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west virginia oil marketers & grocers assoc.

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

December 2012

Number 620



*We Wish You A Merry Christmas
and A Happy, Prosperous New Year!*

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From the President ...



It is hard to believe that we are ready to wrap up 2012. What an exciting year it was for the Association! Who would have thought when we begun the year that we would be making a move? It may not have been part of our plan for the year, but we could not be more pleased with our new office!

Recently the staff and executive committee met and completed a year-end review as well as set some goals for 2013. 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 2013 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 2013 and plan, we ask for your input. We are your association and appreciate suggestions and comments.

Dues invoices are being mailed this week and as is customary, we added a yearly summary of our activities and accomplishments. We will be emailing this document to members as well. We hope that you are proud of your Association's efforts in 2012.

On February 13th, the session will begin. We look forward to working with the Governor, Senate and House of Delegates to move WV forward. We will once again host our Legislative Day and Legislative Reception at the Capitol, but don't have the date set. We will forward this information to you once we confirm it with the Governor's Mansion so that you may add it to your calendar.

In January, we will mail registration information for our upcoming Mission Possible Trade Expo and Golf Outing, which will be held May 13 - 15 at The Resort at Glade Springs.

Also in January, we will be mailing scholarship applications to our Active Members. The deadline to submit applications is May 1st.

Traci, Marti and I wish you and yours a Very Merry Christmas and health, happiness and prosperity in 2013.

Jan

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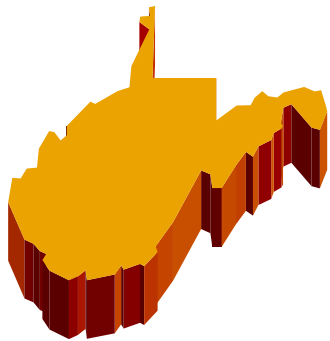
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West Virginia News

Motor Fuel Tax to Increase on January 1, 2013

On January 1, 2013 the total tax on motor fuel in West Virginia will be \$0.347. That includes the new variable rate of tax on motor fuels of \$0.142 per gallon and the fixed rate of \$0.205 per gallon. The WV Tax Department Administrative Notice is available on our Web site at www.omegawv.com.

We are having decals printed for members to display on their gas pumps, which will show the breakdown of federal and state gas taxes. These will be available for purchase in January.

Few Changes in Lawmakers' Nominations for Leadership in Next Session

Senate President Jeff Kessler won the unanimous backing of fellow Democrats for a full term on December 9th. Kessler took over from now-Gov. Earl Ray Tomblin last year. GOP Senators chose Senator Mike Hall as Minority Leader again. The Democrats also nominated Sen. Joe Minard to be the next Senate clerk. Senator Minard is expected to resign his Senate seat in January.

House Speaker Rick Thompson was unanimously chosen by that chamber's Democrats for a fourth term in his post. GOP delegates re-nominated House Minority Leader Tim Armstead.

Class C Operator Training Clarification

We received a question in the OMEGA Office regarding whether drivers who load and unload fuel need to have someone with a Class C Operator certification present.

Answer: A Class C operator is a daily on-site employee who has primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank (UST). A Class C operator must be on-site during all hours of operation unless the facility has been designated as an "unmanned facility." A convenience store that is not open for business is not considered to be in operation; therefore, a Class C operator would not be required to be on-site. (An example of this would be a store that closes between midnight and 5 a.m.).

In most instances, the Class C operator would be the Clerk or Store Manager. The Class C Operator controls the dispensing of fuel and is responsible for initial response to alarms or releases. This individual notifies the Class A and Class B operator and appropriate emergency responders when necessary.

The definition of an unmanned facility is: A UST facility that does not have an attendant present during all hours of operation. Examples of such UST facilities would include unattended card lock facilities, emergency generator sites, and some government emergency response service providers. (A bulk plant open at night could fall within this definition.)

If you operate a bulk plant or other facility with no formal station attendant at the site and want to become a designated unmanned facility, WVDEP will consider written requests from owners for designating certain types of facilities as unmanned on a case by case basis. Unmanned facilities are still required to have Class C operators. These operators must be available to respond to emergencies at their facility within 60 minutes. Request for designating a facility as "unmanned" should be made by the UST owner to the WVDEP UST Program Manager. Information for filing for "Unmanned" status can be found at the following website: <http://www.dep.wv.gov/WWE/EE/UST/Pages/USTOperatorTrainingFAQs.aspx>.

Audit Report Recommends Expansion of Home Rule Statewide

The home rule program that gives four cities additional authority to deal with local problems could be extended to other communities after its termination date in mid-2013.

A legislative audit delivered to the interim committee members at the meeting recommended continuing the program and doing away with the Home Rule Board, which screened proposals from the four home rule cities.

Charleston Mayor Danny Jones said he hopes the Legislature extends home rule. He said he appreciates what home rule has done for the city.

"Our biggest plus is the building codes we had trouble enforcing before. We need more power, but we'll take whatever we can get," Jones said.

Charleston, Huntington, Wheeling and Bridgeport have operated pilot programs under home rule to determine whether cities can handle local problems without some of the restrictions they otherwise face under state law.

Many of the home rule projects deal with liens on properties that are delinquent on services or fees, but Huntington took it further to implement a city sales tax and an occupation tax.

The sales tax has brought in \$2,225,745 through Oct. 12. That allowed the city to eliminate the business and occupation tax on manufacturing, reduce the tax on service businesses from 1 percent to half a percent and reduce the tax on retail business from half a percent to one-fourth of 1 percent. The audit report quotes Huntington officials as saying those reductions saved Huntington businesses \$2,085,000 in the first half of this year.

According to the audit report, Charleston has collected \$202,258 through lien letters and property sales through liens it issued to collect delinquent fees. The city also collected \$30,000 by publishing a list of the top 15 delinquent city service fee accounts.

Charleston also obtained the authority to issue "on-the-spot" citations for external sanitation violations and common nuisances. Charleston inspectors have reported faster compliance, and only two of the 63 issued citations were appealed to the Municipal Court.

And Charleston may now sell land to nonprofits at fair market value without an auction. That allowed the city to sell a plot of connecting land to a Kroger store at Ashton Place without auctioning off the property. This store will use the land for a \$9.6 million expansion, the report said.

"Given the success of the program and the benefits to the participating municipalities and the state, the Legislature should consider granting broad-based home rule to all Class I, II, and III municipalities," the audit report released at an interim committee meeting says.

"The Legislative Auditor assumes that the intent of the Legislature was to determine if home rule authority could be expanded to all Class I, II, and III municipalities without the continuation of the Home Rule Board; therefore it is recommended that the Home Rule Board be discontinued if home rule is expanded statewide."

Ergon Plans \$78M Expansion of Refinery

Ergon Inc. is planning a \$78 million expansion of its oil refinery in Newell. Ergon spokesman Jim Temple tells the Weirton Daily Times that expansion will allow the refinery to process new crude oils from the Marcellus and Utica shales in the region.

Temple says the expansion primarily involves processing equipment and won't create any new jobs. The plant employs 180 people.

The expansion is expected to be completed in 2014.



Aluminum Foil Used in Theft Scheme

We have been notified by Jerry Cole of the U. S. Attorney's Office that in recent weeks they have found a couple of instances of aluminum foil being used at convenience stores to block data feed between the station and credit card companies.

Basically, criminals are climbing on top of roofs and putting foil over "data feed horns" which prevents communication between the merchant and the credit card (or others) companies. The merchant processes the cards offered by the Merchant does not find out the card is

fraudulent until the criminals have left the business because of the blocking of the data feed.

This is not a new trick by criminals but it is working to an extent as many retailers have their communication links on top of their business or unprotected near by the store location.

Methods employed to "foil" the scammers abound on the Internet. They include lubricating the exterior walls of the building to prevent access to the roof and the installation of razor wire. One station in Kentucky resorted to embedding razors in the roof in the area of the dish and nearly caught the bandit when he showed up at a neighboring business with bloodied hands he attributed to a sharp car hood.

State Tax Revenues Slightly Ahead of Projections

State tax collections soldiered on slightly ahead of projections in November, despite downturns in severance tax collections and state Lottery profits, the deputy revenue secretary said recently. "The economy's moving forward, but it's remaining sluggish, with the headwinds of the energy sector weighing a little bit, along with competition in the gaming sector," Mark Muchow said.

- ◆ Overall revenue tax collections came in at \$266.7 million for the month, about \$2.8 million above estimates.
- ◆ Since the start of the budget year on July 1, total tax collections are at \$1.6 million which is about \$2 million (0.1 percent) above estimates
- ◆ Year-to-date severance tax collections are running about \$20 million (20 percent) below projections, hit by a double whammy of decreased coal production and a drop in natural gas prices.
- ◆ Lottery transfers year-to-date are at \$92.6 million, down \$127 million at the same point in 2011, as competition from casinos in Ohio, Pennsylvania and Maryland are hurting business at West Virginia's racetrack casinos.
- ◆ Corporate net taxes are running \$13.8 million above estimates, and nearly 29 percent ahead of last year
- ◆ Sales tax collections are running \$3.2 million ahead of projections year-to-date. Sales tax collections are down 1 percent from the same point in 2011-12 budget year, attributable to the reduction in the sales tax on food to 1 percent, effective this past July 1.

**A SLIPPERY SLOPE – PREMISE LIABILITY DECISION
A CAUSE FOR CONCERN**

Are we headed for a society that demands neon-lit signs warning of all things we encounter? Apparently we are. Last month, U.S. Federal District Court Judge Gina Groh (a recent Obama appointee whose investiture was on 10/19/12) issued a Memorandum Opinion and Order that should grab the attention of all OMEGA members.

Dana Cline, a 33 year old mother of two, walked into the Ranson, WV 7-Eleven store on a rainy day to buy a pack of cigarettes. When she stepped off of the mat and onto the store’s vinyl floor, she slipped, causing her to stumble and catch herself on the counter. Cline testified later that the store manager said, upon seeing her stumble and almost fall to the floor: “I need to get that wet floor sign out;” and subsequently put the sign in the area of Cline’s slip and stumble. 7-Eleven obviously disputed that version of events and maintained that the wet floor sign had been properly displayed when Cline entered the store. Cline also testified that she observed a puddle of water on the vinyl tile floor after her fall, but could not say how long it had been there. Litigation ensued in June 2011 in Jefferson County Circuit Court, but 7-Eleven removed the case to U.S.D.C. in November 2011. Cline’s Complaint included a demand for punitive damages based upon the recklessness and “gross negligence” of 7-Eleven. Of particular note, Cline retained an expert witness that inspected the floor of the 7-Eleven store some three (3) years after the event and was prepared to testify that: (1) the floor of the 7-Eleven was dangerously wet; (2) the mats at the entrance of the store were inadequate; and (3) that the store failed to maintain the floor and mats in a reasonably safe manner to avoid Cline’s injury. 7-Eleven moved to dismiss the punitive damages claim shortly before trial, and Cline moved for partial summary judgment on the issue of liability. 7-Eleven moved in the alternative for bifurcation of the punitive damage claim if it survived.

Judge Groh’s 15 page Opinion acknowledged that the W.Va. Supreme Court of Appeals had never provided its own definition of “gross negligence” but had previously interpreted Virginia law to define that term as the “degree of negligence which shows an utter disregard of prudence amounting to

complete neglect of the safety of another.” (citations omitted). Judge Groh further found that the plaintiff’s allegations were sufficient to survive 7-Eleven’s motion to dismiss in as much as it was alleged: (1) the defendant knew or had reason to know that wet floors in its business created dangerous and hazardous conditions; (2) that the defendant knew or had reason to know that the failure to place mats on the floor to protect customers from slipping when the floor was wet caused dangerous and hazardous conditions; and (3) that the defendant knew or had reason to know that the failure to place cones or warning signs near the door when the floor was wet caused dangerous and hazardous conditions. Judge Groh determined that the difference between ordinary and “gross negligence” was one of degree, and thus, a question of fact for the jury.

If, under WV law, the failure to wipe up a puddle of water on a convenience store floor, during a rain storm, is “gross negligence” giving rise to the potential for punitive damages, then this Association should be very concerned. 7-Eleven appropriately argued that “gross negligence” meant something more than the lack of ordinary care, but Judge Groh disagreed. I note that 7-Eleven’s motion was for dismissal, rather than summary judgment, meaning that Judge Groh’s Opinion could be narrowly interpreted to mean that the plaintiff was merely able to survive the dismissal challenge. However, Judge Groh cited to Cline’s intention to introduce evidence through her expert, which is suggestive of making her determination on more than the four-corners of the Complaint. In doing so, Judge Groh found that a reasonable fact-finder (jury) could conclude that the 7-Eleven employees were reckless and grossly negligent when they failed to make the dangerously wet floor safe for customers. Irrespective of the standard employed, Judge Groh found that Cline had sufficient allegations of gross negligence to survive 7-Eleven’s motion to dismiss, and that the issue of punitive damages would be left to the jury’s discretion.

The case settled some 17 days after Judge Groh’s Opinion, which leaves some uncertainty to litigants of slip and fall cases. Ordinarily, these types of cases don’t have factual scenarios that would lead to a good-faith demand for punitive damages. However, based upon Judge Groh’s Opinion, the difference between ordinary negligence and gross negligence is one of degree that a jury is entitled to determine. I suspect that every slip and fall case going forward will want to test that determination. At a time when so many of our members are struggling with increased regulations, sky-rocketing costs, and fluctuating prices, can we afford to defend punitive damages in every slip and fall case? Judge Groh’s Opinion will no doubt be a topic of conversation at the next trial lawyers meeting – and if you read this article, it should be a topic of discussion at your next safety meeting.





Federal Issues

The Fiscal Cliff

The debate in Washington has reached fever pitch on whether Congress should extend some or all of the 2001 and 2003 tax rate reductions that TRC helped get enacted into law. With the “status quo” re-elections of President Obama and a GOP-controlled House and Democrat-controlled Senate, the policy positions that were taken before the election have not changed. What has changed is that the December 31st deadline for reaching an agreement on spending and revenue changes to avert the “fiscal cliff” is now only weeks away.

The President has now called for \$1.6 trillion dollars in tax increases (over ten years), and continues to demand increases in the top two income tax brackets to ensure that “the rich pay their fair share” of the tax burden. But the President has put no spending plan on the table, his allied groups and labor unions are demanding that no entitlement program cuts be made, and some Democrat leaders in the Senate have insisted that Social Security be entirely exempt from the conversation and that if any entitlement spending cuts are considered, they should not take effect for 10 to 20 years.

Republican Leaders in the House and Senate have agreed to support increased revenues as part of a fiscal reform package as long as income tax rates are not increased, and as long as meaningful entitlement spending cuts are included in the package.

Despite the Republicans’ demand for what they call a “balanced package” of revenue increases and spending cuts, neither the President nor Democrat leaders in Congress have indicated any willingness to budge on the spending side. In recent weeks newspapers considered friendly to the Administration – including the Washington Post, the Los Angeles Times and the New York Times – have all reported or editorialized on the Democrats’ refusal to discuss spending cuts.

Nonetheless the president continues to demand that Congress act immediately to extend current tax rates only for middle-income taxpayers, and insists that tax rates be increased on so-called “upper income earners” – individuals and families earning \$200,000 and \$250,000 – and on capital gains and dividends.

This will have adverse consequences for many members that operate as Subchapter S-corporations and other pass-through entities because rates will go up in conjunction with the current or pending expiration or elimination of many business deductions and credits. An increase of up to 39.6 percent on these types of business will create higher rates and make it even more difficult to argue for equitable treatment and reduced rates for all businesses when Congress considers tax reform next year with the goal to lower rates and eliminate tax expenditures.

Things are moving quickly, but it isn’t too late to contact your Senators and Congressmen and ask them to:

- ◆ Temporarily extend all individual tax rates to allow Congress to tackle comprehensive reform in 2013. Tax reform must be fair and balanced by treating C-corporations, pass-through entities such as S-corporations and LLC’s, equally.
- ◆ Protect family-owned business by extending the current estate tax rate of \$5 million per individual indexed to inflation (\$10 million per couple with portability of any unused portion to surviving spouse) with a top tax rate of 35 percent. The current estate tax agreement passed with bi-partisan support in 2010.
- ◆ Extend important pro-growth tax provisions such as: accelerated bonus depreciation, Work Opportunity Tax Credit (WOTC), the 15 year straight-line cost recovery for qualified leasehold improvements (including qualified retail improvements), the increased expensing of up to \$500,000 in equipment, re-authorization of New Market Tax Credits, and enhanced charitable deductions for contributions of food inventory. These provisions encourage capital investments and job creation.

Federal, State Lawmakers Eye Increases to Gas Tax

Lawmakers at both the federal and state level are saying they will consider raising fuel taxes to fund much needed highway infrastructure projects. Recently Rep. Earl Blumenauer of Oregon, a Democrat on the House Budget Committee and the Ways and Means Committee, said President Obama should support a fuel tax increase. In addition, Rep. Bill Shuster (R.-Pa.), has said he would consider raising fuel taxes to fund the highway program.

Virginia Gov. Bob McDonnell said he's considering indexing the gas tax to inflation as part of his transportation funding plan for the 2013 Congressional session. The statement comes on the heels of Virginia Sen. John Watkins' announcement that he is creating a transportation funding proposal that would apply a sales tax to gasoline, eliminate several tax exemptions and lower some income tax brackets. In addition, as reported in last week's NNW, a growing number of state groups have voiced opposition [link to voiced opposition to the PDF we uploaded last week] to Gov. McDonnell's plan to toll Interstate 95 in Virginia.

In Iowa several advocacy groups have said they will continue pushing for an increase in the state's gasoline tax to better address transportation needs. A spokesman for Gov. Terry Branstad (R) said the governor would look favorably on raising tax revenue for roads and bridges only if the proposal were contained "within a broad, overall tax reform package that reduces taxes on all Iowans."

Officials in Massachusetts have said "everything" remains on the table to increase transportation funds, including tolls and fuel tax increases. The governor is expected to deliver a proposal by Jan. 7 calling for more robust taxes. In Wisconsin, Craig Thompson, executive director of the Transportation Development Association, said the state is seriously considering increasing the gas tax and increasing vehicle registration fees. In Pennsylvania, Gov. Tom Corbett hasn't specifically called for an increase to the gas tax, but said he soon will propose and lobby for a legislative plan to pay toward fixing the state's \$3.5 billion in transportation needs. A commission Corbett created last year suggested several ways to raise funds, including lifting the cap on the state's oil franchise tax and increasing fees for auto registrations and driver's licenses.

Discussions are already under way in Harrisburg, PA regarding what proposals will be offered to address the increasing crisis in funding needs for Pennsylvania's roads and bridges. Two proposals under consideration are a significant increase in the oil franchise tax and moving the point of collection of motor fuel taxes to the rack.

PA Governor Rendell is leaning toward support of lifting the ceiling in the oil franchise tax formula which currently limits the annual wholesale price designation at \$1.25.

Supporters argue that the cap - set by the legislature in 1982 - is outdated and needs to be raised to reflect modern wholesale prices.

In West Virginia the Blue Ribbon Commission on Highways continues to meet. Following is a table presented to the Infrastructure Sub-Committee:

Overview of 25-Year Constrained Budget Estimate for Highway and Bridge Needs:

Budget	Highways = \$463 Million annually Bridge = \$101 Million annually
Highways	= \$11.1 Billion \$9.8 Billion for Federal-Aid Roads \$1.3 Billion for Local road
Bridges	= \$2.4 Billion

An additional \$400 million is needed just to maintain the status quo of the highway system in West Virginia.

Employee Hiring Resolutions for the New Year

If you can implement these two, simple hiring resolutions for 2013, at the end of the year, you'll find the quality of your new hires is significantly higher and employee turnover is significantly lower than it was at the end of 2012:

1. In 2013, we will not hire people who are looking for work; we will only hire people who are looking to work for and with us and who we want to work with. In other words, don't hire anyone who just wants a job - any job. Instead, look for those who really want to work for you and your organization. While many applicants may tell you how great they've heard your company is, here's how to separate the wheat from the chaff... When you find an applicant you'd like to hire, offer the person the job with the caveat that they cannot start until two or three weeks later. Those who really want to be part of your team will figure out a way to make it work and are the ones you want to hire. This works even if you need someone yesterday because, if they commit to the wait, you can call them the next day and arrange to have them start earlier.
2. Always be looking for your next employee. Make sure you schedule at least "x" interviews every week (or month, depending on your needs).

This is a great way to keep your interviewing skills sharp and build a backup bench so you will never have to hire out of desperation. Moreover, it's a surefire way to eliminate mediocrity.

IRS Sets Mileage Allowances for 2013

On November 26, 2012, the Internal Revenue Service issued a notice setting the allowable deduction for business mileage for 2013 at 56.5 cents per mile. This is one cent higher than the rate for this year.

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Convenience Store News

Appeal Filed Against Preliminary Approval of Interchange Fee Settlement Denied

Recently, plaintiffs filed an appeal against the preliminary approval of settlement over VISA and MasterCard transaction fees. The appeal is in response to the November 11 preliminary approval of settlement handed down by U.S. District Court Judge John Gleeson. On December 10th this appeal was denied. The Second Circuit Court of Appeals said it was deferring briefing for an appeal of the settlement until the deal receives final approval from the U. S. District Court in Brooklyn, where the litigation is pending.

The 7.25 billion settlement was reached in July and is a poor settlement for seven million retailers and merchants. The settlement prohibits any future interchange fee litigation for those who opt-in to the settlement. Although the majority of plaintiffs oppose the settlement and an additional 1,200 have filed objections with the court, preliminary approval was granted. The appeal is based on fatal flaws within the settlement, particularly the portion of the order that enjoins retailers "from challenging in any action or proceeding any matter covered by" the settlement agreement covers.

Under the deal, merchants who opt-in to the settlement will receive payments totaling \$6.05 billion. Visa and MasterCard will also temporarily reduce interchange fees by \$1.2 billion, and eliminate a ban against surcharging customers who pay with credit cards, even though, 10 states including New York, Texas and California, prohibit surcharging. These changes are set to take effect in two months. In the meantime, it's not known if a stay will be issued to prevent notices of settlement from going to the millions of merchants who accept credit cards.

Retailers can choose to opt-out if they do not want to participate in the settlement. PMAA Counsel Bob Bassman has written a memorandum on the consequences of opting out of the settlement. This document is available at <http://www.omegawv.com/attachments/article/244/Opt%20Out%20Consequences.pdf.pdf>. Retailers who opt out will have an opportunity to initiate a new antitrust lawsuit against Visa and Mastercard on grounds similar to the current case.

A hearing on final approval is expected to be scheduled for sometime next year.

Paige Anderson Joins NACS as Director of Government Relations

Anderson has extensive experience on Capitol Hill, and has particular expertise in energy policy and cyber-security. She most recently served as deputy chief of staff and legislative director for Congresswoman Mary Bono Mack.

At NACS, Anderson will represent the convenience and fuel retailing industry on a variety of issues, but will leverage her experience by focusing primarily on motor fuels and payment card data security issues.

"Paige brings a wealth of legislative experience to our Government Relations team that will greatly expand our effectiveness on Capitol Hill and enhance our abilities to represent our membership on the core issues of fuels and data security," said NACS Senior Vice President of Government Relations Lyle Beckwith. "We are excited to have her join our team."

Anderson also has served as legislative director for Congressman Paul Brown, legislative director for Congressman Darrell Issa, senior legislative assistant for Congressman Brian Bilbray, senior legislative assistant for Congressman Ken Calvert and staff assistant for Congressman Al McCandless. She also served as manager of government affairs and business services for TXU Inc. (now known as TXU Energy), the largest provider of electricity in Texas.

Appeals Court Won't Reconsider Graphic Tobacco Warning Labels

The court denied the federal government's request to reconsider its decision to block the Food and Drug Administration's requirement that tobacco manufacturers put large graphic health warnings on cigarette packages and advertisements.

The U.S. Court of Appeals in Washington, D.C., denied the federal government's request to reconsider its decision blocking the Food and Drug Administration's (FDA) requirement that tobacco manufacturers put large graphic health warnings on cigarette packages and advertisements.

In August, a three-judge panel of the same court upheld a lower court ruling blocking the FDA's mandate on the grounds that it violated the First Amendment's free speech protections.

The court on Wednesday did not provide any reason for denying the government's request for the full court or a panel to rehear the case. Its August opinion agreed with some of the nation's largest tobacco companies, including R.J. Reynolds Tobacco, that the warnings went beyond simply presenting factual information and amounted to "forced speech" advocating against smoking.

The nine different graphic warnings FDA proposed include a man smoking a cigarette through a tracheotomy hole in his throat, a cancer-stricken patient, and a baby breathing smoke while being kissed by his mother — all accompanied by language warnings of the risks of smoking. FDA's rule would mandate tobacco companies to cover the entire top half of cigarette packs, front and back, and were also to be included on all cigarette advertisements.

The Washington, D.C., court reached a different opinion than that of the Sixth Circuit Court of Appeals. Earlier this year, that court upheld the constitutionality of the graphic warning labels requirement against a First Amendment challenge. In light of the differences between the two appeals courts, it would not be surprising for the parties to seek review of the case by the U.S. Supreme Court. As a result, it is likely to be some time before these questions are fully settled.

OMB Approves FDA's Potential Tobacco Product Violations Reporting Form

The Federal Office of Management and Budget (OMB) has approved the Food and Drug Administration's request to begin using a "Potential Tobacco Product Violations Report" form to allow the public to report possible violations of the Family Smoking Prevention and Tobacco Control Act directly to the FDA. A report of a possible violations of the FDA's federal tobacco regulations can be made by using a smartphone application, a downloadable report form that can be completed and submitted via e-mail or a form that is completed and mailed to the FDA.

The Potential Tobacco Product Violations Report form lists various possible violations for a member of the public to select when completing the form including the following:

- ◆ Sales to minors
- ◆ Flavored cigarette sales
- ◆ Advertising/promotion/marketing
- ◆ Free samples
- ◆ Vending machine/self-service display/direct access to cigarette or smokeless tobacco
- ◆ Sales of cigarettes in packs of less than 20
- ◆ Unsure

On the FDA's website, the page dedicated to this new Potential Tobacco Product Violations Report form states that "the information provided on the form is reviewed by the FDA. FDA evaluates the report and determines what follow-up, if any, is appropriate. Reports submitted by the public and stakeholders may be helpful in identifying possible violations of the Tobacco Control Act and related regulations that FDA enforces."

In addition, this website page indicates that "Reports can be submitted anonymously; however, reports accompanied by name and contact information are helpful in cases when FDA needs to follow up for more information. All reports to FDA remain private to the extent allowed by law, as explained in FDA's Privacy Policy." The Potential Tobacco Product Violations Reporting form is available via download at www.fda.gov.

Health Groups Say States Don't Spend Enough on Tobacco Prevention

A new report issued by health groups — Campaign for Tobacco-Free Kids, American Heart Association, American Cancer Society Cancer Action Network, American Lung Association, Robert Wood Johnson Foundation and Americans for Nonsmokers' Rights — says that this year the states will collect a record \$25.7 billion in revenue from the 1998 tobacco settlement and tobacco taxes, but will spend less than 2% of it — \$459.5 million — on programs to prevent kids from smoking and help smokers quit.

"Given such a strong return on investment, states are being truly penny-wise and pound-foolish in shortchanging tobacco prevention and cessation programs," notes report.

The report says **West Virginia** isn't investing enough in its efforts to help smokers quit and prevent kids from smoking. The report says West Virginia has the second highest rate of adults who smoke in the nation at 28.6%. About 19% of high school students smoke. But the report ranks West Virginia 19th in the nation in tobacco prevention funding. According to the report, the state will receive \$231 million this year from the 1998 tobacco settlement and tobacco taxes. But only 2.5% of the revenue will be used for tobacco prevention and cessation programs. The report says most states aren't providing adequate funding for these programs.

Other findings include:

- ◆ Total state funding for tobacco prevention this year amounts to 12.4% of the \$3.7 billion the CDC recommends for all the states combined.
- ◆ States have failed to reverse deep budget cuts that reduced funding for tobacco prevention by 36%, or \$260.5 million, from FY 2008 to FY 2012. Funding this year is essentially flat with the \$456.7 million budgeted last year.
- ◆ Only two states — Alaska and North Dakota — currently fund tobacco prevention programs at the CDC-recommended level. Only three other states — Delaware, Wyoming and Hawaii — provide even half the CDC-recommended funding.

The report also claims that smoking declines have slowed in recent years, and to accelerate progress, the report calls on elected officials at all levels to:

- ◆ Step up the pace in enacting tobacco tax increases and smoke-free workplace laws
- ◆ Effective implementation of the Food and Drug Administration's new authority to regulate tobacco products.



Time to Re-Order We Card Tobacco Materials and Training Resources

FDA tobacco inspections are increasing, so with the end of the year approaching now is the time to re-order your We Card tobacco point of sales tool kits and training materials. Order today at <http://www.wecard.org>.

Core-Mark Holding Company Acquires J. T. Davenport & Sons

Core-Mark Holding Company Inc., marketer of fresh and broad-line supply solutions to the convenience retail industry in North America, announced plans to acquire J.T. Davenport & Sons Inc. Davenport would become a wholly owned, indirect subsidiary of Core-Mark. "We are extremely pleased to welcome Mark Davenport and his company to the Core-Mark family. I look forward to Mark's leadership in creating customer solutions by combining J.T. Davenport's best practices and market presence with Core-Mark's marketing strategies and technology," said J. Michael Walsh, president and CEO, at Core-Mark. The deal is expected to close by the end of 2012 and be accretive in 2013 companies have a strong wholesale distribution presence within the convenience store industry.

Retailers Rate Business Conditions

Convenience store retailers are preparing for the new year with the rosier outlook in years, according to CSP's 2012 Outlook Survey.

The exclusive survey, in which 189 retailers participated, shows nearly 60% of respondents described current business conditions as "good" or "excellent," and more than 57% expect business conditions will show "great" or "some" improvement in 2013.

About 42% of respondents described "flat" business conditions, and nearly 15% considered them "poor." In 2012, the flat fraction fell to 36%, while those seeing poor conditions shrank to 5.2%. Meanwhile, 10.6% rated conditions as "excellent," the highest percentage in the survey's eight-year history.

But for the majority of retailers, business is far from gangbusters; in fact, the majority of 2012 respondents rated them as simply "good," and for some retailers, it depended on which month you measured. Others cited good growth, compared to a low baseline the year prior.

"Inconsistent is probably the best word to describe current business conditions," said one survey participant who described conditions as "flat." "Strong months [are] followed by flat months."

"You have different categories tugging in different directions," said Scott Hartman, president and CEO of Rutter's convenience stores, York, Pa. Hartman also cited flat business conditions. "You have cigarettes tugging to the negative side, and have been and will continue in terms of the sales growth opportunity. ... The growth areas for us are certainly foodservice, beverages and coffee. There's a sort of tug and pull--which will do better; which will do worse? Overall, I feel like our net sales should be up but not like they used to be."

That said, among most Outlook Survey participants, expectations for 2013 are rosier than in previous years. More than 57% of this year's participants expect "some" or "great" improvement in 2013, compared to about 45% in the 2011 survey. Fewer retailers expect stasis in 2013, with less than 26% anticipating conditions to "remain the same," the lowest percentage in the survey's history.

"Every day is a struggle, but it's a good struggle," said Fran Galle, owner of Neon Deli in Middletown, Conn. "Every day you try your best, every week you try to introduce a new SKU and try to live up to customers' expectations."

For the full article, visit <http://www.cspnet.com/news/corporate/articles/retailers-rate-business-conditions>.

How would you describe current business conditions?

	2005	2006	2007	2008	2009	2010	2011	2012
Excellent	6.70%	6.40%	6.80%	2.30%	3.70%	7.10%	5.30%	10.60%
Good	52.50%	41.80%	44.60%	37.00%	36.00%	41.80%	37.80%	48.20%
Flat	26.70%	31.80%	39.90%	41.20%	51.50%	40.10%	42.00%	36.05%
Poor	14.10%	20.00%	8.70%	19.50%	8.80%	11.00%	14.90%	5.20%

What do you expect will happen to business conditions next year?

	2007	2008	2009	2010	2011	2012
Great improvement	3.70%	1.00%	4.00%	3.90%	0.50%	10.50%
Some improvement	49.00%	48.20%	56.60%	46.20%	39.90%	47.00%
Remain the same	37.60%	30.00%	30.20%	44.40%	45.20%	25.90%
Somewhat decline	0.00%	0.00%	0.00%	0.00%	12.80%	13.20%
Greatly decline	0.00%	0.00%	0.00%	0.00%	1.60%	3.40%

Source: CSP Outlook Survey 2005 - 2012



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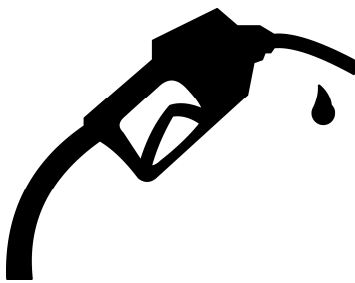


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Oil Marketers Update

U. S. DOT Sets 2013 Random Drug and Alcohol Testing Rate for CDL/HAZMAT Drivers

The U.S. DOT recently announced its annual minimum testing rates for random drug and alcohol. The rates are the minimum percentage of employees subject to U.S. DOT drug and alcohol testing requirements (CDL drivers) that must undergo a random test during calendar year 2013.

For 2013, the number of random tests conducted by the employer must equal at least 50 percent for drugs and 10 percent for alcohol. The random test percentage is based on the average number of driver positions subject to the regulations. Employers are responsible for implementing and conducting driver drug and alcohol testing programs. They may do this using their own employees or contract services or by joining together in a consortium that provides services to all member companies. Any individual conducting the test must be trained to operate the evidential breath testing (EBT) equipment and be proficient in the breath testing procedures.

Random alcohol testing must be conducted just before, during or just after a driver's performance of safety-sensitive duties. The driver is randomly selected for testing from a "pool" of subject drivers. The testing dates and times are unannounced and are reasonably spread throughout the year. The following drugs are subject to random testing requirements: Marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin), phencyclidine (PCP) and, MDMA (ecstasy).

For more information, go to www.fmcsa.dot.gov or contact Mark S. Morgan, PMAA Regulatory Counsel, at mmorgan@pmaa.org.

Gasoline Demand Tumbles 3.7% in Latest Week

U.S. retail gasoline consumption slid below the 8.8-million-b/d level seen in recent weeks in a mostly seasonal dip between the higher-demand Thanksgiving and Christmas periods, SpendingPulse reported on December 11th.

As measured by purchases at the pump, gasoline demand decreased by 324,000 b/d, or 3.7%, to an average 8.515 million b/d for the week ended Dec. 7. Consumption during the previous week was a scant 0.14% higher week on week at 8.839 million b/d.

Gasoline demand compared to the first week of December a year ago was 2.8% lower, while the year-on-year comparison of four-week averages showed a deficit of 2.4%. The year-over-year declines are consistent with those seen in past autumn weeks. Approaching the end of the year, gasoline demand year to date is off 3.6% compared to the same 2011 time period.

University of Michigan Releases Study on Fuel Economy and Consumption

According to a University of Michigan study, as Americans bought more fuel efficient cars and light trucks between Fall 2007 and Fall 2012, fuel demand was reduced by 17 percent. The study was released earlier this week which also indicated that CO2 emissions were down by 20 percent since 2007. New vehicles bought in the fall of 2012 are using about 15 percent less fuel per mile than cars purchased in 2007. Whether the study took into account the recession and other factors that reduce travel such as telecommunicating and online shopping wasn't indicated.

EIA Reports Natural Gas Exports Could Boost U.S. Economy

A report issued by Department of Energy's Energy Information Administration indicates that the U.S. could boost its economy by exporting some of its natural gas. However, critics said doing so is costly and would raise natural gas prices in the U.S. In addition, it's uncertain there will be a market for it.

Debate Over E15, Renewable Fuels Continues

AAA's call for a halt in the sale of gasoline containing 15 percent ethanol has sparked debate. The American Petroleum Industry released a point-by-point analysis of the Renewable Fuels Association's statement about AAA's position. Recently, the National Council of Chain Restaurants called for a repeal of the Renewable Fuels Standard and released a new, comprehensive report on the effect of federal ethanol policies on the chain restaurant industry, commodity prices and the food supply chain.

Some in the renewable fuel industry said a RFS waiver wouldn't reduce the amount of ethanol in blends because refiners would have to seek alternative high octane blend stocks or significantly adjust refinery operations to make up for the volume and octane increase they currently receive from ethanol.

Quick Facts and Figures

- ◆ The Energy Information Administration (EIA) reported that biofuels will account for 5.8 percent of liquid-fuels market by 2040. EIA predicted biofuel use will increase to 2.1 quadrillion BTUs in 2040 from 1.3 quadrillion BTUs in 2011.
- ◆ EIA projects gasoline prices will reach \$8 per gallon and crude will reach \$268 a barrel by 2040. EIA made the prediction in its Annual Energy Outlook 2013 Early Release Overview. The full report will be released in the spring.
- ◆ The National Retail Federation estimates retailers will lose \$8.9 billion to return fraud this year, and \$2.9 billion during the holiday season alone.

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Grocery Highlights

FMI's Lieberman Explains Menu Labeling to Americans for Tax Reform "Wednesday" Meeting

At the Americans for Tax Reform (ATR) "Wednesday" meeting, FMI's Erik Lieberman pointed out grocers' concerns with being pulled into proposed FDA regulations for restaurant menu labeling. Chaired by ATR President Grover Norquist, Lieberman joined a representative from Domino's Pizza to outline concerns with the menu labeling law and regulations, as well as to seek support for H.R. 6174/S. 3574 to address those problems. The ATR-hosted meeting was standing-room only, attended by a broad cross section of taxpayer groups, social conservative groups, business groups, legislators, etc., to promote limited government ideals.

Visit <http://www.omegawv.com/attachments/article/243/CRS%20Report%20-%20Nutrition%20Labeling%20of%20Restaurant%20Menus.pdf> for a Legislative Alert and a full report prepared by the Congressional Research Service on this very important issue.

Top Ten Food Trends 2013

Last year we predicted how weather conditions around the globe would affect crop yields and impact food production and prices; little did we know just how big that impact would be. 2012 brought us the worst drought in 50 years and created havoc on over 60% of all farmland here in the United States. There is little doubt that, just as the USDA has predicted, food prices will continue to rise for many years to come. The average American spends less than nine percent of their income on food, which is the lowest percentage of citizens of any other country, and less than Americans spent back in 1982 (13 percent). Yet even modest food price increases will affect many.

The passionate interest in foods being led by the Millennials will continue; led by their desire to understand food heritage, where foods come from, food preparation and how food is served; but with a twist. Millennials are deal seekers: over 86% seek the lowest everyday prices for foods. Almost one-third of Millennials (50+ million people born between 1978 and 1994) have difficulty affording their weekly groceries as compared to 22% of the general population. Millennials are the most ethnically diverse generation in our nation's history – approximately 19 percent are Latino, 13 percent are black, four percent are Asian. one in five have an immigrant parent and one in 10 have a parent who is not a U.S. citizen. Clearly they are the foundation for the rise and desire for ethnic and more flavorful foods. This generation will be the most educated with 63% predicted to have or expect to graduate college by the year 2016, however, many report low paying or no jobs and a quarter of them have moved back home with their parents.

Food prices will also have an enormous impact on America's "middle class" (defined as households with incomes from \$38,000 to \$118,000 per year) that has shrunk from 61 percent of the population in 1971 to 51 percent in 2011; and has seen their net worth plummet almost 40% to \$77,300 from 2007 to 2010. As of August 2012, over 45 million Americans were enrolled in USDA's Supplemental Nutrition Assistance Program (SNAP or food stamps) and receive monthly benefits.

All is not doom and gloom however, as we have experienced a comeback in supermarket services. More retailers are investing in loyalty programs and apps that reward their best shoppers with personalized discounts, on-site dietitians, in-store pubs and dining, and are generally sprucing up the retail environment. We can also expect more retail consolidation as the traditional supermarket struggles and shoppers expand their food shopping to alternative sources including drug chains, dollar stores and discounters. Supermarkets lost a full 15% share of volume to these and other competitors since the year 2000, sounding an alarm bell and wake up call to the industry that it is time to focus on a deeper understanding of what shoppers want.

(Continued from Page 19)

Elementary school students returned to school this fall to find more healthy choices in the lunch line and with it comes a re-education and empowerment for a new generation designed to have these students not only eat healthier while at school, but also understand why eating this way is so important. School meals must meet new federal nutrition standards requiring more whole grains, fresh fruits, vegetables, reduced sodium, reduced calories, imposing strict limits on saturated and trans fats, less sodium, less calories and with fat free or 1% milk. The hope is that these modified behaviors translate to eating at home and to all family members.

The top food trends for 2013 include:

- ◆ **Trend #1: Sustainability: We Stop Wasting Food**
- ◆ **Trend #2: Health & Wellness: Snacking & Mini-Meals Take the Spotlight and We Discover the Correct Portion Size**
- ◆ **Trend #3: Health & Wellness: The Boomer Reality of Diabetes, High Blood Pressure & Heart Disease**
- ◆ **Trend #4: The Economy: The New Proteins**
- ◆ **Trend #5: Lifestyle: Breakfast Becomes The Most Important Meal of the Day**
- ◆ **Trend #6: Frozen Foods Evolve Into Foods That Are Frozen**
- ◆ **Trend #7: Lifestyle: Men in the Supermarket and in the Kitchen**
- ◆ **Trend #8: Mobile the Next Generation: Tests for Allergens, Ripening Produce, Organics, and Start Cooking Your Meals**
- ◆ **Trend #9: Lifestyle: Millennials Go Retail – As Employees**
- ◆ **Trend #10: Transparency: Who is making our food?**

For the full article, please visit <http://www.factsfiguresfuture.com/issues/december-2012/top-ten-food-trends-2013.html>.

Mark Your Calendar!



MISSION POSSIBLE TRADE EXPO & GOLF OUTING

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Are You Extending Your Liability for Free?

Do you know who your additional insureds are? They are basically hitchhiking on your policy.

Your neighbor purchases a new vehicle, but is concerned about the cost to insure it. Knowing that you are getting a multi-auto discount, he asks if you will add it to your policy. Would you?

Entering into contracts may place you in a situation similar to the one above. Service contracts for copiers or fax machines, lease contracts for company vehicles, and rental contracts for office space all have their own wording variations and can expose your business in many different ways. However, most contracts commonly require you to name the other party as an additional insured.

While there are many variations of an additional insured endorsement, generally an **additional insured** is a person or organization that **enjoys the benefits of being insured under another's insurance policy**, but is not required to pay the premium, make changes to the policy, or direct or receive notification of a cancellation of the policy.

An additional insured's status on your policy causes the policy limits to be shared by you and the additional insured — with the potential to reduce or even exhaust the occurrence and aggregate limits of insurance available.

In addition, when an additional insured makes a claim, the loss amounts paid become **part of your claims history** and are considered when determining future acceptability and pricing of your insurance programs.

What can you do?

Contact your local Federated representative to discuss ways to help reduce the exposures of additional insureds.

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Safety Corner

2013 Workplace Safety Training Program Schedule Available

BrickStreet's 2013 workplace safety training program schedule is now available online at www.brickstreet.com. Those interested are encouraged to sign up online at any time prior to the scheduled sessions.

New to the program next year, at the request of past participants in the training program, are a number of industry-specific training sessions. Specifically, said Thomas Withrow, safety and loss technical coordinator for BrickStreet's Underwriting Operations, a session regarding the oil and natural gas industry is planned for April. More industry-specific topics are being planned and will be announced at a later date.

The safety program was created in 2006 to provide safety knowledge and awareness training to policyholders. BrickStreet remains committed to keeping its policyholders' workforces safe, which is why the company hosts the series of free value-added safety training sessions each year for its policyholders. Policyholders as well as their new and experienced employees and managers are encouraged to participate in any number of these training sessions.

To learn more about BrickStreet's safety training program or to sign up for an upcoming session, visit our website at www.brickstreet.com.

A graphic illustration featuring a close-up of a human ear. The ear is rendered in shades of orange and brown, with a bright yellow-green eardrum. A large, bold, red and white text overlay reads "HEAR US OUT". The background is a mix of yellow and orange tones, suggesting a noisy environment. In the bottom left corner, the BrickStreet Insurance logo is present, along with the tagline "Your Business. Your People. You're Covered.™" and the contact information "866.452.7425 brickstreet.com". In the bottom right corner, a black text box contains the message: "Noise-induced hearing loss is a common occupational hazard. Protect yourself by always wearing the appropriate hearing protection."



Miscellaneous

Welcome!

We would like to welcome a new member:

Astro Exxon, LLC
2354 White Hall Blvd
White Hall, WV 26554
Phone: 304.366.4460
Fax: 304.333.6095
Email: officestaff2238@gmail.com
Contact: Lisa M. Gutshall, Office Manager

Hometown Grocery, LLC
P. O. Box 650
Princeton, WV 24740
Phone: 304.324.2260
Fax: 304.324.2262
Email: ron_grants@frontiernet.net
Contact: Ron Martin, Owner

Children's Home Society Little Red Stocking Campaign

We received an update this week from Mary White of the Children's Home Society regarding the Little Red Stocking Campaign.

From all indications, it looks like this is going to be another tremendous success for CHS!

Thanks to **One Stop, R. M. Roach & Son, TWJ, Inc.,** and **Go-Mart** for participating in this campaign that raises money and awareness for West Virginia's children.



Calendar of Events

**Mission Possible
Trade Expo & Golf
Outing
May 13 - 15, 2013
The Resort at Glade
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