AT THE PUMP & DOWN THE AISLE

PROVIDING LIFE'S ESSENTIALS TO WEST VIRGINIA-
FUEL , FOOD & CONVENIENCE

OMEGA west virginia oil marketers & grocers assoc.

August 2012 **Number 616**

OMEGA Kicks Off

Make-A-Wish Campaign

Providing Life's Essentials to West Virginia - Fuel, Food and Convenience.

Value...
one way we stand out!

Building Brand Value:

- Marathon Brand employs 33 Territory Managers and 5 Program Territory Managers to deliver value to our customers.
- Marathon Petroleum has excellent supply with truck loading racks at our 83 terminals, all operated with the driver in mind.
- Marathon Petroleum has approximately 9,400 miles of pipeline, which ensures stable and flexible supply.
- Marathon Petroleum is the 5th largest refiner in the United States, owning and operating six refineries with a combined capacity of 1,193,000 barrels per day.

For Brand and Wholesale opportunities visit www.marathonpetroleum.com

MARATHON® *Fueling the American Spirit.*

From the President ...

I love Cinderella, Snow White and Belle … Just like Shylia, on the cover, who is 5-years old and recently went to Disney World for her wish. She is in remission from neuroblastoma.

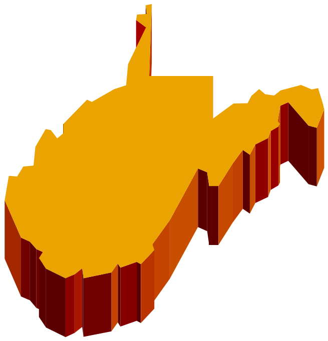
This has been a rewarding month so far visiting with Shylia, Trenton, Landon and others as they tell about their wishes and encourage our store employees to sell stars. The families have been wonderful. Even though they are struggling, they have shared with us in order to help others and we certainly have been blessed by them and their generosity.

It's hard to believe that we are at the half-way point in this campaign. If re-orders of stars are any indication, your retail employees are doing a great job!

As a reminder, our Make-A-Wish Charity Golf Outing will be held September 26th at Stonewall. If you have not registered for this event, please visit www.omegawv.com to access registration forms or call the Association Office. If you have not made your room reservations, please do so today by calling 888.278.8150.

I'd like to welcome all of our new members to OMEGA. It is wonderful to have to have the 13 new members listed on page 23 of this newsletter.

Our training for clerks for UST C Certification has been very successful and has proved to be a great member service as well as a recruitment tool. Thanks to Rod Moore and Neil Capper with Enviroprobe Integrated Solutions, Inc. for the development of the training and to Jamie Summers-Brown with Bricks Without Straw who has done the work getting it on-line on our Web site. Traci and Marti in the office have done a Yeoman's job in handling all of the calls and questions to get employees trained and tested.



West Virginia News

State Agencies Begin Preparations for the 2014 Budget

The State of West Virginia has began budget preparations for the 2014 fiscal year. Secretary of Revenue Charles Lorensen sent out budget documents instructing agencies for budget proposals, targeting an overall reduction in expenditures of approximately 2 percent for 2014.

"At a time when other states have faced huge deficits, are being forced to cut critical services, and making significant budget reductions, West Virginia's fiscal health remains strong. We continue to operate with a budget surplus, and we are addressing our long-term debt," said Gov. Tomblin. "However, we must vigilantly prepare for the future. My administration will continue to make fiscal responsibility a top priority. For 2014, we must simply do more with less in certain of our agencies. We will be up to that challenge."

To prepare for anticipated increases in Medicaid expenditures, declining severance revenues and lottery revenues, certain state agencies have been asked to tighten their budgets by 7.5 percent in an effort to ensure our state remains on a path of fiscal responsibility, leading to an overall reduction of approximately 2 percent in expenditures. Importantly, the governor specified that spending on the school aide formula, correctional programs, and certain health-related services are not to be subject to the proposed reduction.

Amid Budget Cuts, W.Va. Agencies Must Pay More into Pensions

In addition to those state agencies instructed to cut their budgets by 7.5 percent next year, all state agencies will have to shift funds to cover an increase in the employers' share of employee pensions.

That's because the state pension funds failed to grow by a required 7.5 percent annually during the 2011-12 budget year, state Budget Office Director Mike McKown confirmed.

"The actuarial assumption is 7-1/2 percent, and we only earned somewhere between zero and 2 percent," he said.

In his letter to state agency heads ordering spending cuts, Revenue Secretary Charles Lorensen noted, "Increased funding will also be needed for our retirement systems because investment returns last fiscal year were below the actuarially assumed 7.5 percent."

Employer contributions to the Public Employees Retirement System will increase from 14 percent to 14.5 percent of employee salaries, beginning July 1, 2013.

The state will also have to pick up the costs of a 1/2 percent increase in employer contributions for the Teachers Retirement System.

Statewide Motor Vehicle Contract to Include CNG Vehicles

Gov. Earl Ray Tomblin announced recently bids for the 2013 model year statewide motor vehicle contract will include compressed natural gas (CNG) fueled vehicles. This comes as a request from his Natural Gas Vehicle Task Force. After awarded, this contract will make available 36 different types and sized vehicles for state agencies and local governments in West Virginia. Of the 36 different types and sized vehicles, ten types will be fueled by compressed natural gas.
(Continued from Page 5)

The task force is exploring interest in partnerships with and among natural gas producers, infrastructure developers, vehicle manufacturers, and other industry leaders to expand the natural gas fueling infrastructure in West Virginia. Once the infrastructure is in place, West Virginians will also begin to see the financial savings of the switch. Natural gas vehicles can be filled up for as little as $1.50-$2.00 a gallon.

CNG Task Force Update

The task force that has the mission to evaluate whether the state’s vehicles can run on natural gas as a fuel source continues to work.

The task force was formed to examine the various details and hurdles that will need to be overcome to make natural gas vehicles a reality.

The task force was broken down to three committee, which included Finance, Legislative & Communications and Infrastructure Development. These committees met on August 9th and 10th. Lists of needed information where made and assignments to obtain it were given.

OMEGA members serving on the Infrastructure Development Committee are **Greg Darby of Little General Stores, Inc., Michael Graney of One Stop and Sam Heater of Go-Mart, Inc.**

Governor Tomblin Forms New Commission to Address Transportation Needs and Economic Development

Gov. Earl Ray Tomblin has issued an executive order forming the West Virginia Blue Ribbon Highway Commission, a group tasked with studying the condition and needs of the state's transportation system and developing a long-term strategic plan of action. The plan will include funding options for the maintenance, construction and expansion of the state's roadway system. Joined by West Virginia Department of Transportation Secretary Paul Mattox, House of Delegates Speaker Rick Thompson and State Senate President Jeff Kessler, the announcement took place near the almost 80 year old Dick Henderson Memorial Bridge in Saint Albans, W.Va., which is currently undergoing a $24 million renovation and expansion.

"West Virginia maintains the nation's sixth largest highway system," Gov. Tomblin said. "This new commission comprised of unions, associations, legislators, state and local leaders in transportation and travel industries will develop a long-term plan to help us meet our current and future needs for the safety of the traveling public and the economic development of the state."

The Blue Ribbon Highway Commission includes state officials, members from statewide constituency groups, representatives of counties and municipalities, members of the Legislature, as well as citizen members. The West Virginia Department of Transportation will provide staff support for the Commission.

The Blue Ribbon Highway Commission will present a report to the governor prior to the start of the legislative session. Among the groups on the commission are the West Virginia Business and Industry Council (BIC) (Jan Vineyard will fill that position) and the West Virginia Trucking Association (representative yet to be named).

Senators Facemire, Kirkendoll appointed to Southern States Energy Board

The Southern States Energy Board will have two new members from energy-rich West Virginia. *(Pictured, from left to right: State Sen. Doug Facemire, State Sen. Art Kirkendoll.)*

According to a news release, Senate President Jeff Kessler, D-Marshall, appointed state Sens. Doug Facemire, D-Braxton, and Art Kirkendoll, D-Logan, to the Southern States Energy Board.

The SSEB is a nonprofit consisting of 16 southern states, focused on economic development. The group does work in energy and environmental policy.

"As chairman and former vice-chair of the Energy, Industry and Mining Committee, Senator Facemire brings viable knowledge and experience to the SSEB," Kessler said in the news release. "His experience provides the necessary understanding and knowledge to work with each member of the SSEB to promote the well-being of all citizens in our great State and the SSEB region."

Other states in the SSEB are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

The SSEB also includes Puerto Rico and the U.S. Virgin Islands.

UST Operator C Training Update

As you know, we have been providing UST Operator C Training to our members through our Web site. To say the least, this has been a huge undertaking! Approximately 5,000 people have been registered to test through our site. Through the process we have made upgrades and made things easier for both members and staff.

There are a couple of common issues that people are experiencing:

1. Trying to register for the OMEGA site instead of registering to take the test. As a reminder, you go to www.omegawv.com. Scroll down the page and on the lower left side click on "testing system". Fill in the registration form and submit.
2. Trying to log into the system with a username and password PRIOR to approval. Those who register MUST be approved before their login information will work. Approvals may take up to 24 hours.
3. Using the same computer for multiple employees. Each employee must log out of the testing system after they are finished in order for the next employee to log in to take theirs.

We are thrilled that your employees can now print their test results upon completion of the test. They will receive an email, which advises them to go to Reports Manager to print their certificate. The email will have the following link in it: http://testing.omegawv.com/reports-manager.php. They click the PDF icon to download the certificate.

THE TEN COMMANDMENTS OF DRAFTING A SOCIAL NETWORKING POLICY

By Vanessa L. Goddard

You've probably heard this "fact": if Facebook was a country, it would be the fourth largest country in the world! Web 2.0 has infiltrated every aspect of our lives, including the workplace. As a result, most lawsuits in which employers become mired are fraught with electronic data issues. To guard against a wide range of legal claims, as well as reap the benefits of a global marketplace, many employers are instituting social networking policies. But, as with any policy, a social networking policy must be carefully drafted to meet your business needs. With that, I introduce to you the 10 Commandments of drafting a social networking policy:

NUMBER ONE: Thou SHALT NOT use a sample policy pulled willy-nilly from the Internet. While your search results will pull up dozens of fine looking policies, you won't know who wrote them, the legal jurisdiction from which they hale, or the business interests the policy seeks to promote. Many times, a bad policy is worse than no policy at all.

NUMBER TWO: Thou SHALT work in harmony to craft a policy appropriate for your business. If you decide that a social networking policy is appropriate for your business (and it may not be), the combined cooperation of your IT department, human resources, legal, and company decision-makers is necessary to formulate an effective policy.

NUMBER THREE: Thou SHALT know the risks and guard against them. Employee use of social networking media can have wide-ranging legal ramifications for employers. Possible claims include: harassment, discrimination, defamation, invasion of privacy, and a variety of statutory violations.

NUMBER FOUR: Thou SHALT proclaim that the eye of the employer sees all. Notify employees that they have no expectation of privacy in their use of company technology, that their activities should be work related only, and that their communications may be accessed at any time.

NUMBER FIVE: Thou SHALT NOT take the name of the employer in vain. The policy should require disclaimers be used indicating that the opinions stated therein are those of the employee and not the employer.

NUMBER SIX: Thou SHALT respect thy co-workers, customers, competitors, and employer. Require employees to act respectfully in their social networking/blogging activities. Provide guidance on what is and what is not appropriate behavior.

NUMBER SEVEN: Thou SHALT NOT steal or do other really bad things with your employer's computer. The policy should prohibit disclosure of confidential information, the use of legally-protected/copyrighted information, and the dissemination of personal information of co-workers.

NUMBER EIGHT: Thou SHALT know the consequences of thy actions. Inform your employees that their social networking activities on the job are subject to all company policies and explain the consequences of violating your social networking policy.

NUMBER NINE: Thou SHALT spread the word throughout the masses. Distribute the policy. Have your employees sign off on their receipt and understanding of the policy. Provide training on the policy.

NUMBER TEN: Thou SHALT NOT commit random acts of destruction. You MUST ensure that your litigation hold policy incorporates procedures and methodologies to capture and preserve social networking data in the event of litigation.

Federal Issues

Schedule
U.S. Senate In Recess: August 4-September 9. Back to Capitol Hill: September 10.
U.S. House of Representatives is In Recess: August 4-September 9. Back to Capitol Hill: September 10.

NCSL Predicts Record Legislator Turnover

The National Conference of State Legislators says it's likely that following the 2012 elections at least half the members of state legislatures will have no more than two years' experience. NCSL cites three factors leading to this: (1) There was high turnover in seats at the 2010 elections (over 24%), with Republicans making large gains in many states. (2) The elections this fall will be the first since the redistricting following the 2010 federal census, and the election following redistricting tends to produce the highest turnover each decade. (3) Finally, term limits, now in effect in more and more states, increase turnover, as they were designed to do. For more, see on-line at http://ncsl.typepad.com/the_thicket/, under June 12. Altogether, there are nearly 7,400 state legislators.

Tax Update

On Wednesday, August 1st, the House passed legislation to renew all of the 2001 and 2003 Bush-era tax cuts for an additional year. The Job Protection and Recession Prevention Act of 2012 (H.R. 8) garnered 256 votes in support, with 19 Democrats joining all but one Republican (Tim Johnson of Illinois) to pass the bill. Under current law, the so-called "Bush" tax cuts are scheduled to revert to their pre-2001 levels on January 1, 2013, which would mean a significant increase in not only marginal tax rates, but also on capital gains, dividends, and the estate tax. H.R. 8 extends the cuts through the end of 2013 in order to give Congress more time to work on broad-based tax reform. House leaders also allowed a vote on a proposal passed last week by the Senate, which allows the tax cuts to expire for those making over $200,000 ($250,000 for joint filers). This legislation was soundly defeated 170-257. The House followed this action on Thursday with a related vote on a bill that will allow for "fast track consideration" of any tax reform proposal approved by the Ways and Means Committee in 2013. H.R. 6169 - Pathway to Job Creation through a Simpler, Fairer Tax Code Act of 2012 – was approved on a 232-189 vote. The House and Senate have now both acted on their proposals to prevent the largest tax increase in U.S. history, but remain far apart on how to reconcile their very different positions. Most of the action this week and last was political in nature, directed more at the presidential campaigns than completing a bill the President will sign. Substantive action will likely to have to wait for a lame duck session after the November elections.

Final Rule on Debit Fraud Adjustment

On Friday, July 27 the Federal Reserve Board issued a final rule that is in line with the interim rule on fraud adjustment provisions of debit card fee reforms. Effective October 1, 2012, the amount an issuer can collect for the adjustment remains at a maximum of 1 cent per transaction. The Merchants Payment Coalition (MPC) strongly oppose the ruling as it only requires banks to "self-certify" that they meet fraud prevention standards while burdening merchants with paying one cent on debit transactions in addition to the .7 percent fee already included in the interchange fee to pay for the banks fraud prevention. Therefore, the Fed requires merchants to pay fees that cover 100 percent of fraud-prevention costs incurred by issuing banks (as long as they "self-determine") yet the Fed will not actually ensure that banks are actually reducing fraud through their programs before allowing them to collect the additional one cent.

Senator Durbin Blasts Proposed Antitrust Settlement

The senator, who championed debit card swipe fee reform two years ago, called the proposed settlement "a sweetheart deal" for Visa, MasterCard and a "bad deal" for retailers and consumers

On the Senate floor, U.S. Sen. Richard Durbin (D-IL) called the proposed settlement of longstanding antitrust litigation between merchants and the credit card industry "a stunning giveaway to Visa and MasterCard."

Durbin, the Senate's second-ranking Democrat, said in his remarks that the lawsuit "had the potential to bring about important changes to the credit card system that would have promoted transparency, enhanced competition, and helped consumers."

The senator noted that the proposed settlement "does nothing to change the anticompetitive fee-fixing that Visa and MasterCard do on behalf of their member banks," and that card companies would have "free reign to carry on their anticompetitive swipe fee system with no real constraints and no legal accountability to the millions of American businesses that are forced to pay their fees."

"This is a stunning giveaway to Visa and MasterCard, all for a payout of a mere two months worth of swipe fees," he continued, suggesting that class plaintiffs must now decide how they plan to move forward.

"This is a bad deal, but it is not a done deal. The merchant plaintiffs still have to decide if they will support it, and the court must approve it. Several plaintiffs — the National Association of Convenience Stores, the National Grocers Association and the National Community Pharmacists Association — have already rejected the deal."

"I know that Visa, MasterCard, and the banks are thrilled with this settlement, but this is not a settlement I would agree to," Durbin said, adding, "I hope that the remaining merchant plaintiffs will review the proposed settlement carefully and think hard about whether it will be good for the future of our credit and debit card systems. They should not be anxious to sign away that future and settle for a bad deal.

A Summary of Proposed Settlement in Visa/Mastercard Antitrust Litgation can be found at http://www.nacsonline.com/NACS/Government/CreditCardFees/Documents/ProposedSettlementSummary.pdf.

Costly Health Care Law

The Wall Street Journal reports that the new federal health insurance law could cost McDonald's and its franchisees more than $400 million a year in additional health-care expenses. McDonalds Chief Financial Officer Peter Bensen estimates that each restaurant will incur between $10,000 and $30,000 in added annual costs, Bensen said in response to an analyst's question on a conference call. There are about 14,000 McDonald's restaurants in the U.S., meaning McDonald's expects the total cost to the company and its franchisees to be in the range of $140 million to $420 million. McDonald's owns about 11 percent of its U.S. restaurants, while the rest are franchised.

House Committee Holds E-Fairness Hearing, Senate to Follow

The House Judiciary Committee held a hearing on the Marketplace Equity Act (H.R. 3179), "e-fairness" legislation that would authorize states to require online retailers to collect sales taxes and create a level playing field between online and brick and mortar retailers. While brick and mortar stores must collect state and local sales taxes, online operators are not required to collect these taxes unless they have a physical presence in the state. Rep. Steve Womack (R-AR) and Rep. Jackie Speier (D-CA) introduced H.R. 3179, which now has the support of 49 bipartisan co-sponsors. During the hearing, Judiciary Committee Ranking Member John Conyers (D-MI) expressed his support for the bill, removing one potential hurdle toward House passage.

In the Senate, lawmakers have introduced similar legislation, the Marketplace Fairness Act (S. 1832). Introduced by Senators Enzi (R-WY), Durbin (D-IL) and Alexander (R-TN), S. 1832 currently has 19 bipartisan co-sponsors. Though the Senate bill is very similar to the House version, the Marketplace Fairness Act lowers the small seller exemption to $500,000 from $1 million in the House bill. The Senate Committee on Commerce, Science and Transportation will be holding a hearing on August 1 to discuss the online sales tax issue. While passage in either the House or Senate remains uncertain, Senate Majority Leader Harry Reid (D-NV) indicated that he would bring the bill to the Senate floor as soon as it appeared to meet the 60 vote threshold to move forward toward passage. There are still a number of lawmakers that have expressed concern over various parts of the two bills – including the impact on small businesses and the ability of online retailers to be able to comply with the nation's complex tax code – but the issue has gained significant support in the past few weeks.

ATM Dual Signage Bill Passes House, Stalled in Senate

The House passed H.R. 4367, a bill to repeal provisions requiring dual signage on ATMs, with unanimous support in a 371-0 vote. Current law requires ATM operators to post a physical placard on both the machine and notice on the screen of possible fees associated with the transaction. H.R. 4367 would amend the Electronic Fund Transfer Act to remove the ATM physical placard fee disclosure requirement. Proponents of the bill have been trying to move forward with hotlining the bill in the Senate, a procedure that would allow the bill to be passed under unanimous consent barring any opposition, but now the legislative path of H.R. 4367 is uncertain.

The ATM disclosure repeal language has now been merged with a provision that would require the Consumer Financial Protection Bureau (CFPB) to keep certain sensitive information from financial institutions confidential. The new bill, S. 3394, introduced by Senate Banking Chairman Tim Johnson (D-SD) and Ranking Member Richard Shelby (R-AL) will need to overcome a number of hurdles in the Senate before Senate leadership would move to offer the bill under unanimous consent. A Senator has announced he will not support a unanimous consent agreement because of the included CFPB language. He has stated he will not support any CFPB bills until the Senate holds an up or down vote to repeal Dodd-Frank. The bill is now lingering in the Senate, where leaders can either opt to pass the original House bill or schedule floor time for debate on the new bill. With only a handful of legislative days remaining before the election, it is extremely unlikely the bill will get floor time this year. The coalition of associations working on the bill has been reaching out to congressional offices to discuss any potential concerns and to try to move the bill forward without any objection. While final passage seems like a potentially heavy lift now, coalition partners are optimistic due to the level of attention that the issue has garnered, and are hopeful a legislative solution can be achieved.

Judge Declines to Reconsider Union-Organizing Rule

The federal district judge who earlier this year struck down a National Labor Relations Board (NLRB) ambush elections rule, which would have accelerated the timeframe allowed for union elections, has denied the NLRB's request that he reconsider the decision citing the board's inability to expand and improve its argument. The NLRB said it will appeal the case to a higher court.

The U.S. District Court for the District of Columbia in May overturned the NLRB ambush elections rule ruling that an insufficient number of Board members participated in the decision to adopt the final rule. The Court held that only two members of the NLRB participated in the decision. Without at least three members participating, the NLRB lacked the authority to issue the rule, making it invalid, according to the Court decision.

The NLRB suspended the rule on May 15 in response to the judge's decision.

Convenience Store News

Tobacco Sales to Minors Hits Lowest Rate in Retailer History

The Annual Synar Report recently reported that the national weighted average rate of tobacco sales to minors was 8.5 percent in 2011; which marked the lowest retailer violation rate (RVR). To view the study, visit: http://store.samhsa.gov/product/2011-Annual-Synar-Reports-Tobacco-Sales-to-Youth/SYNAR-12.

While the nation's violation rate has decreased. West Virginia's has INCREASED. In 2010, our violation rate was 11.4%. In 2011, 14.6%. This is not acceptable. We are not doing a good job. We must do a better insuring we are not selling tobacco products to minors.

FDA Increases Tobacco Compliance Efforts

The Food and Drug Administration (FDA) is boosting its compliance inspections and making retailer compliance checks a priority. In recent years the FDA has increased its number of inspectors from 1,218 in 2008 to 1,600 in 2011, and has conducted more than 91,000 retailer compliance checks on tobacco-related regulations.

The FDA is currently issuing Warning Letters to retailers who are found in violation during an initial store inspection. Violations found in follow-up compliance checks may result in fines or penalties. According to online FDA enforcement data, the agency conducted more than 35,000 store inspections in 2011 and issued more than 1,700 Warning Letters. The pace is on track to double in 2012, where data through July 2012 shows more than 55,000 store inspections yielding some 2,115 Warning Letters — with 316 retailers pursued by FDA for fines (Civil Money Penalties.)

To help retailers comply with FDA requirements, the We Card Program offers online training on FDA requirements and the recommendations in FDA's Draft Guidance for Tobacco Retailer Training Programs. The training is available on line at wecard.org and can also be licensed and run on internal corporate computer-based training systems.

The 2009 Family Smoking Prevention and Tobacco Control Act gave FDA the authority to regulate tobacco, which applies to selling cigarettes, cigarette tobacco, smokeless tobacco and roll-your-own tobacco. Violations observed during FDA retailer inspections range from Warning Letters to steep fines maxing out at $10,000 — with a worst case of a "No Sale" order that prohibits the sale of tobacco at the establishment. In the near future, FDA will likely issue regulations governing the sale of other products, such as e-cigarettes and other tobacco products.

NACS Applauds NPC for Advising Government to Remain Technology Neutral

Report on new fuel and vehicle technologies recommends coordinated market approach to determine the vehicle and fuel technologies of the future.

The National Petroleum Council (NPC) has approved a draft report on the future of vehicles and fuels, "Advancing Technology for America's Transportation Future."

The report finds that new fuel and vehicle technologies must overcome a variety of technological hurdles in order to penetrate the market and become viable options for consumers. NPC advises that the government should support research into these technologies and work with state and local governments and other stakeholders to streamline permitting and regulatory processes that impede introduction of new fuels.

However, given the uncertainty over which technologies will best serve the public in the long term, the government should remain technology neutral and let the market determine the technologies of the future. The report was prepared in response to a specific request from Secretary of Energy Stephen Chu, who tasked the council with evaluating the future of transportation and fuel technologies through 2050. The council's report represents more than two years of work from some of the leading experts in the nation.

"This comprehensive report provides additional detail and analysis regarding the challenges the market faces when trying to identify new fuels and technologies," noted NACS Vice President of Government Relations John Eichberger.

"NACS has been saying for a long time that research and development, combined with a coordinated go-to market strategy, can help determine which fuels will survive. We have also strongly cautioned the government against picking winners and losers during this transition; rather we have advocated for a technology neutral approach to reduce barriers to entry in order to empower consumers to decide what the future will hold. It is reassuring to hear the NPC echo these sentiments, and we applaud them for their work on this report."

The council identified 12 Priority Technology hurdles that it considers essential to the commercialization of advanced fuels and vehicles. But while profound changes are possible, "despite sustained investment in technology and infrastructure, these fuel and vehicle advances are not assured. There are competing priorities in the pursuit of new fuel and vehicle technologies that are at once reliable, affordable and environmentally responsible," the council wrote.

The council also took a close look at infrastructure impediments to the introduction of new technologies. The report acknowledges the significant investment necessary to introduce a new fueling technology and noted that the lack of significant demand during early adoption could preclude such investments; similarly, the lack of refueling infrastructure can limit consumer purchases of new vehicles. One option that deserves consideration is orchestrating a concurrent rollout of vehicle and refueling technologies in an attempt to overcome the hesitancy of both stakeholders.

The council made five recommendations to facilitate the development and adoption of new technologies:

- Government should promote sustained resources to help overcome the identified technology hurdles.
- Due to uncertainty concerning which technologies will emerge as the best options for the market, government policies should be technology neutral and allow the market dynamics to drive commercialization.
- The federal government should convene stakeholder groups to streamline permitting and regulatory processes in order to accelerate deployment of infrastructure.
- The government should consider full life-cycle environmental impact and cost effectiveness across all sectors when considering GHG emission reduction options.
- Fuel, vehicle and technology providers should consider existing or new voluntary forums to address concurrent development of vehicles and infrastructure.

Another Listeria Outbreak Hits C-Stores

Convenience stores, grocers and fast food operators in 37 states have been asked to pull hundreds of thousands of packaged food products containing sliced or diced apples from their shelves because of potential listeria contamination, according to the federal Food and Drug Administration website.

The listeria outbreak is the fourth in less than a year affecting c-stores.

Others last fall and earlier this year in the spring involved prepackaged sandwiches and some salads.

Among the retailers affected in this case are: Wawa, McDonald's, Burger King and Safeway, according to the safety recall notice released to the public and to the Food and Drug Administration.

The products, which have use-by dates of July 8, 2012 through August 20, 2012, were produced and distributed by the Missa Bay LLC food service operation, a wholly owned subsidiary of Ready Pac Foods Inc., of Swedesboro, N.J.

Missa Bay notified retailers of the possible contamination after finding listeria monocytogenes on equipment primarily used to produce apple products.

While the producer said that so far no illnesses have been reported as a result of the contamination, listeria monocytogenes can cause serious and sometimes fatal infections in young children, frail or elderly people and others with weakened immune systems. The bacteria can also cause miscarriages and stillbirths in pregnant women.


PA
OH
WV
KY
TX

Oil Marketers Update

EPA Revises Annual EPCRA Tier II Inventory Reporting Forms

The U.S. EPA announced that it will require additional information on annual EPCRA Tier II filings. The new requirements are important to petroleum marketers because all bulk plant owners must submit an annual EPCRA Tier II inventory report to state emergency planning commissions – generally the state Fire Marshal – each year by March 1.

EPA's requirements add new data elements that bulk plant operators must report on Tier II Emergency and Hazardous Chemical Inventory Forms under Section 312 of the Emergency Planning and Community Right-to-Know Act. The Tier II inventory form requires more detailed information on the amounts and locations of hazardous chemicals present, including the longitude and latitude of the facility, whether employees are stationed on site, and the maximum number of employees who may be present at one time. Additionally, bulk plant operators will be required to provide contact information for the facility emergency coordinator, the email addresses of the owner/operator and emergency contact as well as applicable identification numbers assigned under the Toxic Release Inventory and risk management programs. The Tier II form will also include separate data fields to report pure chemicals and mixtures.

The changes will not take effect until January 1, 2014 and will appear on the 2013 annual inventory report (both on paper forms and on electronic data fields) due on March I, 2014. EPA said the rule will impose only "minimal" reporting burdens on subject facilities because "the data elements are readily available to the facility."

We will provide regulatory guidance to bulk plant owners as the deadline approaches.

Senate Extenders Bill Includes Biodiesel Credit

The Senate Finance Committee approved by 19-5 a tax extenders package that includes a two year extension (retroactive to December 31, 2011) of the biodiesel tax credit, a two year extension of the 30 percent tax credit for alternative fuel refueling property, and a one year extension of the cellulosic biofuel producers tax credit.

The ethanol tax credit is not included in the $205 billion package of tax cuts, and the committee accepted Sen. Kyl's (R-AZ) amendment adjusting credits that are generally 50 cents per gallon for alternative fuels such as compressed or liquefied natural gas. The amendment eliminated language that makes the credits refundable, therefore no one would be able to claim credits in excess of their tax liability. Committee members also unanimously approved Sen. Thune's (R-SD) amendment expressing the committee's desire to embark on comprehensive tax reform aimed at reducing overall tax rates by eliminating targeted incentives, particularly energy tax expenditures, which should be "responsibly phased out".

The Family and Business Tax Cut Certainty Act is expected to move to the Senate floor in September, but the House Ways and Means Committee will not act on its version of the package until after the November elections. The measure will face significant opposition in the House but it is possible that a compromise measure could be adopted in the lameduck session of Congress.

Results from NCWM Annual Meeting

The National Conference on Weights and Measures (NCWM) held its 2012 Annual meeting in Portland, Maine. Items on the agenda important to petroleum marketers and retailers were standardizing nozzle color and size, a potential 10 micron diesel dispenser filter mandate, biodiesel disclosure and retail price posting requirements.

PMAA continued to work on the proposal to require full disclosure of the percentage of biodiesel under five percent in diesel fuel. PMAA believes that all parties along the distribution chain have a responsibility to disclose accurate biodiesel content information for the fuel they supply. PMAA's Second Vice Chairman Sam Bell attended the meeting to push for modifications to the biodiesel disclosure item to improve transparency and fairness for marketers. Bell is co-chairman of the NCWM Biodiesel Disclosure Working Group along with Steve Howell with the National Biodiesel Board. After intense discussions, the task group, which is made up of the National Biodiesel Board (NBB), the American Petroleum Institute's (API) member companies and PMAA, were unable to find consensus on the issue. It was later agreed that a state-by-state approach was the best available option for marketers to receive exact biodiesel content disclosure. PMAA has drafted model state legislation that it has shared with state association executives.

Additionally, NCWM Laws and Regulations (L&R) Committee agreed to PMAA's recommendation to withdraw the Standardized Colors for Nozzles which would mandate a green diesel nozzle and a yellow nozzle to E85. Because not all states adopt these requirements, the proposal could actually cause more confusion in the marketplace by creating a patchwork of requirements across the country. Also, there is no evidence that the proposal would help mitigate vehicle misfueling. After hearing from industry groups, weights and measure officials withdrew the proposal to standardize dispenser nozzle colors. However, NCWM did approve a non-controversial proposal to require retail diesel dispensers to have a nozzle spout diameter that conforms to the latest version of SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."

PMAA also urged the NCWM L&R Committee to withdraw an item on the agenda which would mandate a 10 micron or smaller sized filter on all diesel dispensers. Auto trade groups are pushing NCWM officials to require retailers to install smaller pore sized micron filters for diesel nozzles. PMAA argued that it would cause clogging and diminish dispenser flow rates by 50 percent or more, hurting commercial truck drivers. Additionally, this could potentially lead to a patchwork of some nozzles having the smaller pore size while other retailers might not have them since some states do not automatically adopt the NCWM handbook. After further discussion, NCWM officials left the item as "informational" which will allow time for industry stakeholders to come up with a consensus solution.

Finally, NCWM officials approved new language which would allow greater flexibility for retailers to give discounts at the pump. Current regulations do not address the recent advancements in fuel purchase discounts at retail stations, such as discounts for purchasing with cash, pre-pay sales, purchasing store products, carwashes, rebates, and other discount scenarios, that could lead to retailers to be found non-compliant with NCWM standards. While PMAA didn't object to the new language to address price posting, PMAA asked for a two year delay implementation period to allow small mom and pop retailers time to upgrade their point-of-sale (POS) systems to be in compliance with the new language. However, NCWM officials rejected the delay noting that the current NCWM Handbook 44 requirements do not permit systems to offer post-delivery discounts and that retailers are already out of compliance with current Handbook 130 regulations. **Please note: The language isn't a mandate, however, if retailers wish to offer discount programs starting January 1, 2013, they must have capable POS technology to conform with the new language described below.**

For post-delivery discounts: The unit price at which the dispenser is set to compute shall be the highest unit price for any transaction. All purchases must be accompanied by a printed receipt recorded by the system (no hand written receipts or hand calculated discounts are permitted — such transactions are already prohibited in NCWM Handbook 130) that includes the total volume delivered, the dispensed price per unit, total computed price on the dispenser, an itemization of post-delivery discounts to the unit price, and the final total price of the sale after all post-delivery discounts are applied. Additionally, dispensers capable of pre-delivery discounts will be able to do so provided that the dispenser will display or be capable of displaying the final unit price prior to any post-delivery discounts following a deliberate action by the purchaser. For instance, when the customer swipes a debit card or loyalty card, this is a deliberate action by the customer in which the dispenser will roll back the price. Many retailers do not have the option for pre-delivery discounts, so they will have the option to apply all discounts as "post-delivery discounts" and subject to an itemized detail receipt as explained above. Please note that truck stop dispensers used exclusively for refueling trucks, fleet sales and other price contract sales are exempt from these requirements.

Ethanol Mandate Reduction Sought

Before the recess 156 members of the House led by Representative Goodlatte (R-VA) urged EPA to reduce the 2012 ethanol RFS mandate to help offset the drought stricken corn harvest this year. Corn prices have risen 50 percent since June and the lawmakers believe a waiver of the mandate would diminish future price spikes. Livestock groups also filed a petition with EPA asking for up to a one-year waiver of the corn ethanol mandate.

The Renewable Fuels Association and Growth Energy responded to the request from Congress stating that the drought and high oil costs are to blame for corn prices, not ethanol. The Senate and some Governors are considering a similar letter campaign to urge EPA to waive the mandate. Agriculture Secretary Tom Vislack has indicated that the Obama Administration is firmly opposed to easing the ethanol mandate.

EPA Puts Off Designation of New Non-Attainment Areas Until June 2013

In what is likely a not so well disguised effort to put off controversial regulations until after the 2012 presidential elections, the EPA announced this week that it is extending the deadline for designation of new non-attainment areas for 2010 sulfur dioxide standards until June 13, 2013. The delay is important to petroleum marketers because non-attainment designation sometime affects fuel formulations in areas that are found to be in "severe" non attainment with air pollution standards. Combustion of high sulfur fuels such as marine locomotive and heating oil is one source of sulfur dioxide emissions though coal burning electric plants that account for more than 75% of sulfur dioxide emissions. The Clean Air Act (CAA) requires EPA to designate non-attainment areas within two years of issuing new air quality standards. In this case, the EPA was due to designate new non-attainment areas by June 3, 2012. Instead, EPA decided to take advantage of a provision in the CAA that allows a third year if the agency has insufficient data to promulgate the designations. The agency had intended to base non-attainment designations on both air quality monitoring information and modeling data. However, EPA received public comments questioning the modeling data and determination of area boundaries and identification of pollution contributed from nearby areas. EPA officials say it remains uncertain at this point on how to change the modeling formula to produce reliable data upon which to base non-attainment designations.

Farmers SPCC Clarification Moving in House

The House Transportation and Infrastructure Committee approved by voice vote, H.R. 3158, the "Farmers Undertake Environmental Land Stewardship (FUELS) Act". The bill, introduced by Rick Crawford (R-AR), would bring clarity to farmers on the requirements of the EPA's Spill Prevention, Control, and Countermeasure (SPCC) rule, it would provide threshold sizes for tank regulation at the farm level, and allow more farms to self-certify.

As petroleum marketers well know, the SPCC rule is applicable to any facility, including farms, with an aggregate above-ground oil storage capacity of 1,320 gallons in tanks of 55 gallons or greater. H.R. 3158 would create three classes of farms for SPCC purposes:

1. Farms with individual tanks with storage capacity greater than 10,000 gallons, aggregate storage capacity of at least 42,000 gallons or spill histories would need professional engineers to certify their SPCC plans.
2. Farms with aggregate storage capacity greater than 10,000 gallons but less than 42,000 gallons and no history of spills could be self-certified by the farms' owners or operators.
3. Farms with aggregate storage capacity less than 10,000 gallons and no history of spills would be exempt from requirements.

The bill would also exclude all containers on separate parcels that have a capacity less than 1,320 gallons from the aggregate storage capacity of a farm.

The measure faces significant opposition in the Senate and is not likely to be adopted without pro-environment changes. Senators Inhofe (R-OK) and Sessions (R-AL) tried to attach an SPCC amendment to the Farm bill, but their amendment was not included in the final Senate agreement.

Senate Discusses Natural Gas as A Transportation Fuel

Recently the Senate Energy and Natural Resources Committee held a hearing to review the potential obstacles that natural gas faces as a transportation fuel. Testifying before the committee were: Dave McCurdy, president and CEO, American Gas Association; Michael Gallagher, senior adviser, Westport Innovations Inc.; Reg Modlin, director of regulatory affairs, Chrysler Group LLC.; David Greene, corporate fellow, Oak Ridge National Laboratory; and Paul Cicio, president, Industrial Energy Consumers of America.

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) challenged witnesses to explain why natural gas hasn't been able to penetrate the transportation sector. Witnesses cited the "chicken and egg" conundrum. With little to no natural gas refueling infrastructure, car manufacturers are reluctant to invest in CNG/LNG cars. It can be said the other way around as gasoline station owners are reluctant to invest in natural gas infrastructure since there's so few CNG/LNG cars on the road (less than 120,000 nationwide). Oak Ridge National Laboratory's fellow, David Greene, cited natural gas obstacles such as increased vehicle cost mainly due to the greater cost of compressed gas storage tanks, reduced range and, therefore, increase frequency of refueling as well as diminished cargo space due to the lower energy density of compressed natural gas. "We need to proceed with caution – attempting a large scale transition from petroleum fuels to natural gas would be a mistake in my opinion," said Mr. Greene. All witnesses agreed that the low hanging fruit for natural gas lies within state and municipal fleets in which hundreds nationwide have already converted to natural gas. The next on the list is to convert trucking fleets to natural gas. Many fleet operators have announced plans to expand natural gas operations including Waste Management, Verizon, and Ryder.

McCurdy said that natural gas utilities are providing early markets for NGVs – "The gas utilities in AGA's membership maintain over two million miles of natural gas distribution pipelines nationwide which means we can place CNG fueling stations around the country. Currently, there are over 1,000 CNG stations in the US, and many of these are owned and operated by gas utilities."

Meanwhile, Paul Cicio with the Industrial Energy Consumers of America said that the government shouldn't be in the business in picking winners and losers. Cicio's organization is opposed to the Nat Gas Act which would impose a tax on compressed natural gas (CNG) and liquefied natural gas (LNG) to fund tax credits for trucks to convert to CNG/LNG. Federal subsidies would also be available for new refueling infrastructure. "Since natural gas is so cheap compared to diesel fuel, the market will work to supply natural gas without the need for government involvement," Cicio said.

Other challenges include home automobile refueling and tax code obstacles. Modlin with Chrysler said that home refueling is extremely expensive, although research is ongoing to make it cheaper and faster. Home refueling equipment often costs more than $5,000. The tax code also poses challenges to the liquefied natural gas (LNG) market. Currently, LNG incurs an effective excise tax rate of $0.41 per diesel gallon equivalent versus $0.24 for diesel fuel. Because the tax is applied on a volume basis rather than energy content, the lower LNG energy density is more costly.

Motor Carriers and Shippers Cited for Hazardous Materials Violations

Motor carriers and shippers cited for hazardous materials violations face far greater penalties following the passage of the new federal highway reauthorization law.

Fleets recently blasted the Federal Motor Carrier Safety Administration over a change in its Compliance, Safety, Accountability program related to hazmat transport.

A provision in the highway legislation signed into law last month by President Obama allows the Pipeline and Hazardous Materials Safety Administration to assess fines of up to $75,000 per day, per violation, from the former $50,000 limit.

In cases of death, severe injury, serious illness or substantial property damage, PHMSA can fine a carrier or shipper up to $175,000 per day, per violation, an increase from the former $100,000 ceiling.

PHMSA regards serious incidents as those in which a fatality or major injury was caused by the release of a hazardous material, the evacuation of 25 or more people was required as a result of release of a hazardous material or exposure to a fire and it caused the closure of a major transportation artery.

Grocery Highlights

Bipartisan Menu Labeling Reform Bill Unveiled

On July 24, Rep. John Carter (R-TX) and a bipartisan group of cosponsors introduced legislation to reform the restaurant menu labeling requirements of the health care law and ensure that FDA does not broaden its scope in its rulemaking to include grocery stores and other food retailers. The menu labeling provision was passed as part of the health care law to provide uniform, federal menu labeling regulations for chain restaurants, not grocery stores. The menu labeling reform bill, entitled the Common Sense Nutrition Disclosure Act of 2012 (H.R. 6174), currently has 23 cosponsors. The full bill text can be accessed here. FMI worked closely with Rep. Carter's office and representatives from Domino's, NACS and the National Grocers Association in crafting the bill. We sent a joint letter to the offices of Rep. Carter and other key cosponsors to show our support for the bill and the need for legislative action to fix the menu labeling requirement. FMI's press release stresses the importance of the legislation for the industry.

Rep. Carter held a press conference to coincide with the bill introduction alongside some of the bill cosponsors and food industry representatives, including FMI member H-E-B. Rep. Carter was joined by bill cosponsors Reps. Henry Cuellar (D-TX), Tim Walberg (R-MI), Rubén Hinojosa (D-TX) and Tim Scott (R-SC). Dya Campos, Director of Public Affairs at H-E-B, spoke at the press conference, emphasizing the unnecessary burden that the menu labeling requirement would place on the supermarket industry. Campos also highlighted that over 95% of food items in grocery stores already provide nutrition labeling. Domino's Pizza franchisee Jonathan Sharp and Miller Oil Co. President Jeff Miller also made remarks at the press conference in support of the bill. FMI has been aggressive in pursuing both regulatory and legislative action to seek supermarket exemption when FDA releases its final rule. FMI and our coalition partners will continue meeting with congressional offices to seek additional cosponsors and garner support for the bill.

Food and Drug Law Institute Publishes Menu Labeling Paper by FMI's Lieberman, Available on Site

Earlier this month, the Food and Drug Law Institute published a paper FMI's regulatory counsel Erik Lieberman wrote on menu labeling and how FDA exceeded its authority by regulating supermarkets. The paper is published in the peer-reviewed FDLI Policy Forum series.

The paper will be an effective resource to share with policymakers to highlight FMI's concerns with FDA's proposed rule on menu labeling. A copy can be viewed at www.fmi.org.

25% of Americans Utilize Online Coupons

According to Coupons.com, digital coupons are used by 25% of Americans, or 55.7 million people, compared with 49 million in 2010. People who use online coupons make more shopping trips, spend more money and have a higher average household income compared with other shoppers.

Where Consumers Put Their Food Money

Where that food money is going, and a new IBM report - for July 26, 2012. Exchanging unexpected pieces of knowledge.

- On a national average basis, households have spent less than 9% of their income on groceries in 2012 vs. more than 12% of their income thirty years ago, according to U.S. Bureau of Labor Statistics data.

- When it comes to packaged brands and retailer marquee brands, today's smarter consumers exert a new independence. Because they can easily access alternate choices and product-pricing-review information using mobile technology and social media, they are forcing change in the way manufacturers and retailers approach them.

FMI Launches Redesigned Government Public Affairs Site

FMI's Government & Public Affairs department is happy to highlight our new video issue interviews, a member resource that provides updates on key industry public policy issues to supplement our regular conference call updates, public policy newsletters and @FMI_GR Twitter feed. These video issue updates will be hosted on the FMI Government & Public Affairs website on the appropriate priority issue pages. We currently have videos posted on the website on the impact of the health care reform law, specifics of FDA's menu labeling proposed rule, e-fairness and tax reform. Please visit FMI's new feature on the G.R. Multimedia page or on the various issue-specific pages. We will provide new video updates over the next few months, but you can continue to learn about the latest industry G.R. news via the recently redesigned FMI Government & Public Affairs site.

House Action on Farm Bill Remains Uncertain, May Pass Short-Term Extension

The House Agriculture Committee has approved the Federal Agriculture Reform and Risk Management Act of 2012 (H.R. 6083), its version of the Farm Bill which estimates $35.1 billion in savings over the next ten years from mandatory funding, including $16 billion from tightening eligibility for the Supplemental Nutrition Assistance Program (SNAP). Last month, the Senate passed its Farm Bill, the Agriculture Reform, Food, and Jobs Act of 2012 (S. 3240), which estimates $23.6 billion in savings over ten years, including $4.5 billion from SNAP. Authorization for 2008 Farm Bill nutrition and farm programs expires September 30.

It is unclear whether H.R. 6083 will move to the House floor for consideration due to a number of opposing factions in the House seeking either increases or further decreases in spending programs, such as SNAP. Some Agriculture Committee members still prefer addressing a five-year Farm Bill reauthorization to avoid further potential cuts in the budget sequestration process. The House could vote on the short-term plan as early as next week. If the short-term extension passes, lawmakers would likely then form a conference committee to reconcile the Senate-passed and House bills to work toward passage of a longer, five-year extension. FMI has been working with congressional offices throughout the Farm Bill debate to ensure that certain onerous amendments were not offered to the underlying bills, including those related to SNAP food policy and requiring labels on genetically engineered food products. FMI also engaged with offices to verify that retailer provisions acknowledge existing commercial practices of responsible SNAP retailers and to avoid further cuts to SNAP.

OMEGA Kicks Off Make-A-Wish Fundraiser

On August 1st, we kicked off our fundraising campaign for Make-A-Wish. On August 1st, we had press events at TWJ, Inc. (Foodland) in Parkersburg and Par Mar Stores in Fairmont. On August 2nd we had an event at a Par Mar location in Elkins. On August 3rd, we held an event at Little General Stores in Beckley and Go -Mart in Kanawha City. Below are some pictures from these events.

Miscellaneous

Welcome New OMEGA Members

21 Country Market, Inc.
P.O. Box 40
Millwood, WV 25262
Phone: 304.532.9697
Email: jmccoy@casinternet.net
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Big Four Exxon
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Contact: Wayne Goodson

Godfather Spirits
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Derrow's Mountaineer Mart
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Fax: 304.843.1863
Email: lisapaigebug@aol.com
Contact: Lisa Hines-Derrow

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Fax: 304.467.8300
Email: bennettmary77@yahoo.com
Contact: Mary Bennett

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Contact: Sandra Kinder

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Email: jfodell@frontiernet.net
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Calendar of Events

Designated Risk
Management Seminar
September 25
Stonewall Resort
Roanoke, WV

MAW Charity Golf Outing
& Awards Banquet
September 25 & 26
Stonewall Resort
Roanoke, WV

UST Re-certification
Training
October 23 & 24
Charleston Civic Center
Charleston, WV

Trade Expo & Golf Outing
May 13 - 15, 2013
The Resort at Glade
Springs

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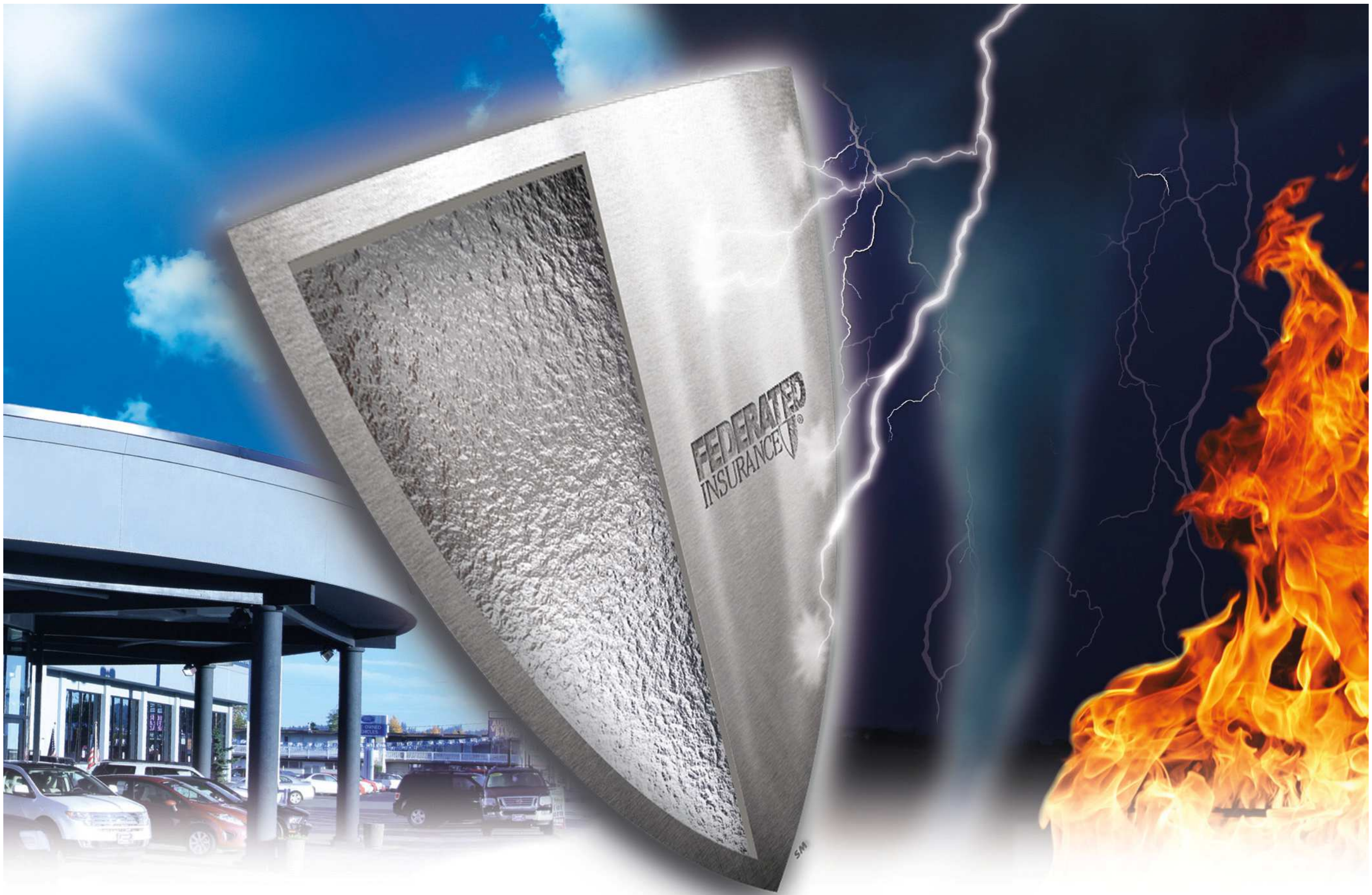

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