

# AT THE PUMP DOWN THE AISLE &

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

October 2015

Number 654

## INSIDE THIS ISSUE

- 3 From the President
- 4 Governor Announces Budget Reduction
- 5 Governor Appoints Atkinson to 11th District House Seat
- 6 WV Lottery Director Retires
- 7 OMEGA Elects New Officers
- 8 President Signs Bill to Avoid Shutdown
- 9 President Signs Obamacare Fix
- 10 NLRB New Standard
- 11 House Reviews New Joint Employer Standard
- 12 Initiative Seeks to Avoid ACA Premium Hike
- 13 IRS Launches ACA Page
- 14 FDA Issues Draft Menu-Labeling Guidance
- 15 Senate Introduces Legislation to Raise Smoking Age
- 16 Durbin Calls for Change to Swipe Fee Reform
- 17 Debit Card Reform Update
- 18 Appeals Court Allows NY to Forbid Credit Surcharges
- 19 Updated Cigarette Tax Map
- 20 C-Store Operators Upbeat
- 21 AGs Call for FDA Action on Liquid Nicotine
- 22 EPA Lowers Ozone Standard
- 23 Retailers Appeal Decision
- 24 Approving ATC Standard
- 25 Crude Oil Export Bill Passes
- 26 FMI Comments on Overtime
- 27 Children's Charity Fundraiser Highlights



*OMEGA Members Raise  
More than \$64,000 for  
West Virginia's Children*

*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](http://www.marathonpetroleum.com)



*Fueling the American Spirit.*

# From the President ...



It's already been a busy Fall! We got to kick off the season at Stonewall Resort with our Children's Home Society Golf Outing. I continue to be amazed at how our members come together to improve the health and well-being of West Virginia's children! This proved to be another successful fundraiser because of the generosity of our members. We raised over \$64,000 for the Children's Home Society of West Virginia. When coupled with the \$79,615 OMEGA members raised during our Taking it Home for Mother's Day Campaign, we have contributed \$143,750 in 2015 to help children and families cared for the Children's Home Society of West Virginia.

Also, during our event at Stonewall, Greg Rogers passed the gavel to our new chairman, Joe DeFazio of DeFazio Oil Company. I would like to thank Greg Rogers for his leadership and service to the Association over the last two years.

Also, former Chairman Jim Oppe is no longer on the Executive Committee. I would be remiss if I didn't take a moment thank him for his service and for being a source of support for the Association. For a full updated list of officers and board members, turn to page 6.

We have a lot going on at the Association Office, including compiling a new *Membership Directory*, planning for the 2016 Legislative Session and the 2016 Locker Room Trade Expo & Golf Outing. So, we are as busy as ever!

As always, we are your Association. We welcome your comments, complaints and compliments! We hope you are enjoying a beautiful October in the Mountain State!

## Jan

### OMEGA 2015 - 2017 Officers

#### Chairman

**Joe DeFazio**  
DeFazio Oil Co.

#### Vice Chairman

**Brian Waugh**  
Little General Store, Inc.

#### Secretary/Treasurer

**Sandra Morgenstern**  
Par Mar Oil Co.

#### President

**Jan Vineyard**

#### Immediate Past Chairman

**Greg Rogers**  
R. T. Rogers Oil Co.

### Senior Board Members

**Greg Darby**  
Little General Store, Inc.

**Patrick C. Graney, III**  
One Stop

**Art Hartley, Jr.**  
City Ice & Fuel Co.

**John Heater**  
Go-Mart, Inc.

**H. C. Lewis, II**  
H. C. Lewis Oil Co.

**Douglas M. Roach**  
R. M. Roach & Sons

**R. T. "Ted" Rogers**  
R. T. Rogers Oil Co.

**Curt Woodford**  
Woodford Oil Co.

### Board Members

**Cory Beasley**  
Little General Store, Inc.

**Garet Bishop**  
Bruceton Petroleum/BFS

**Sam Chico, III**  
Chico Enterprises Inc.

**Edward J. Coyne, II**  
Tri-State Petroleum Corp.

**Tim Forth**  
Forth's Foods

**Michael Graney**  
One Stop

**Wayne Harris**  
Harris Oil Co.

**Sam Heater**  
Go-Mart, Inc.

**Tom Jamieson**  
Jamieson Family Markets

**Rick Joseph**  
Kanawha City Foodland

**H. C. Lewis, III**  
H. C. Lewis Oil Co.

**Jim Oppe**  
TWJ, Inc.

**Thad Ours**  
Petersburg Oil Co.

**Steve Roach**  
R. M. Roach & Sons

**Darroll Talbott**  
Woodford Oil Co.

**Dennis Thompson**  
Dawson-Thompson Oil Co.

### Associate Supplier Members

**Steve Atkins**  
Frito Lay

**Dave Brickley**  
Superior Services

**Eric Dana**  
Dana Insurance & Risk  
Mgmt.

**Jay DeSantis**  
Sledd Co.

**Proctor Dean**  
Eagle Transport Corp.

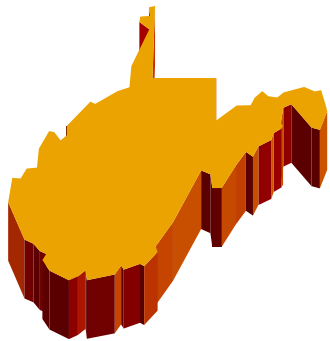
**Matt Ford**  
CORE Environmental  
Services

**Mike Legg**  
Pepsi Beverages Co.

**Kris Matre**  
Marathon Petroleum Co.

**Scott Parkes**  
Northern Eagle, Inc.

**Louis Southworth**  
Jackson Kelly PLLC



# West Virginia News

## **Governor Tomblin Announces Reduction in Fiscal 2016 Budget**

Gov. Earl Ray Tomblin has announced an across-the-board cut of 4 percent for most West Virginia government agencies, a move made necessary largely due to unexpected and unprecedented drops in the state's severance tax collections.

"This is a difficult decision that results from several factors beyond our control," Gov. Tomblin said. "We are taking this action based on trends we see in the first three months of the fiscal year that we expect to continue throughout this budget cycle. While the cuts we're enacting today will not be easy, we must maintain a balanced budget and this will help us do that."

State aid to public schools, which has not been subject to budget cuts in recent years, will see a 1 percent reduction.

In addition to the spending cuts, Gov. Tomblin announced the state hiring freeze will continue, nonessential travel for state employees will be eliminated, and the annual holiday parties will be canceled. The governor met with legislative leaders Monday afternoon to discuss the situation.

The projected deficit for Fiscal Year 2016 is currently more than \$250 million, in large part due to a \$190 million shortfall in severance tax collections. As of Sept. 30, general revenues are more than \$60 million behind estimates, a figure that has grown quickly from a \$12 million deficit at the end of August.

In addition to cuts that represent more than \$100 million, the state will use one-time appropriations to close the budget gap. An appropriation from the Rainy Day Fund is possible, although Gov. Tomblin pledged to keep that figure as low as possible. The Rainy Day Fund was created in 1994 under the leadership of then-Senate President Tomblin and has grown to \$869 million, a figure about 5 percent higher than the 15 percent bond rating agencies have suggested is necessary to keep the state's high bond rating that reduces borrowing costs.

"We have been prudent in our use of the Rainy Day Fund, and adjustments prior to this budget year beginning resulted in us taking just \$14.8 million from the fund rather than the \$85 million initially expected," Gov. Tomblin said. "We continue to have one of the best Rainy Day Funds in the country, and we created the fund for unexpected difficult times such as this."

Severance tax collections rose 2 percent during the first nine months of Fiscal Year 2015 but dropped by 31 percent during the final three months of the last fiscal year and dropped 36 percent during the first two months of Fiscal Year 2016. Coal production is down 15 percent compared to last year. Although natural gas sales are up roughly 30 percent early this fiscal year, natural gas severance tax revenues are expected to decrease for the year because of significantly lower prices.

It is worth noting that a significant portion, more than \$400 million of the state's \$4.2 billion budget, goes toward paying off old unfunded liabilities such as the Teachers Retirement System. The state has never missed one of these payments, which is critical to the long-term financial stability of the state, and Gov. Tomblin reiterated Monday that the state remains committed to making all appropriate payments toward paying off those liabilities.

## **Governor Tomblin Appoints Martin "Rick" Atkinson III to 11th District House of Delegates Seat**

Gov. Earl Ray Tomblin has announced the appointment of Martin "Rick" Atkinson III to represent residents of the 11th District in the West Virginia House of Delegates. Atkinson's appointment fills the vacancy created when former Delegate Bob Ashley was appointed to the West Virginia Senate on Sept. 15.

The governor's appointment is effective immediately.

Atkinson, a West Virginia University graduate, retired from BPB-Stella Jones in 2013 and currently serves as director of sales for Mountain State Log Homes.

## **Long-time West Virginia Lottery Director Wins Top Prize – Retirement**

West Virginia Lottery Director John C. Musgrave has announced that he has elected to retire effective October 31, 2015. Musgrave said that his decision to retire came after much thought and many emotions.

Musgrave has served as the Lottery Director for the State of West Virginia for more than 19 years and has more than 24 years of state service. During his tenure at the Lottery he has had consecutive appointments by four different Governors, including his first appointment in April 1997 by Gov. Cecil Underwood, followed by Gov. Bob Wise, former West Virginia Governor and U.S. Senator Joe Manchin, and his current appointment under Gov. Earl Ray Tomblin. Musgrave has also served as Acting Cabinet Secretary of Revenue in 2003-06, 2010-11, and was again appointed as Deputy Secretary of Revenue in 2013 and has continued to serve in this position with oversight for the Alcohol Beverage Control Administration (ABCA), Athletic Commission, Racing Commission and the Lottery.

Also, Retail Accounts Manager Karen Medley is retiring. Kayla Brown-Giordano will be replacing Karen and will have primary oversight over all traditional lottery retailers, including corporate chain accounts, in the field. Please note her contact information below;

Kayla Brown-Giordano  
Retailer Accounts and Contract Compliance Manager  
Office: (304) 558-0500; Ext. 297  
Cell: (304) 546-2113

Would You Like  
to See  
Your Ad Here?  
Call 304.343.5500

## **OMEGA Board of Directors Elects New Officers and Directors**

The OMEGA Board of Directors met on **September 21st** at Stonewall Resort in conjunction with our Children's Charity Golf Outing and approved the following slate of officers and directors for 2015 – 2017:

### Chairman

**Joe DeFazio, DeFazio Oil Company**

### Vice Chairman

**Brian Waugh, Little General Store, Inc.**

### Secretary/Treasurer

**Sandra Morgenstern, Par Mar Stores, Inc.**

### Directors

**Garet Bishop, Bruceton Petroleum  
Trace Hartley, City Ice & Fuel Company  
Darroll Talbott, Woodford Oil Company  
Tim Forth, Forth Foods**

### Associate and Supplier Directors

#### Food

**Mark Barker, United Dairy  
Steve Adkins, Frito Lay**

#### Motor Carrier

**Proctor Dean, Eagle Transport Corp.**

#### Equipment/Environmental

**Matt Ford, CORE Environmental Services, Inc.**

#### Supplier

**Jay DeSantis, Team Sledd**

#### Insurance/Legal

**Louis Southworth, Jackson Kelly PLLC  
Eric Dana, Dana Insurance & Risk Mgmt.**

**Curt Woodford** and **Art Hartley, Jr.**, will be moving to Senior Director.

We would like to thank **Immediate Past Chairman Greg Rogers** for his leadership and service over the past two years. We would also like to thank the following outgoing Associate & Supplier Board Members for their service:

**Randy Emanuelson, Team Sledd  
Greg Walls, Frito Lay  
Victor Flanagan, Pullin, Fowler, Flanagan, Brown & Poe LLC  
Allan Williams, BrickStreet Insurance  
Denny Huff, Sammie Huff Contractors**

*A full listing of board members is on page 3 of this publication.*



# Federal Issues

## **President Signs Bill to Avoid Government Shutdown**

On September 30th, the House voted 277 to 151 to approve a stopgap spending bill that would avoid a government shutdown, shortly thereafter the Senate approved the bill by a vote of 78 to 20. President Obama signed the bill which keeps the government funded through December 11 of this year. Many Republicans wanted a bill that would defund the women's health group Planned Parenthood, but many believed it was not worth shutting down the government.

Although a government shutdown has been averted and the government will be funded temporarily through December 11, a fight looms in the near future between Republicans, who seek an increase in defense spending and President Obama and Democrats, who seek an increase in funding for a wide range of domestic programs. The possibility of another government shutdown could happen in December. Speaker Boehner has indicated that he would like to work on a long term government funding bill before he leaves office so that his replacement is not burdened with the issue when he/she assumes the new role.

## **President Signs Rare Obamacare Fix Legislation**

Following a relatively quiet summer, it has been a lively few weeks on Capitol Hill. Between Speaker of the House John Boehner's announcement that he will resign effective October 30, 2015, and Congress' passage of a stop-gap measure to maintain existing funding levels and keep the government open through December 11, 2015, there certainly has been a lot to talk about.

Amidst these big stories which have all but consumed Congressional press attention, recently, both chambers of Congress quietly passed the Protecting Affordable Coverage for Employers (PACE) Act. The purpose of the legislation is to allow states the option to maintain the current definition of a small group market as covering employers with 50 or fewer employees. Without the passage of the PACE Act, under the Affordable Care Act (ACA), starting in January 1, 2016, the definition of the small group market would expand to include plans of businesses with up to 100 employees. Under the ACA, there are a number of requirements that apply only to small group plans. It was anticipated that the change in the small group market definition would trigger higher premiums and fewer plan options for those small businesses with between 50 and 100 employees that have been currently operating in the large group market. Consistent with this, on September 15, 2015, the Congressional Budget Office (CBO) released its analysis of the PACE Act, concluding that the legislation will likely result in lower premiums for small businesses.

With so much gridlock in Washington, it has been refreshing to see that a common sense bipartisan bill that helps small businesses can still get passed. PMAA supported the PACE Act.

## **National Labor Relations Board Announces New Standard**

On August 27, 2015, in a 3-2 decision, the National Labor Relations Board (NLRB) announced a new standard for determining joint employer status under the National Labor Relations Act. The Board's decision in Browning-Ferris Industries, Inc. significantly expands the Board's joint employer doctrine. Specifically, NLRB will no longer require that an employer directly and immediately exercise control over essential terms and conditions of employment to be deemed a joint employer; instead, the NLRB will evaluate whether an employer has the right to control such terms and conditions.

Under the new standard, more business entities will be subject to obligations and liability under the National Labor Relations Act. And the decision will have a dramatic influence on the way businesses structure their contracts insofar as they include any employment terms for shared or joint workforces. Franchisors, contractors and firms that use workers supplied by other companies should be aware of the new standard and carefully structure (or restructure) their business relationships if they wish to avoid joint employer status.

## **House Committee Reviews Joint Employer Standard**

On September 29th, the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor and Pensions held a hearing on a proposal to roll back a recent National Labor Relations Board (NLRB) decision related to when an employer can be considered a "joint employer" for purposes of the National Labor Relations Act (NLRA).

Last month, the NLRB adopted a more expansive definition of "joint employer" under the NLRA. Under the new standard, adopted in a case against Browning Ferris Industries, the NLRB rejected the requirement that a joint employer possess and exercise "direct and immediate control" over terms and conditions of employment, ultimately finding that simply possessing the authority to control terms and conditions of employment, even if that authority is never used, is sufficient.

Under the new definition, employees may have the ability to directly bargain not just with the company for which they work, but with a company that contracts with their employer. The new definition also means that franchisors and contractors may be liable for the labor practices of their franchisees and subcontractors.

The subcommittee hearing examined the NLRB's recent decision in Browning Ferris, and it discussed the Protecting Local Business Opportunity Act (H.R. 3459), a bill introduced by Committee Chairman John Kline (R-MN). Identical legislation to H.R. 3459 has been introduced in the Senate by Senate Health, Education, Labor, and Pensions Committee Chairman Lamar Alexander (R-TN). The legislation reaffirms the traditional standard that an employer must have "actual, direct, and immediate" control over an employee to be considered a joint employer. The witnesses included academics, small business owners, and a former member of the NLRB.

Subcommittee Chairman Phil Roe (R-TN) began the hearing by emphasizing the implications of the NLRB's decision, which "blurred the lines of responsibility for decisions affecting the daily operations of countless small businesses, including the nation's 780,000 franchise businesses and countless contractors, subcontractors, independent subsidiaries, and more." Committee Republicans agreed with Poe's sentiment and made a point to ask the small business owners about their largest concerns, which include the case-by-case standard of review, the practical difficulties imposed by the joint employer designation, and the uncertain future of how the Browning Ferris decision will impact the franchisor-franchisee relationship.

However, Democrats on the subcommittee, with the support of the two academic witnesses, vehemently disagreed. They argued that the impact of the Browning Ferris decision has been exaggerated both because the decision has no stated impact on the franchisor-franchisee relationship and is consistent with the common law and the statutory language. In their questioning, the Democrats focused on the potential for the legislation to negatively impact the rights of workers to collectively bargain by effectively establishing a broad loophole for companies to hide behind to avoid negotiating with their employees. At the close of the hearing, Subcommittee Ranking Member Jared Polis (D-CO) remarked that while no one on the committee wants to make it harder for smaller businesses to succeed, now is an inopportune time to "prejudge the NLRB's motives or undermine its authority."



## **Bipartisan Initiative Seeks to Avoid ACA Premium Hike for Small, Midsize Companies**

A group of lawmakers from both parties, as well as some employers, insurers and state insurance commissioners, are seeking changes in the Affordable Care Act (ACA) to prevent premium increases that are expected to affect workers at many small and midsize companies next year.

Being targeted is a provision of the ACA that expands the definition of a "small employer" to include companies with 51-100 employees, subjecting them to stringent insurance regulations starting Jan. 1.

## **IRS Launches ACA Resource Page for Employers**

The Internal Revenue Service on Sept. 23 announced a new web page offering information on the Affordable Care Act's employer mandate and reporting requirements. The ACA Information Center for Applicable Large Employers (ALE) web page provides information and resources for employers of all sizes, including sections to help employers determine if they are an applicable large employer as well as outreach materials. Under the employer mandate of the ACA, ALE's must provide full-time employees with affordable health-care coverage that meets minimum-value standards or face penalties. ALE's also must report their offers of minimum essential coverage to employees. Both provisions are in effect for 2015.

## **FDA Issues Draft Guidance for Menu-Labeling**

Recently, the Food and Drug Administration (FDA) issued its draft guidance to assist restaurants and retail establishments with menu-labeling compliance. FDA indicated that the draft guidance is intended to help businesses comply with the final rule.

On December 1, 2014, the FDA published the Menu Labeling Rule requiring covered establishments to disclose calorie and certain nutrition information for standard menu items. In July 2015, the FDA delayed compliance with the menu labeling rule until December 1, 2016.

Unfortunately, under the final rule, convenience store owners with 20 or more locations doing business under the same name and offering for sale substantially the same menu items, are required to list calorie information for standard menu items, such as posting calorie information on menus and menu-boards. Specifically, the number of establishments owned and operated by a particular company/individual is not what matters under the rule. What matters is whether there are multiple locations doing business under the same name (and offering for sale substantially the same menu items). For example, if you own three businesses and there are no other businesses with that name, you are not covered. If you own three stores all with a branded name then you do meet this criteria. The menu labeling final rule also requires covered establishments to provide, upon consumer request and as noted on menus and menu boards, written nutrition information about total calories, total fat, calories from fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, fiber, sugars and protein.

Earlier this year, legislation strongly supported by PMAA was introduced to provide relief from the final rule for retailers. Reps. Cathy McMorris Rodgers (R-WA) and Loretta Sanchez (D-CA) reintroduced, the "Common Sense Nutrition Disclosure Act," (H.R. 2017) which would modify the Menu Labeling language in Obamacare to permit retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Under the existing regulations, every area where food is on display must each include calorie information for every item sold there. Furthermore, the bill would clarify that advertisements and posters do not need to be labeled and would provide flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals.

H.R. 2017 would also ensure that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulate that individual store locations are not required to have an employee "certify" that the establishment has taken reasonable steps to comply with the requirements. Stores would have 90 days to correct any alleged violation without facing enforcement action. Finally, the bill would also delay regulatory implementation for two additional years.



# Convenience Store News

## **Senators Introduce Legislation to Raise Smoking Age to 21**

Recently, U.S. Senators Dick Durbin (D-IL), Brian Schatz (D-HI) and Sherrod Brown (D-OH), along with seven other senators, introduced the Tobacco to 21 Act (S.2100), legislation that would prohibit the sale of tobacco products to anyone under the age of 21.

"Thanks to tobacco control measures like banning smoking in public places and placing warning labels on cigarette cartons, far fewer people smoke now than did 50 years ago," said Durbin in a press release. "We can help prevent a new generation from falling prey to this deadly epidemic by passing another commonsense measure to reduce youth tobacco use: raising the minimum tobacco age of sale to 21."

According to a study released this summer, three out of every four American adults favor increasing the minimum age to purchase tobacco from 18 to 21. "This year, Hawaii became the first state in the nation to raise the minimum smoking age to 21," said Schatz. "It was an historic public health achievement that we should adopt nationwide."

"The harder it is for children and teenagers to get their hands on tobacco products, the easier it will be to keep our next generation from becoming hooked on nicotine," added Brown. "Our country has come a long way on tobacco products—we've banned the marketing of cigarettes to children, we've prohibited the sale to minors, and we've helped people find ways to quit once they are hooked—but we need to do more to keep people from becoming addicted in the first place."

Senators co-sponsoring the bill are: Ed Markey (D-MA), Barbara Boxer (D-CA), Jack Reed (D-RI), Elizabeth Warren (D-MA), Mazie Hirono (D-HI), Richard Blumenthal (D-CT) and Sheldon Whitehouse (D-RI). Companion legislation was introduced in the House of Representatives by Reps. Diana DeGette (D-CO) and Mark Takai (D-HI).

## **Durbin Calls for Further Changes in Swipe Fee Reform**

Illinois Sen. Dick Durbin, who authored the legislation meant to regulate payment transaction fees back in 2011, challenged the Federal Reserve to do more to enforce fair debit card interchange fees. Writing an op-ed article for American Banker, Sen. Durbin declared that the current fees don't do enough to help either retailers or consumers.

Current debit card interchange rates can be "charged at an unreasonably high level that far exceeds the real costs of transactions," Sen. Durbin wrote. "The Fed's final rule failed to adequately follow the law I wrote and did too little to rein in the lucrative swipe fee price-fixing scheme created by Visa, MasterCard and debit card-issuing banks. Under the Fed's rule, Visa and MasterCard have gleefully raised swipe fee rates on many types of debit transactions, boosting the profits of their big-bank allies but hurting Main Street businesses and their customers."

Sen. Durbin added in his article that, "It's time for the Fed to stop giving deference to the banking industry and correct the industry's swipe fee increases on small-ticket transactions. The point of the law was to curb swipe fee abuses, not make them worse."

Earlier this year, in a white paper compiled from issue-reported surveys to the Federal Reserve, the Merchants Advisory Group reports that while debit costs have decreased substantially in the five years since the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, there have been no coinciding changes to existing debit fee regulations. According to the survey data, issuer costs have decreased from 7.6¢ per transaction to 4.4¢ per transaction—a 42% reduction—yet, merchants, and ultimately consumers, continue to bear unreasonable and inflated costs associated with debit card acceptance. This discrepancy runs counter to the purpose of the Durbin Amendment in Dodd-Frank.

## **Debit Card Reform Should Progress More**

Debit-card reform, which began four years ago with the passage of the Durbin Amendment, has helped both retailers and consumers by decreasing outrageously high debit fees (due to market dominance by Visa and MasterCard). However, debit fees in the United States still remain among the highest in the industrialized world.

Statistics from leading economist Robert J. Shapiro calculate that the Durbin Amendment has saved consumers approximately \$24 billion and supported about 150,000 jobs during the four years since it became law. But much more work remains to be done to reform the debit and credit card industry. The Richmond Federal Reserve discovered that 90% of retailers recently surveyed reported that they weren't aware of any drop at all in the debit card swipe fees they pay.

Currently, every time a customer swipes a debit card to make a retail purchase, a bank makes a profit that can exceed 500% of the purchase price, according to the Merchants Payments Coalition (UnfairCreditCardFees.com), a group of businesses (including NACS) that are fighting unfair credit card fees.

"The law is clearly a big first step in the right direction," said Lyle Beckwith, senior vice president of government relations at NACS. "But clearly the Fed hasn't strictly followed Congress' intent to make this market completely competitive. "The Fed has to consider its rules periodically, and merchants would urge it to do just that and finally make this market conform to the same conditions our free-market system imposes on every other part of our economy."

## **Appeals Court Allows New York to Forbid Credit Card Surcharges**

New York's ban on merchants adding a surcharge on credit card payments has been upheld by an appeals court, Reuters reports. A unanimous 2nd U.S. Circuit Court of Appeals overturned the previous decision that found the rule to be unconstitutional.

The law subjects merchants to criminal penalties for adding a surcharge for customers paying with a credit or debit card. Retailers have long bemoaned the cost of processing credit cards, especially the swipe fees.

"Interesting how the State of New York condemns the notion of retailers adding a surcharge to recoup credit card transaction fees, yet requires people who pay their income taxes by credit card to pay an additional 2.25% 'convenience fee,'" New York Convenience Store Association President Jim Calvin told NACS Daily.

New York Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus Vance are hailing the decision as a victory, one that protects consumers from "bait-and-switch" pricing. Five N.Y. retailers filed a lawsuit against the state, saying that the prohibition stopped their efforts from informing customers about the hidden fees associated with credit card payments. Major retailers including Walgreen, Safeway and Kroger supported the plaintiffs in the suit. In October 2013, U.S. District Judge Jed Rakoff halted enforcement of the law because it "perpetuates consumer confusion."

Now the appeals court has decided the regulation doesn't affect speech, but rather price differences. Circuit Judge Debra Ann Livingston wrote that "we are aware of no authority suggesting that the First Amendment prevents states from protecting consumers against irrational psychological annoyances."

The 2nd Circuit also has heard a challenge to the \$5.7 billion antitrust settlement over swipe fees involving Visa, MasterCard and retailers.

## **Updated Cigarette and Tobacco State Tax Maps**

With a significant majority of state legislatures now adjourned for this year, an updated set of state cigarette and tobacco tax rate maps accompany this bulletin and can also be found on NATO's website, [www.natocentral.org](http://www.natocentral.org). These five maps show the tax rates for cigarettes, cigarette smoking tobacco, smokeless tobacco, large cigars, and little cigars. These maps are an excellent reference for determining various cigarette and tobacco tax rates on tobacco products in all fifty states.

## **C-Store Operators Upbeat Thanks to Fuel and Food**

Nearly eight in 10 convenience store retailers say they are optimistic about their business for the fourth quarter of 2015, according to a retailer survey from NACS.

Strong fuels sales and margins continue to drive retailer optimism. More than half of all retailers (59%) say that fuels sales so far in 2015 are stronger than the same period in 2014 and two in three (66%) say that fuels margins are stronger than in 2014. The c-store industry sells an estimated 80% of the gasoline purchased in the country.

Food sales are another plus. Two in three retailers (67%) say that their food sales have increased in 2015 and nearly as many (63%) say that sales of "better-for-you" items improved this year. Retailers are stocking more fresh items and aggressively marketing and merchandising them to create customer awareness and loyalty, NACS reports.

Across the country, retailers are seeing opportunities to grow food service sales. "We have put more effort into building our food service and getting more better-for-you items in stores," says Jeff Chase with Fast Break, of Klamath Falls, Ore.

## **AGs Call for Immediate FDA Action on Liquid Nicotine**

Top law officials in a majority of states are pushing the Food and Drug Administration (FDA) to require nicotine e-liquids to carry warning labels.

Thirty-three attorneys general sent a letter to the agency on Tuesday urging regulators to action in a bid to stop the liquid nicotine poisoning among children.

Specifically, the letter asks the FDA to require appropriate warning labels on liquid nicotine, nicotine-containing e-liquids and novel tobacco products such as dissolvables, lotions, gels and drinks.

The attorneys general also urge the FDA adopt or establish standards for child-resistant packaging for liquid nicotine and novel tobacco products.

"As more and more Americans — especially young people — take up e-cigarettes, it is more important than ever that the FDA ensures our children are protected from the dangers of liquid nicotine," said New York Attorney General Eric Schneiderman. "Child-resistant packaging and health warnings are an essential step to keeping these potentially lethal toxins out of the hands of our children. The FDA must step up and regulate the sale and packaging of these dangerous products before any more kids are harmed."

The letter cites a recent study that found 87 percent of adult respondents supported FDA requirements for child-resistant packaging for all e-cigarettes and liquid nicotine refills.

In addition, according to the letter, there were 3,783 reported exposures to liquid nicotine, just over half of which involved a child under the age of six, in 2014. Compared to the number of liquid nicotine exposures in 2012, these 2014 figures represent a more than an 800-percent increase in such exposures. As of June 30, there were 1,732 reported cases of liquid nicotine exposures this year.

"Unfortunately, for children, e-cigarettes now account for roughly 25 percent of nicotine exposures, while in other age groups, e-cigarettes exposures have surpassed other tobacco products and account for as many as 65 percent of exposures," the letter stated.

In January, New York passed legislation requiring that liquid nicotine be sold in child-proof packaging. In July, following an investigation, Schneiderman announced agreements with four e-liquid manufacturers and retailers whose product was being sold in New York in violation of the new legislation.

The attorneys general push comes as the FDA closes the public comment period on an Advance Notice of Proposed Rulemaking (ANPRM) on Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s) and Other Tobacco Products.

As CSNews Online previously reported, the agency is seeking comments, data, research and/or other information related to nicotine exposure warnings and child-resistant packaging for liquid nicotine, nicotine-containing e-liquid(s) and potentially for other tobacco products including but not limited to novel tobacco products such as dissolvables, lotions, gels and drinks.

If the agency decides to issue a rule, the first step in the process is to issue a Notice of Proposed Rulemaking in the Federal Register, which gives the public an opportunity to comment on the proposal.

The letter to the FDA was signed by attorneys general of the following states, territories and District of Columbia: Alabama, California, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Mexico, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming.

05/17/16

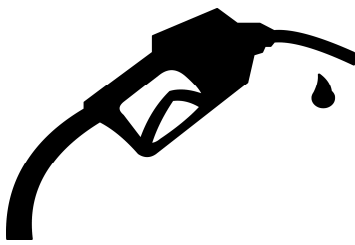


05/19/16

# The Locker Room Trade Expo & Golf Outing

Develop the game plan, skills and motivation for your winning team

The Resort at glade springs  
Daniels, WV



# Oil Marketers Update

## EPA Lowers Ozone Standard to 70PPB

Recently, the EPA set the new ozone standard at 70 parts per billion (ppb), a significant reduction from the 75ppb level set in 2008. The 70 ppm standard is not as low as many feared and is considered a compromise between industry and environmental interests. The rule is important to petroleum marketers because it could lead to additional RFG or lower RVP mandates for those counties nationwide which are not in attainment with the new standard.

Depending on the severity of their ozone problem, states and counties will have from 2020 to 2037 to meet the new standard. The EPA estimates that 241 counties will be pushed into nonattainment due to the reduction in the standard. The EPA will determine the severity of the ozone problem in these counties no later than October 1, 2017. The agency considers 3 years of air monitoring data to determine if an area is in marginal, moderate, serious, severe or extreme nonattainment. RFG is mandated for serious, severe and extreme nonattainment areas.

However, the EPA says that all but 14 of the 241 counties (except those inside California which is under a statewide RFG mandate) currently in nonattainment with the new 70 parts per billion standard will come into attainment by 2025 with no further action required. The EPA credits existing air pollution regulations including the Tier II gasoline requirements and the clean diesel program for reducing the number of counties to 14 that must take additional action to come into attainment. The 14 counties that may see the mandatory introduction of RFG and lower RVP requirements are:

- ◆ Suffolk, Queens and Richmond Counties, NY;
- ◆ Larimer and Jefferson Counties, CO;
- ◆ Tarrant, Harris and Brazoria Counties, TX;
- ◆ Jefferson County, KY;
- ◆ Sheboygan County, WI;
- ◆ Allegheny County, PA;
- ◆ Harford County, MD;
- ◆ Fairfield and New Haven Counties in Connecticut;

Several of these counties are close to attainment with the new standard and may miss a serious or higher designation that would require new fuel mandates. The fate of these 14 counties will not be known until EPA releases nonattainment designations in late 2017. However, state governors may opt into the RFG program voluntarily regardless of the attainment designation the EPA sets.

PMAA opposed lowering of the ozone standard in written comments and continues to support legislation to roll back the new ozone mandate. Although the standard has been finalized, it is very likely that environmentalists will sue the agency to mandate a lower standard.

**U.S. Sen. Shelley Moore Capito** and **3rd District Congressman Evan Jenkins** both criticized the federal EPA's announcement of tightened ozone standards. "The new ozone standard announced today will jeopardize our ability to create new manufacturing jobs at a time when West Virginia's growing natural gas reserves should mean more factories and plants are coming online," said Capito in a release. "EPA continues to hold America back with its onerous regulations and deeply flawed permitting process for new and expanding manufacturing facilities."

Jenkins was similarly disappointed in the ruling, saying that it would come at the cost of more jobs statewide. "Today's announcement is another attempt by the EPA to promote its radical agenda at the expense of West Virginia's jobs. We have already seen how committed the EPA is to destroying West Virginia's coal jobs, and now the EPA is aggressively pursuing attacks on our manufactures and factories," Jenkins said. "This ozone rule threatens manufacturing jobs across West Virginia and the nation, placing the administration's environmental agenda ahead of the livelihood of our families."

Both Capito and Jenkins have taken steps to rollback the ruling. Jenkins introduced an amendment in the House Appropriations Committee to block implementation of the new ozone standard.

Capito is a co-sponsor of The Clean Air, Strong Economies Act, which aims to fight back against the “economic harm projected to accompany the stricter ground-level ozone limits.”

## **Motor Fuels Retailers Appeal Decision Approving ATC Settlements**

On September 17, 2015, Circle K, Marathon, and nine other motor fuel retailers that decided not to enter settlements with the plaintiff class in the ATC litigation (the “Non-Settling Defendants”) appealed a decision of the district court approving the settlements entered by the settling parties. The district court held that the Non-Settling Defendants had no standing to challenge settlements in which they did not participate.

Ordinarily, the Non-Settling Defendants would lack legal standing to challenge the settlements because they would suffer no injury as a result of other parties’ decisions to settle. In this case, however, the Non-Settling Defendants alleged that the settlements created a “de facto slush fund” that would financially reward state governments that chose to change their laws to permit automatic temperature correction. The settlement included \$22.9 million to reimburse retailers for installing ATC equipment and other funds to assist the States in implementing voluntary ATC programs. The Non-Settling Defendants argued that some retailers and states will move toward implementing voluntary ATC, and that States may decide to mandate ATC at retail, and that all of this may result in market and regulatory forces requiring all retailers to implement ATC. If all retailers were required to implement ATC, the Non-Settling Defendants would suffer a financial injury.

The district court was not persuaded by the Non-Settling Defendants’ arguments. It entered a final judgment approving the settlements. The Non-Settling Defendants’ appeal to the Tenth Circuit Court of Appeals should take at least a year to resolve. If the Non-Settling Defendants are successful in their appeal, the case will go back to the district court where the Non-Settling Defendants will be allowed to challenge the settlements on the ground that they create a slush fund to be used to advance the political goal of the plaintiffs, which is to require a nationwide program of automatic temp.

## **U.S. Crude Oil Exports Bill Passes Without RFS Repeal Amendments**

Recently, the Senate Banking Committee passed a bill by a vote of 13 to 9 that would repeal the 40-year-old ban on U.S. crude oil exports. The Senate Energy Committee passed the bill by a vote of 12 to 10 in late July before the August recess. The bill will now move to the full Senate for a vote.

Meanwhile, Senator Pat Toomey (R-PA) offered two amendments during the markup. One amendment, co-sponsored by Senator Diane Feinstein (D-CA), would have eliminated the corn-based ethanol mandate. Senator Toomey has been under pressure from a number of refineries in Pennsylvania who claim they are hitting the “blend wall,” meaning they can no longer combine enough ethanol to meet constantly increasing targets without exceeding a 10 percent threshold acceptable for use in all cars and trucks. However, the amendment failed by a vote of 15 to 7.

A second amendment by Senator Toomey would have delayed any new U.S. oil to be exported allowed under the bill until Congress enacts a law eliminating the corn-based ethanol mandate, but it also failed to pass.

PMAA continues to aggressively oppose any E15 mandate without a pathway to demonstrate legal compatibility for UST systems and liability protection.

## **EPA Announces New Website and Twitter Account for USTs**

Petroleum marketers will now have access to a website and Twitter account specifically about Underground Storage Tanks (USTs). EPA’s website will include information regarding UST regulations, storage requirements, UST corrective action training and other UST issues. Click here to view the new website. For Twitter, go to @EPALand.



# Grocery Highlights

## **FMI Files Industry Comments on DOL Overtime Proposal**

FMI filed extensive written comments with the Department of Labor (DOL) in response to the agency's proposed rulemaking that would make significant changes to federal overtime pay requirements under the Fair Labor Standards Act (FLSA). Among other things, DOL's regulatory proposal seeks to raise the current salary test threshold from \$23,660 annually to \$50,440 per year, which would mean that workers making less than \$50,440 would be eligible for overtime pay if they work in excess of 40 hours in a week.

FMI told DOL that its proposed changes, if finalized as is, would have a significant adverse impact on supermarkets and food wholesalers, especially in terms of associates who are currently exempt from overtime pay. FMI's comments stressed that this new proposed salary test threshold would likely result in significant numbers of associates being "demoted" to non-exempt status, which will hurt employee morale. FMI advised DOL that exempt associates take great pride in being part of management, enjoy the predictability of an annual salary, the potential for career advancement, having flexible work schedules and access to numerous company benefits that non-exempt hourly workers do not have. As a result of this proposed rulemaking, the supermarket industry as employers could potentially be forced to decide whether to increase the salary of certain exempt positions to reflect the agency's proposed higher salary test threshold or to reclassify exempt associates to non-exempt status.

FMI's comments were highly critical of the Department's proposal to impose automatic annual increases in the salary test threshold by some form of indexing, noting in the 77-year history of the FLSA, Congress has never provided for automatic increases in the minimum wage. In arguing that DOL's proposed salary test threshold is excessively high, FMI pointed out that the initiative fails to recognize that various regions of the country have significant differences in the cost of living; a higher salary test will be most acutely felt in regions with lower salary scales, such as the south, mid-west and rural communities.

Although DOL did not propose any changes to the primary duties test, the agency invited comments on whether adjustments should be made. FMI stated that while the supermarket industry can accept some increases to the salary level, FMI strongly objected to any changes to the duties test because the Department has failed to provide the public with adequate notice of what specific changes would be made in its proposal. It is FMI's concern that DOL may adopt something similar to a state of California law, which requires exempt employees to spend 50% of their time exclusively on primary, supervisory duties when the agency issues final regulations. Employer groups are speculating that DOL could finalize its overtime initiative by spring or early summer of 2016. The Department of Labor received over 250,000 filed comments on this regulatory proposal.

## **New Member**

We would like to welcome the following new member:

**Grocery Inc. dba Scott Depot Save-A-Lot**  
**6420 Teays Valley Road/P.O. Box 470**  
**Scott Depot, WV 25560**  
**Phone: 304.757.3030**  
**Fax: 304.757.3088**  
**Contact: Roger Allen, Owner**





# INVEST IN THE BRAND THAT INVESTS IN YOU.



## Become a BP Branded Marketer.

In addition to our commitment to being a best-in-class, reliable fuel provider, BP also supports our BP Branded Marketers with a variety of programs designed to attract consumers and help build profits — Like BP Driver Rewards, our loyalty program that rewards your station's customers just for filling up\*.

**To learn more about becoming a BP Branded Marketer, contact your local Business Development Manager: Bob Zampini | (330) 757-0089 | [robert.zampini@bp.com](mailto:robert.zampini@bp.com)**

\*10 cents off per gallon reward following every \$100 in BP fuel spend at participating locations. All rewards may be redeemed after you register and are valid for a single use only, up to 20 gallons. Any unused rewards are forfeited. May not be combined with any other offers. Rewards expire 365 days after the end of the month they are earned. Rewards are earned and redeemable at participating locations with operable transaction networks. Other terms and conditions apply. See [www.bpdriverrewards.com](http://www.bpdriverrewards.com) for full details and participating locations. ©2015 BP Products North America Inc.



## 2015 Children's Charity Fundraiser

On September 22nd, we held our Children's Charity Golf Outing at Stonewall Resort to benefit the Children's Home Society of West Virginia. Thanks to the generosity of our OMEGA Members we raised over \$64,000 for this worthwhile charity.



**ExxonMobil Fuels Marketing**



**Red Bull Energy Drink**



**Little General Stores**



**Par Mar Stores**



**Marathon Petroleum Company**



**Team Sledd**



**Anheuser-Busch**



**Bruceton Petroleum/BFS**



**One Stop**



**Frito Lay**



**Tri-State Petroleum Corp.**



**Pepsi**



**Proud Eagle Inc.**



**Go-Mart Inc.**



**Pullin, Fowler, Flanagan,  
Brown & Poe PLLC**



**Broughton Foods Co.**

**Charitable Giving Through the Years**  
When coupled with the \$79,615 OMEGA members raised during our Taking it Home for Mother's Day Campaign, we have contributed \$143,750 in 2015 to help children and families cared for the Children's Home Society of West Virginia.



**DeFazio Oil Company**



## How OMEGA Members have impacted the Children's Home Society of West Virginia and the children and families in their care:

- ◆814 children lived in our emergency shelter homes providing them with 33,083 days of care
- ◆Our foster care program cared for 317 children providing them with 48,028 days of care
- ◆We saw 79 children adopted – permanent homes/forever families for these children
- ◆67 children were adopted by their foster families
- ◆466 children and youth received 1-1 mentoring and group mentoring services with a total of 12,924 volunteer hours
- ◆Safe Haven Child Advocacy center assisted 176 severely physically or sexually abused children and provided victim support to 1,042 individuals
- ◆Teen Pregnancy Prevention and Reducing the Risk program to 334 middle school students
- ◆Early intervention programs (Right From the Start, Birth to Three and Parents as Teachers) 224
- ◆Resource Centers – Providing education and basic support and crisis stabilization such as food clothing, infant care items, household items etc. 4,794
- ◆Programs for older youth – Youth in Transition and Transitional Living programs 60 youth
- ◆Visitation Programs – 57 children
- ◆Parenting apart – (education for divorcing parents) - 189
- ◆Youth Services Programs- 224 youth
- ◆Statewide Christmas campaigns and other assistance throughout the year 4,101
- ◆Total children and families cared for in 2014-2015 13,027
- ◆The Greenbrier Valley Children's Home in Rupert West Virginia has the grandest kitchen imagined thanks to OM&GA. The kitchen has 3 refrigerators two ranges/ovens , a dish sanitizer and walls of cabinets. Hanging on the wall is the plaque with all the OM&GA member names.



# Miscellaneous

## **Children's Charity Golf Outing Sponsors**

*We would like to gratefully acknowledge the sponsors of our Children's Charity Golf Outing:*

### Underwriter

**ExxonMobil Fuels Marketing**

### Platinum

**Red Bull Energy Drink  
Little General Store Inc.  
Marathon Petroleum Company  
Par Mar Oil Company  
Team Sledd**

### Gold

**Anheuser-Busch  
BP  
BrickStreet Insurance  
Bruceton Petroleum/BFS Foods  
Federated Insurance  
Frito Lay  
One Stop  
R. T. Rogers Oil Company  
Sammie Huff Contractors  
Tri-State Petroleum Corp.**

### Silver

**Bolger Brothers, Inc.  
Pepsi Beverages Company  
Proud Eagle, Inc.  
R. J. Reynolds Tobacco Co.**

### Bronze

**Broughton Foods Company  
D. G. Yuengling & Sons  
DeFazio Oil Company  
Eagle Transport Corporation  
Enviroprobe Integrated Solutions, Inc.  
Pullin Fowler Flanagan Brown & Poe PLLC  
Go-Mart, Inc.  
UTZ Quality Foods**

### Supporter

**Bandy's Inc.  
Dawson-Thompson Oil Co.**

## Calendar of Events

**UST Re-Certification  
Training  
October 20 - 22  
Charleston Civic  
Center  
Charleston, WV**

**2016 The Locker  
Room Trade Expo &  
Golf Outing  
May 17 - 19  
The Resort at Glade  
Springs  
Daniels, WV**

**At The Pump & Down  
the Aisle  
is a Monthly Publication of**



**West Virginia Oil Marketers  
and Grocers Association  
2006 Kanawha Blvd., East  
Charleston, WV 25311  
www.omegawv.com**

**Phone: 304.343.5500**

**FAX: 304.343.5810**

# Don't Let Your Business Go Up in **SMOKE...**

**Take preventive measures today.**

Federated Insurance can help you tailor a fire prevention risk management program for your business. Contact your local Federated Insurance marketing representative to learn more.

It's Our Business to Protect Yours  
**FEDERATED**  
**INSURANCE** 

Federated Mutual Insurance Company • Federated Service Insurance Company\* • Federated Life Insurance Company  
Owatonna, Minnesota 55060 | Phone 507.455.5200 | [www.federatedinsurance.com](http://www.federatedinsurance.com)

\*Not licensed in the states of NH, NJ, and VT. © 2015 Federated Mutual Insurance Company