help states and the federal government collect lost revenue from tobacco products purchased on the black market. The legislation includes stiffer penalties for smugglers who avoid taxes.

Congressman Peter King (R-NY), a cosponsor of the STOP Act, wrote in an op-ed to POLITICO that states are losing almost four billion dollars annually and the federal government is losing five billion dollars each year in lost revenue. King said that cigarette sales on tribal lands in New York are estimated to account for up to one-third of all cigarette sales in the state, sales which are supposed to be limited to tribal members.

## **Study Shows How to Woo Gas Customers into Stores**

*From Oil Express*

Your best bet for luring would-be gasoline-only customers into the store is a hot cup of coffee, a new study reveals.

The data addresses a chronic industry problem that started when electronic card readers were installed at gas pumps years ago, making it convenient for customers to gas up without entering the store.

The study is from LIFT Retail Marketing Technology Inc., an Atlanta company providing software and hardware designed to boost impulse purchases. LIFT studied in-store fuel purchases, at 60 c-stores that use its services. The data revealed:

- The top-selling categories with in-store fuel purchases in order were coffee, cigarettes, lottery and food service. Other notables were energy drinks and carbonated soft drinks.
- Coffee and cigarettes were three times more likely to be purchased with in-store fuel than lottery, food service, energy drinks or carbonated soft drinks.
- Fuel-only transactions represented 20% of the in-store purchases. So a sizable number of customers avoid paying at the pump even if they only want fuel.
- Fuel plus one item represents 5% of in-store purchases, followed by fuel plus two items, 2%; fuel plus 3 items, 1%; and fuel plus 4 or more items, 1%.

## **Teen Drinking, Cigarette Smoking at 30-Year Low**

Survey shows significant declines in cigarette smoking and drinking, though marijuana use is Health experts announced earlier this week that teen drinking and cigarette smoking are at their lowest points in 30 years, the *Los Angeles Times* reports.

The 2011 Monitoring the Future survey suggests programs and policies implemented over the past three decades that focus on reducing teen smoking and alcohol have been effective.

Since 1991, the proportion of eighth-grade students who admitted using alcohol within the past 30 days has dropped by half, to 13%. Rates are also down for older students. Additionally, binge drinking among seniors is down from 41% in 1981 to 22% in 2011.

Cigarette usage is down for all teen-age groupings, with 11.7% of youths saying they smoked within the past 30 days, down from 12.8% in the 2010 survey.

## **CFTC Issues Final Order Regarding Swap Regulation**

The Commodity Futures Trading Commission (CFTC) has issued a Final Order regarding the effective date for swap regulation. On July 14, 2011, the CFTC granted temporary exemptive relief from certain provisions of the Commodity Exchange Act that otherwise would have taken effect on July 16, 2011, the general effective date of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. On October 25, 2011, the CFTC proposed to extend the exemptive relief beyond the December 31, 2011, expiration date. Today's Final Order addresses the comments received on the October 25, 2011, Notice of Proposed Amendment, and extends the potential latest expiration date of the exemptive relief to July 16, 2012.

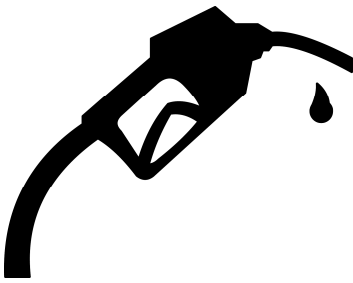
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# **A & B Operator Training**

We have been notified by the WV DEP that they still have 485 scholarships for A/B Course Operator Training. They have extended the deadline to use these scholarships to **August 8, 2012.**

Visit: [http://usttraining.com/othertraining\\_wv.html](http://usttraining.com/othertraining_wv.html) for more information. They are offering live webinars and self-paced versions of the course.

Note: We expect these scholarships to go quickly. They are on a first come, first serve basis.



# Oil Marketers Update

## **PMAA Expands Efforts to Support Biodiesel Tax Credit**

PMAA has lobbied for extension of the biodiesel tax credit throughout the year, and last week, PMAA, along with NATSO and the National Biodiesel Board, sent a letter to members of Congress in support of the one dollar per gallon biodiesel blender's tax credit which expires on December 31, 2011. PMAA supports at least a one year extension of the current biodiesel blender's tax credit to ensure that the fuel remains competitive in the marketplace, but it remains uncertain whether Congress will extend the credit given deficit concerns.

Earlier this year, House Agriculture Committee Ranking Member Collin Peterson (D-MN) and Rep. Aaron Schock (R-IL) introduced the "Biodiesel Tax Incentive Reform and Extension Act" (H.R. 2238) that would replace the one-dollar-per-gallon biodiesel blenders tax credit with a new biodiesel production tax credit which would expire in three years. H.R. 2238 is similar to legislation introduced last year by Senator Maria Cantwell (D-WA). The biodiesel legislation would: create a biodiesel production tax credit (rather than blenders credit) for three years; require that production of B100 or B99 become a taxable fuel requiring the producer to collect the 24.4 cents per gallon tax from a marketer when sold outside of a registered terminal (fuel not subject to excise tax will be dyed by producers); and still allow blenders to own the RINS, but they would not be eligible to collect the one dollar tax credit.

PMAA supports tax credits for and expanded production of biodiesel, but PMAA has vigorously opposed legislation that takes the tax credit from blenders and gives it to producers. PMAA will continue to support a one-year extension of the biodiesel blender's tax credit, but not legislation that would move the credit from blender to producer.

## **PMAA Speaks Out Against Lawmakers' Proposal to Raid LUST Fund**

Recently, Senate Finance Committee Ranking Member Orrin Hatch (R-UT), along with Senators Chuck Grassley (R-IA), Olympia Snowe (R-ME), Pat Roberts (R-KS), John Cornyn (R-AZ), Tom Coburn (R-OK) and John Thune (R-SD), sent a letter to Senate Finance Committee Chairman Max Baucus (D-MT) which seeks \$12 billion in revenues to fund the highway infrastructure bill also known as "Moving Ahead for Progress in the 21st Century Act of 2011," or "MAP-21." One of the proposals to raise revenue included a transfer of \$3 billion from the Leaking Underground Storage Tank (LUST) Trust Fund to help finance the highway infrastructure bill. While PMAA agrees that Congress needs to fund a long-term extension of highway infrastructure programs, PMAA adamantly opposes any proposal to remove vital funds which support important UST related programs. Today, PMAA responded to the Senators' proposal in a letter to Chairman Baucus.

PMAA argues that the LUST Fund should be used solely to support UST leak prevention and remediation programs. The transfer of \$3 billion from the fund would cripple important programs and ultimately harm marketing companies who have paid the tax and built the fund over the past 25 years.

## **Anticipated Hours of Service Rule**

In a recent Court filing, FMCSA signaled its intention to publish a final rule on hours of service by December 28, or perhaps sooner. As of today, the rule is still being reviewed by the Office of Management and Budget (OMB) and there have been no recent developments to suggest a specific anticipated publication date. Once ATA learns that the rule's release is imminent (e.g., it has been released and approved by OMB), we will notify our members accordingly. Upon publication of the rule, ATA will highlight the key points of it and begin to develop a more comprehensive summary of its many components. ATA may not be the first to announce the changes, as we feel it is far more important to ensure that our summary is accurate than published quickly. Also, we urge caution in taking any actions based on the rule, since it will not take effect immediately. It will likely give the industry a reasonable amount of lead time to come into compliance. In addition, ATA and other groups may file for an injunction if the rule is significantly objectionable.



## **Refiners Remind Marketers About New IRS Rules**

As year-end looms, marketers can expect to receive reminders from their suppliers about new credit, debit and fleet card tax requirements that start next year. ExxonMobil has already reminded its jobbers of the change.

The Internal Revenue Service (IRS) adopted rules in late 2010 that require card-issuing companies and those who reimburse others to report all card sales to the agency, starting in early 2012, on a Form 1099-K. The regulations apply to all plastic, including credit, debit and many fleet cards, although there are some exceptions.

Following IRS guidelines, ExxonMobil has said it will report all card sales to the IRS for its branded wholesalers by the end of January. The 1099-K will be an aggregate of all the card payments attributable to sites supplied by the wholesaler and copies should arrive by the end of January, ExxonMobil has told wholesalers.

Jobbers also need to check with their tax and legal advisors about their reporting responsibilities for their dealers, ExxonMobil added in an advisory to branded wholesalers. Under the IRS rules, wholesalers are required to submit any 1099-K forms to IRS for any retailers that the wholesaler pays for card sales.

In general, marketers should expect to receive a Form 1099-K from any entity from which they receive payment card settlements for aggregate settlements exceeding \$20,000 and aggregate transactions numbering more than 200, according to another supplier.

Marketers may also receive a separate Form 1099-K from fleet card firms Fuelman, Fleet One and other third-party networks that settlement payment cards directly with the marketer's company.

The Housing Assistance Tax Act passed by Congress in 2008 required financial institutions and third-party card processing networks to file reports on how much they reimbursed merchants for payment card sales. The law was adopted after IRS convinced lawmakers that many small businesses were understating their card income, sources say.

IRS defines the reportable amount as the gross amount of all payment card transactions, without regard to any adjustments for credits, cash equivalents, discounts, fees or refunds, according to a branded account expert at another supplier.

## **Congress Votes on Government Spending Bill, Petroleum Impacted**

Recently, the House voted on a year-end omnibus spending bill known as the Consolidated Appropriations Act for FY 2012 (HR 2055) which provides funding for the nine remaining spending measures for FY 2012. The spending package totals \$1.043 trillion which is within the parameters of the FY 2012 discretionary spending cap set by the Budget Control Act earlier this year. The federal government is currently operating under a Continuing Resolution (CR) which expires at midnight tonight, so Congress must act quickly to avoid a government shutdown.

The spending package includes: \$104.3 million in LUST funding; \$3.5 billion for the Low Income Home Energy Assistance Program (LIHEAP); \$8.5 billion for general EPA programs and management; \$10.1 million for the Northeast Home Heating Oil Reserve for storage, operations and management; \$105 million for the Energy Information Administration; and \$193 million for the Strategic Petroleum Reserve.

The House recently passed an extension of the payroll tax cut extension for one year (as reported by PMAA earlier this week); however, the bill includes provisions that would force the President to make a decision on the Keystone XL Pipeline within 60 days. Most Senate Democrats and the Obama Administration oppose the Keystone XL Pipeline language; however, GOP leadership is hopeful that the final bill to extend the payroll tax cut will also include the Keystone XL Pipeline provision. The pipeline will improve US energy independence and security, and it will increase domestic supplies of gasoline, diesel and heating oil for decades to come.

Extending expiring energy tax credits, which includes the biodiesel and ethanol blender's tax credit, still faces an uphill battle although Senate Majority Leader Harry Reid (D-NV) continues to reiterate his intention to extend the energy tax breaks into next year. PMAA does not expect the ethanol blender's tax credit will be included in the final deal.



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## **Senate Panel Approves Transportation Safety Measure**

Recently the Senate Commerce, Science and Transportation Committee approved the "Commercial Motor Vehicle Safety Enhancement Act of 2011" (S. 1950) by a partisan vote of 13 - 11 that includes language to require commercial trucks to be equipped with electronic recorders to improve hours-of-service rules. S. 1950 will likely become part of the surface transportation legislation that Congress will need to act upon before March 31, 2012 when the current transportation infrastructure law expires. There is significant opposition to the unwarranted and costly trucking safety provisions in the House and PMAA will be asking Representatives to oppose them.

The House and Senate differ on a plan for a long-term reauthorization of the Highway bill. The Senate Environment and Public Works Committee has already approved a two-year, \$109 billion reauthorization that would maintain current spending indexed for inflation. However, 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. Meanwhile, the House Transportation Committee has proposed a six-year, \$230 billion bill that would cut highway programs by more than 30 percent.

## **State Programs Criticized by EPA Inspector General**

State environmental enforcement programs do not meet the national goals set by the Environmental Protection Agency, according to an inspector general report released December 12. The agency, for example, set a goal for states to inspect 100 percent of major air pollution emitters every two years, but only eight states did so. The average inspection rate was 89 percent.

The EPA inspector general also found that enforcement is not consistent among states. Some states conducted inspections, identified violations, and assessed penalties more often than other states.

"National consistency ensures that all Americans live in states that meet minimum environmental standards," the report said. "National consistency is also important because it levels the playing field among regulated entities, ensuring that those regulated facilities that fail to comply with the law do not have an unfair economic advantage over their law-abiding competitors."

EPA officials defended state programs emphasizing the value of applying local on-the-ground knowledge and necessary ongoing relationships to solving specific state and regional environmental issues.

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# Grocery Highlights

## **Governments Crack Down on Food Stamp Fraud**

With more Americans receiving food stamps than ever before, the U.S. Department of Agriculture (USDA) is asking states to be on guard against fraud among recipients and retailers, Stateline.org reports. A record 46 million U.S. residents receive food stamp benefits.

This week, the agency unveiled new ways states can uncover food stamp fraud, including monitoring Facebook, Craigslist and other social media sites for recipients trying to sell food stamps for cash. Previously, officials had to wait until the sale had gone through before acting, said USDA Under-Secretary Kevin Concannon.

Now, intent-to-sell carries the same sentence as the actual sale — that punishment includes being kicked out of the food stamp program. Concannon said Craigslist works closely with federal agencies on stamping out fraud, including listing food stamp sales as prohibited.

With close to 12 states with bottle deposit laws—and another 23 considering such a bill—a new rule disallows food stamp recipients from “dumping,” i.e., buying a bottled beverage with food stamps and immediately pouring out the contents for the bottle redemption cash. When caught dumping, recipients would lose their food stamps. With bottle deposit bills being considered in 23 states,

Officials also are helping food stamp recipients to avoid online scams that offer help in filing out program applications but instead trick recipients into giving credit card numbers. Currently, food stamp fraud is about 1 cent on the dollar.

## **FY2012 SNAP and WIC Funding Signed into Law**

On November 14, members of the Senate and House negotiated an agreement to set fiscal year 2012 funding levels for the U.S. Department of Agriculture (USDA). Included in that conference report, are the funding levels for the Supplemental Nutrition Assistance Program (SNAP) and the Women, Infants and Children (WIC) program. These federal nutrition assistance programs are for low income individuals and families.

H.R. 2112 is made up of three appropriations bills including the Fiscal Year 2012 Agricultural Appropriations bill. Because of the long-term unemployment associated with the current economy programs such as SNAP and WIC are critical to families across the country. These same programs help independent grocers who face tight net profits and an inflation trend in food prices. For fiscal year 2012, SNAP funding has been set at \$80.4 billion, which matched the Senate funding level; moreover, WIC funding was set at \$6.6 billion, \$100 million above the Senate level. While that news is positive, \$30 million is set aside in the bill and it can only go toward continued investment in the Electronic Benefit Transfer updating across states if enough people sign-up for the program.

On November 30th, OMEGA received a letter from Under Secretary for Food, Nutrition, and Consumer Services, Kevin Concannon, regarding the SNAP (food stamp) program.

The purpose of USDA’s letter is to first thank OMEGA for the continued support for the integrity of the SNAP program and to reinforce how important the public/private partnership is to the success of the SNAP program. Additionally USDA asked for our help to ensure all retailers are reminded that inappropriate use and redemption of SNAP benefits is unacceptable. USDA is increasing its enforcement efforts to address instances of fraud and trafficking of SNAP benefits.

USDA is looking to work more closely with us. Fraud by a small number of bad operators only tarnishes the excellent work that is being done each and every day by reputable retailers to serve local communities and SNAP participants.

# 2012 Food Trends to Watch

*By Phil Lempert*

2011 brought us higher food prices at unprecedented levels, crops and livestock destroyed by global weather catastrophes, nations at war over the lack of food supplies and more food recalls from unique points of origin. Americans love their foods which has built a foundation for what may be one of the most exciting – and game-changing years in the food world.

## **Trend #1: Food Prices**

We will continue to see food prices rise based on environmental conditions as well as higher costs of fuel, feed, packaging, food safety - coupled with a higher demand for export. Shoppers will shave costs by revising recipes by using less meats and seafood and adding more non-meat proteins that are filling and less expensive, including whole-wheat pasta, tofu, lentils, brown rice and vegetables.

## **Trend #2: Never Shop or Eat Alone Again**

The rise of food blogs has built a foundation for group food experiences. Food trucks tweet their locations and flash food raves assemble underground at midnight. And it is not about the food. It is about connection, conversation and a sense of community. One key to success will be embracing LoSoPhoMo - mobile marketing enhanced by the location, social and camera features of mobile devices.

## **Trend #3: The Baby Boomers Keep Right On Truckin'**

The generation of 76 million who started turning 65 years old last year will control 52 percent of the total \$706 billion spend on groceries by 2015 – making them the largest food influencers and purchasers – and as they age they are becoming more interested in those foods and beverages with health benefits.

## **Trend #4: Increased Emphasis on the "Farm to Fork" Journey**

Shoppers have become increasingly interested in knowing where their food comes from, which is why 2012 will bring an added emphasis to a different kind of food celebrity – the farmer. We've seen "buy local" become one of the most important supermarket offerings; now we get to meet the people who are the producers, farmers and ranchers.

## **Trend #5: The End of The Checkout Lane**

Many shoppers are learning to appreciate the tech-savvy nature of using their mobile device (what used to be our cell phones!) comparing prices at nearby retailers, scanners, QR codes, and mobile coupons - increasingly delivering information rich store visits. This year we go beyond finding out nutritional, allergy and country of origin information on individual products – or even receiving special offers, coupons, and flash sales - to checking out as they shop.

## **Trend #6: The Ethnic Food Revolution**

Food trucks are replacing gourmet and specialty stores as the channel to experiment and discover new food experiences – especially when it comes to ethnic foods. These food trucks are actually manned by descendants of the ethnic cuisines and cultures; they possess the ability and knowledge to share the heritage and romance of the food – a benefit many shoppers enjoy.

## **Trend #7: The New Role of The Male Shopper**

It is all about "dad" and family; husbands who help out at home enjoy happier relationships. Bureau of Labor Statistics reports 41 percent of men are now cooking at home – double that in 2003.

## **Trend #8: Eating at Home – Xtreme Home Cooking**

With continued pressure on the economy more of us will eat at home to save money. Think of it as Xtreme Home Cooking where, following the lead of Extreme Couponers, these everyday cooks pride themselves on making the most for the least.

## **Trend #9: How Sweet It Isn't**

The new Dietary Guidelines for Americans recommends reducing the amount of added sugars of all kinds (especially in soft drinks). Reduced sugars will be the biggest health claim in the coming year along with a revised Nutrition Facts Panel that indicates whether the sugars are added, occur naturally, or are a combination of the two.

## **Trend #10: The Sound of Food**

People judge the readiness of foods by the sounds. We judge the freshness of soda based on the sound of the gas as it opens. Multisensory perception will be one of the new "food sciences" in 2012 as psychologists and food scientists join forces to create and influence the sounds of foods to convey freshness, taste and even health attributes.







## After the Rollover...It's Too Late

Any time a tanker truck is involved in an accident, it makes headlines.

An incident occurred in California where a driver was reported to be speeding and lost control of the tanker while rounding a curve. The truck hit a guardrail and overturned. Heat from the ensuing fire caused support beams to collapse onto the roadway below.

The driver survived and no other injuries were reported; however, the tractor, trailer, and load of fuel were destroyed. Costs to repair the highway could eventually run into the tens of millions of dollars.

### Could something like this happen to your drivers?

Several factors may have contributed to the accident described, but tanker accidents are a risk for any petroleum marketing operation. Fortunately, there are measures you can take to help prevent rollover accidents. The first and most important is to hire qualified drivers. Always conduct background checks on prospective drivers—obtain motor vehicle records, check with past employers, check criminal records, and ask about past experience and training. Also, require drug and alcohol screening.

Driving a truck is a dangerous profession and driving a fuel transport is one of the most dangerous. Improvements in traffic safety have resulted in a decline in fatal crashes involving trucks over the last twenty years according to the National Highway Traffic Safety Administration (NHTSA) and other analysts. But, when accidents do occur, the losses are usually severe. Federated Mutual Insurance Company conducted a two-year study of auto claims made by petroleum and convenience store marketers that showed rollover accidents accounted for nearly 3 percent of the frequency and almost 25 percent of the severity (cost) of these claims.

### What are the causes of transport rollover crashes?

Oftentimes speed—coupled with the centrifugal force of the liquid load—causes a transport to roll. In these accidents, the tractor and trailer is usually totaled and the load of fuel either burns or runs into the nearest drainage area, such as a creek or river. In many cases, the driver does not survive the crash or fire.

Most rollovers are the result of excessive speed and often occur when the transport enters an exit ramp too fast. According to the NHTSA, "traveling too fast for conditions" accounts for 67 percent of large truck crashes. Rollovers also occur when a driver "overcorrects" after a wheel runs onto the shoulder of the road. In either situation, the center of gravity changes resulting in a rollover.

Some drivers don't realize that the posted speed on an exit ramp is for an automobile. A truck with a high center of gravity must enter the exit ramp at a slower speed than an automobile.

## Federated Produces New Distracted Driving Safety Program

Distracted driving continues to be a public safety issue that costs business owners millions of dollars each year. A 2011 study by Federated Mutual Insurance Company revealed that 50 percent of commercial driving accidents included distraction as a contributing factor—more than weather, failure to yield, and following too closely combined.

Federated has created a new, comprehensive program called "Distracted Driving—In the Blink of an Eye" to help businesses address the risk exposure distracted driving can have on their companies. The program is designed to help Federated clients reduce claims and the related costs of distracted driving by setting high standards for driving company vehicles.

This program includes a compelling DVD and packet of materials with everything a business needs to conduct an impressive employee distracted driving safety meeting and new employee orientation. Federated marketing representatives will deliver a copy of the DVD and support materials to insured clients beginning in early 2012.





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# Miscellaneous

## Member News

**Lykins Companies** has purchased the bulk plant division of Co-Alliance Energy's petroleum business division based in Jackson, Ohio. Co-Alliance is an Indiana based Energy & Farm Co-Op Company with locations in Ohio and Indiana. The new business will compliment, be managed and serviced from Lykins' current Jackson, Ohio bulk plant. The current staff at Co-Alliance will now be working for Lykins.

The *Charleston Gazette* bestowed a "smile" on **Greg Darby and his Little General Stores** based in West Virginia, giving \$50,000 to Remember the Miners, which helps coal families.

On December 1st, the Chamber of Commerce of the Mid-Ohio Valley presented its annual business awards. Congratulations to **OMEGA Chairman Jim Oppe of TWJ, Inc.**, who was the runner-up for the Community Involvement Award. Jim was also nominated for Business Person of the Year.



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