

# At the Pump & Down The Aisle

a monthly publication of

**OMEGA**

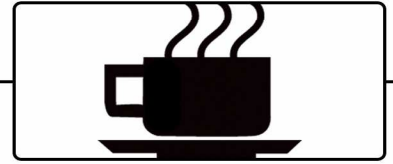
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*fuel*



*food*



*convenience*

January 2007

Number 549

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## OMEGA Legislative Committee Compiles Legislative Position Statements

The Legislative Committee compiled position statements on issues that we will be addressing during the session, but as always, once the session gets going other important issues will also surface. At that time we will add or modify these positions

**Bottle Bill** - We oppose this legislation. Forced deposits do little to help the environment and essentially impose a hidden, regressive tax on consumers. Forced deposits are costly to operate and administer and introduce a significant health and safety risk. OMEGA believes that comprehensive recycling programs are better investments and comprehensive litter control outperforms forced deposits.

**Civil Justice Reform** - West Virginia's business community should continue to seek passage of additional civil justice reforms including: comparative fault, collateral source, limiting punitive and non-economic damages, and establishing a uniform standard for non-economic awards.

**Fair Competition** - OMEGA is comprised of hometown employers and entrepreneurs contributing to our communities. We believe that advantages should not be given to large out-of-state companies or

that our surrounding states should have advantages over us. We continue to seek an even playing field to conduct business.

**Fuel Tax Stability** - While it is critical to appropriately fund our highway system, OMEGA believes we need to analyze where the dollars are going and determine how they can be spent more efficiently. We need to find alternate sources of funding for our highway system and not rely on fuel taxes to fund roads.

**Governmental/Regulatory Cooperation** - OMEGA members provide both employment and valuable services to West Virginia. Representing three separate, yet inter-related industries, OMEGA members interact with numerous governmental and regulatory agencies on a daily basis. We desire fair and consistent treatment and an environment that is business friendly.

**Healthcare** - Affordable healthcare continues to be a major issue for OMEGA members. The adequate funding of government healthcare programs, the reduction and control of healthcare costs, and the availability of affordable health insurance for West Virginia employers and employees are fundamental components of a strategy that will help reduce the cost-shift and the rise in private health insurance premiums experienced by the business community.

*(Continued on Page 3)*



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(Continued from Page 1)

**Interchange Fees** – Credit card fees cost a typical convenience store 2.5 to 3 percent of the transaction and are the third-largest expense at store level. Only labor and rent costs are more. Solutions – regulatory and otherwise – need to be found to reduce these credit card fees before they become even more burdensome.

**Minimum Wage** – An increase in the minimum wage would be damaging to the convenience, grocery and petroleum retailing industries. This type of increase will impair the creation of entry-level jobs for lower skilled employees. It appears that the federal government will address this issue and we would like to move in concert with them.

**Tax Modernization** – West Virginia’s tax structure has long been criticized as not being competitive with other states in terms of attracting and retaining businesses with well-paying jobs. O M E G A s u p p o r t s a comprehensive study of our tax structure and revenue system. This study should also include a complete review of the state’s spending programs to provide a comprehensive review of our total financial system.

**Venue** – In 2003 the West Virginia legislature enacted legislation that curbed lawsuits filed by out-of-state lawyers against entities, which were doing business in West Virginia, on behalf of non-residents who were not injured in West Virginia. These suits were clogging West Virginia’s courts and were causing West Virginians to have to wait to have their cases brought to trial. That legislation was struck down by the West Virginia Supreme Court of Appeals late last year. The West Virginia Legislature must amend the state’s law to protect West Virginia courts for West Virginia citizens.

## Governor Manchin Delivers Third State of the State Address

In his third State of the State address Governor Joe Manchin called for pay raises for teachers and state employees, continued initiatives for coal mine and workplace safety, new workforce education programs, and another round of tax cuts. Manchin’s overall theme in the 49-minute address Wednesday was to build on the accomplishments of the past year, which he described as a year of tragedies and triumphs.

Some highlights of the address were:

- Proposing greater autonomy and taxing powers for local governments
- Seeking end to tax rules and policies deemed a nuisance to business
- Making West Virginia independent of foreign oil by 2030

Below is the Governor’s Proposed FY 2008 Budget:

### **Proposed FY 2008 Budget - \$4.187 billion**

<b>Public Education</b>	\$1.876 billion (44.8%)
<b>Health and Human Resources</b>	\$832.9 million (19.9%)
<b>Higher Education</b>	\$438 million (10.5%)
<b>Military Affairs and Public Safety</b>	\$292.2 million (7%)
<b>Judicial and Legislative Branches</b>	\$146.4 million (3.5%)
<b>Revenue Shortfall and Reserve Fund</b>	\$117.5 million (2.8%)
<b>Commerce</b>	\$75.4 million (1.8%)
<b>Other Miscellaneous Allocations</b>	\$267.2 million (6.4%)

## Legislative Session Begins



The regular session of the 78th Legislature began on Wednesday, January 10th, 2007.

We will be keeping active members apprised of activity at the Capitol throughout the session with our **News Inside the Capitol** reports, which we send out via email or fax. If you are an associate and supplier member of the association and would like to receive these reports, please contact Traci Nelson in the Association Office.

We are in the process of printing our **Legislative Directory** to assist members in contacting their legislators during the session. We will be mailing copies of this publication to members upon its completion.

As always, if you need **up-to-date legislative information** go to [www.legis.state.wv.us/](http://www.legis.state.wv.us/).

If you have any questions during the session or would like to express your opinion on issues, please contact Jan Vineyard at [Jan@omegawv.com](mailto:Jan@omegawv.com) or call the association office at (304) 343-5500.



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**Jon Barker, Owner**



# West Virginia News

## Interim Committee Studying Highway Funding Sources

From the *Charleston Gazette* ... The legislative interim committee studying ways to find new funding sources for road construction approved a number of recommendations on January 8th, including increasing driver's license fees and moving the funding for the state Courtesy Patrol. The panel, which last month recommended renewing a 5-cent-per-gallon gasoline tax set to expire in August, did not recommend any additional increases in the state's gas taxes. Other recommendations were:

- Directing sales tax collections from various highways-related purchases—including such items as tires and vehicle batteries—to the road fund.
- Eliminating funding of the Public Service Commission weight enforcement division through the road fund.
- Transferring funding of the state Courtesy Patrol from the road fund to either the Department of Health and Human Resources or the Division of Tourism.
- Endorsing passage of public-private transportation facilities legislation, to encourage private funding of road construction, primarily through toll roads.

## BrickStreet 2007

BrickStreet would like to offer a special thank you to our policyholders, stakeholders, agents and general agents for a great 2006. It was an exciting year with many changes in the workers' compensation insurance business. BrickStreet would not have been able to achieve its goals without all of your support.

Now that BrickStreet is up and running, we plan to build on the accomplishments of 2006 and look to 2007 to be an even brighter year for our customers.

BrickStreet would like to share a glimpse of our plans. We will:

- Work with the Offices of the Insurance Commissioner and NCCI to transition to NCCI's inter-state E-mod system, which is scheduled to be effective July 1, 2007;
- Continue to enhance our PPO, <sup>^</sup>StreetSelect, to ensure that the injured workers receive quality care and that policyholders receive cost-effective services for their premium dollars;
- Implement a staggered policy system so that our policies can be more effectively managed;
- Implement more sophisticated pricing tools for our policyholders; and
- Continue to emphasize the importance of First Report of Injury. Our goal is to have policyholders report work-related injuries or illnesses to BrickStreet within 24 hours of occurrence so that effective claim management begins immediately.

## WV Lottery Highlights

Through November 30, 2006, overall fiscal sales totaled \$653,346,435. This was up 6 percent from fiscal year 2006, an increase of \$35 million.

November's overall sales were \$124,100,708 a decrease of 3 percent from October's sales. The weekly per capita was \$15.77, down 42 cents from the previous month's \$16.19.

### Traditional Lottery

Through November 30, 2006, fiscal sales for traditional lottery (Instants and Online) totaled \$81,713,356. This amount was down 2 percent from fiscal year 2006, a decrease of \$2 million.

Traditional lottery sales for November 2006 of \$14,943,895 were down 5 percent from October. The weekly per capita was \$1.90 down 9 cents from the previous month's \$1.99.

Compared to November 2005, traditional sales were down 4 percent. The weekly per capita was down 8 cents from last November's weekly per capita of \$1.98. This difference is due to the \$340 million Powerball jackpot high in October 2005.



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# Federal Issues

## House Passes Minimum Wage Hike

The U.S. House of Representatives, in Democratic Party control, voted to increase the federal minimum wage to \$7.25 from \$5.15 over the next two years, with the first of three 70-cent increments kicking in 60 days after the bill becomes law.

The margin of victory was three-to-one, with 82 Republicans voting in favor of the increase, the first in almost a decade. The Wall Street Journal reports that "the long gap, under Republican control of the House, both raised the political stakes of the wage issue and diminished its direct impact on the economy. Labor economists estimate that the six million workers directly affected by an increase represent about 4% of the work force, compared with the 9% directly affected when Congress last approved an increase in 1996.

"The impact also varies, since more than half the states have raised their own minimum-wage standards, often to a higher level than the new federal requirement."

The bill now goes to the US Senate, where it is expected to pass, albeit with some alteration – supporters there plan to tack some small business tax benefits onto the legislation. President Bush has said that he would sign the bill if there were offsetting tax benefits for small business.

Immediately after the legislation was passed, Wal-Mart released a statement supporting an increase in the federal minimum wage:

"In October of 2005, Wal-Mart CEO Lee Scott publicly called for Congress to raise the minimum wage to help working families, saying that \$5.15 an hour was out of date with the times. We believe this statement is truer now than ever before. This increase will help many working families, and we believe the Congress is doing the right thing in passing this important legislation."

## Hidden Fees Bringing Profits to Credit Card Companies

### *Ad Campaign Says Undisclosed Credit Card Companies Fees Unfair To Consumers*

Visa, MasterCard and their member banks collected billions of dollars in secret credit card fees from unsuspecting consumers during the recent holiday shopping season, merchants said this month in newspaper and radio ads.

"Turns out it wasn't the Grinch who stole Christmas after all," a print ad appearing in Capitol Hill newspapers and elsewhere said. "The credit card companies took a bite out of every present you bought with their cards."

"I grew up believing that if anyone stole Christmas it was the Grinch," a similar radio ad

said. "But it turns out the credit card companies stole Christmas by taking a bite out of every present you bought with their cards."

The ads were placed by the Merchants Payments Coalition, a group of merchant trade associations formed to address soaring credit and debit card interchange fees. Interchange is a percentage of each transaction that Visa and MasterCard banks collect from retailers every time their credit or debit cards are used to pay for a purchase. The fee varies with type of merchant, transaction and card, but averages close to 2 percent for most credit card and signature debit transactions. Interchange totaled \$30.7 billion in 2005, up 17 percent over 2004 and an 85 percent increase since 2001.

Unlike other credit card fees that show up on a monthly statement, the interchange fees paid by consumers are not disclosed to cardholders. Visa and MasterCard's non-negotiable contracts require merchants to include the Visa and MasterCard fees in the price of merchandise, forbidding them from being shown on cash register receipts and effectively barring cash discounts.

"Interchange is the biggest credit card fee you've never heard of," the ads said. "Visa and MasterCard don't want consumers to know about it."

The advertisements call the fees unfair to consumers, noting that they are twice what consumers pay in late fees but set in secret by Visa and MasterCard, which together control 80 percent of the credit card market.

## New 110th Congress Begins Session with Democrats at the Helm

The Democrats assumed control of Congress promising a "100 Hour" agenda designed to push through key proposals including an increase in the federal minimum wage. The "look" of the 110th Congress is startlingly different from its predecessor in leadership, committee chairmanships and political agenda. Here is what the leadership and committee assignments look like in the new Congress.

### U.S. House of Representatives

#### Majority Leadership

**Speaker:** Nancy Pelosi (D-CA)

**House Majority Leader:**  
Steny Hoyer (D-MD)

**House Majority Whip:**  
James Clyburn (D-SC)

#### Minority Leadership

**House Minority Leader:**  
John Boehner (R-OH)

**House Minority Whip:**  
Roy Blunt (R-MO)

**Senior Chief Deputy Whip:**  
Eric Cantor (R-VA)

#### Committee Assignments

##### **Agriculture**

Collin Peterson (D-MN)

##### **Appropriations**

David Obey (D-WI)

##### **Armed Services**

Ike Skelton (D-MO)

##### **Budget**

John Spratt (D-SC)

##### **Education and Workforce**

George Miller (D-CA)

##### **Energy and Commerce**

John Dingell (D-MI)

##### **Ethics**

Howard Berman (D-CA)

##### **Financial Services**

Barney Frank (D-MA)

##### **Government Reform**

Henry A. Waxman (D-CA)

##### **Homeland Security**

Bennie Thompson (D-MS)

##### **House Administration**

Juanita Millender-McDonald  
(D-CA)

##### **Intelligence**

Sylvestre Reyes (D-TX)

##### **International Relations**

Tom Lantos (D-CA)

##### **Judiciary**

John Conyers (D-MI)

##### **Resources**

Nick Rahall (D-WV)

##### **Rules**

Louise Slaughter (D-NY)

##### **Science**

Bart Gordon (D-TN)

##### **Small Business**

Nydia Velazquez (D-NY)

##### **Transportation**

James Oberstar (D-MN)

##### **Veterans' Affairs**

Bob Filner (D-CA)

##### **Ways and Means**

Charles Rangel (D-NY)

### U.S Senate

#### Majority Leadership

**Senate Majority Leader:**  
Harry Reid (D-NV)

**Senate Majority Whip:**  
Richard Durbin (D-IL)

#### **Democratic Conference Vice Chairman:**

Charles Schumer (D-NY)

#### **Democratic Policy Committee:**

Chairman Byron Dorgan (D-ND)

#### Minority Leadership

**Senate Minority Leader:**  
Mitch McConnell (R-KY)

**Senate Minority Whip:**  
Trent Lott (R-MS)

#### **Republican Conference Chairman:**

Jon Kyl (R-AZ)

### Republican Policy Committee

#### **Chairman:**

Kay Bailey Hutchison (R-TX)

#### Committee Assignments

##### **Agriculture, Nutrition, and Forestry**

Tom Harkin (D-IA)

##### **Appropriations**

Robert Byrd (D-WV)

##### **Armed Services Committee**

Carl Levin (D-MI)

##### **Banking, Housing, and Urban Affairs**

Chris Dodd (D-CN)

##### **Budget**

Kent Conrad (D-ND)

##### **Commerce, Science, and Transportation**

Daniel Inouye (D-HI)

##### **Energy and Natural Resources**

Jeff Bingaman (D-NM)

##### **Environment and Public Works**

Barbara Boxer (D-CA)

##### **Ethics**

Tim Johnson (D-SD)

##### **Finance**

Max Baucus (D-MT)

##### **Foreign Relations**

Joe Biden (D-DE)

##### **Health, Education, Labor, and Pensions**

Ted Kennedy (D-MA)

##### **Homeland Security & Governmental Affairs**

Joe Lieberman (I/D-CN)

##### **Indian Affairs**

Byron Dorgan (D-ND)

##### **Intelligence**

Jay Rockefeller (D-WV)

##### **Judiciary**

Patrick Leahy (D-VT)

##### **Rules and Administration**

Dianne Feinstein (D-CA)

##### **Small Business and Entrepreneurship**

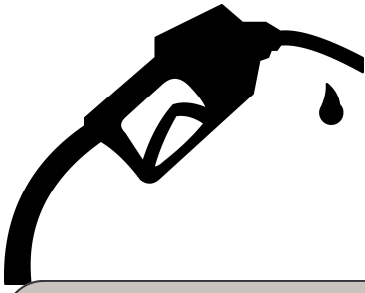
John Kerry (D-MA)

##### **Special Committee on Aging**

Herb Kohl (D-WI)

##### **Veterans' Affairs**

Daniel Akaka (D-HI)



# Oil Marketers Update

## **FMCSA Releases Electronic On-Board Recorder (EOBR) Proposal**

The Federal Motor Carrier Safety Administration (FMCSA) released its much anticipated notice of proposed rulemaking addressing the use of electronic on-board recorders (EOBRs) for compliance with the hours-of-service regulations. Under the proposed regulations:

- New performance standards would be mandated for EOBRs installed in commercial motor vehicles (CMVs) manufactured two years following the effective date of the final rule;
- Motor carriers that have demonstrated a history of serious noncompliance with the hours-of-service rules would be subject to mandatory installation of EOBRs meeting the new performance standards; and
- The FMCSA would provide incentives to motor carriers who voluntarily use EOBRs in their CMVs.

Under the proposed performance standards, EOBRs installed on CMVs manufactured two years after the effective date of the final rule would be required to meet specific standards. The proposed standards would require the EOBRs to record basic information including name of driver, duty status, date and time, location of the CMV, distance traveled, and name and USDOT number of the motor carrier.

FMCSA states that the proposed performance standards would standardize the display of data fields and require that data be easily downloadable.

Under the proposal, EOBRs meeting FMCSA's current requirements and voluntarily installed in CMVs manufactured before the implementation date may continue to be used for the remainder of the service life of those CMVs.

The proposal would require mandatory installation of EOBRs for motor carriers that demonstrate a history of serious noncompliance with the hours-of-service rules. This would apply to motor carriers that had a 10 percent or greater violation rate of the hours-of-service regulations listed in the proposed Appendix C to Part 385 during each of two compliance reviews conducted within a two-year period. Violations in the proposed Appendix C to Part 385 include exceeding the hours-of-service limits, falsifying records of duty status, and failing to make a record of duty status.

FMCSA estimates that if these proposed rules were in place today, about 930 motor carriers and 17,500 drivers would be subject to mandatory EOBR installation.

Proposed incentives for voluntarily using EOBRs in CMVs include:

- Revising FMCSA's compliance review procedures to permit a random sample of drivers' records of duty status; and

- Providing partial relief from the hours-of-service supporting document requirements if certain conditions are satisfied.

The notice of proposed rulemaking is scheduled to be published in the Federal Register Thursday, January 18, 2007. The comment period on this NPRM is expected to last for 90 days. FMCSA anticipates the publication of a final rule in 18 to 24 months.

## **IRS Makes Corrections to Fuel Tax Credit Form Used by Petroleum Marketers**

The IRS recently issued a correction to Form 4136, Credit for Federal Tax Paid on Fuels and its accompanying instructions. The changes were made necessary due to the passage of Tax Relief and Health Care Act of 2006 enacted on December 20. The Act extends blender credits for ethanol until January 1, 2009. The IRS is urging filers to discard the 2006 version of Form 4136 and Instructions and download the new 2007 version that will be available soon on the IRS website. The IRS says the new forms will be ready by February 1 and may be obtained at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## **First Gasoline/ Diesel "Price Gouging" Bill Filed in the Senate**

On Friday, January 5th, Senator Ted Stevens (R-AK) introduced S. 92, the Gasoline Consumer Anti-Price-Gouging Protection Act; the first of what PMAA expects will be many measures in the 110th Congress designed to implement price controls on gasoline and diesel during emergencies. This legislation would make it unlawful to raise prices by an "unconscionable amount" during market disruptions identified either by Presidential proclamation or an emergency order from the Federal Trade Commission (FTC).

S. 92 places most of the enforcement powers with the FTC and limits the fines levied on small businesses to \$500,000 per violation. Refiners could be subjected to fines up to \$5,000,000 per violation. In addition to civil penalties, this legislation includes criminal penalties of no more than \$1,000,000 and/or up to 2 years imprisonment which would be enforced by the Department of Justice. The definitions of "market disruptions" and "unconscionable" price increases will be examined more closely by PMAA and a follow-up report will be issued. It should be noted that currently S. 92 does include many of the safeguards advocated by PMAA, such as the ability to pass along increases in wholesale prices and replacement costs for gasoline/distillate products sold.

PMAA continues to believe that anti-price-gouging measures are, in effect, legislation in search of a problem. Following

Hurricane Katrina, investigations by the FTC revealed that the overwhelming majority of retailers across the United States priced their products responsibly following the emergency. Besides only an extremely small number of isolated instances, there is no evidence that price-gouging poses even a minor threat to consumers.

## **Report Calls for Fifty Percent Reduction in Oil Consumption by 2030**

Citing economic and security concerns, a group of business executives and former military leaders called on Congress and the Bush administration this week to address the nation's growing reliance on foreign oil. The group, called the Energy Security Leadership Council, released a report that calls for increasing vehicle fuel efficiency, domestic energy production, and alternative fuels. The group wants to halve the nation's crude consumption by 2030. Recommendations in the report include:

- Lifting 60,000 vehicles per manufacturer cap on tax credits for purchase of hybrid vehicles.
- Increasing of flex-fuel vehicles by 10 percent a year,
- Mandating that oil companies build more alternative fuel stations.
- Increasing domestic biofuels production to 30 billion gallons by 2030.
- Revising the ethanol tax credit to encourage more cellulosic ethanol and less corn-based product, and drop the tariff on imported ethanol.
- Establishing fuel economy standards for heavy and medium-duty trucks.

- Repealing offshore drilling moratoriums and open crude reserves in Alaska.

The council did not recommend a carbon tax on fossil fuels or a gasoline tax increase. It did not include a climate change proposal, although it recognized that greenhouse gas emissions would have to be addressed in the future.

## **ULSD Labeling Update**

PMAA continues to receive phone calls from members concerned about their retailer and end-user customers who are reluctant to change labels from Low Sulfur Diesel to Ultra Low Sulfur Diesel (ULSD), even though many of the customers have been receiving ULSD for some time.

Some have the mistaken impression that they do not have to label ULSD as such until 2010. While the law does not require a retailer or consumer to sell or dispense ULSD until 2010, those who are receiving ULSD into their tanks must label it as such or risk EPA penalties for exceeding downgrading limitations. Labeling ULSD as LSD is considered to be a downgrade and retailer and end-user (Wholesale purchaser consumers) are limited to downgrading a maximum of 20 percent between October 15, 2006 and May 31, 2007. Only retailers and consumers who offer both ULSD and LSD at their locations are exempt from downgrading limitations.

Additionally with new 2007 year vehicles hitting the roads, EPA is concerned about drivers not being able to find ULSD due to mislabeling at retail locations.

## **Congress Sends LUST Reform Legislation to President for Signature**

The House and Senate this week approved legislation expanding the uses for which funds in the federal Leaking Underground Storage Tank Trust Fund (LUST) may be allocated. The legislation is a technical measure to codify requirements already approved under the Energy Act of 2005. The legislation would permit LUST money to be used for MTBE clean-up, UST operator training, expanded inspection and enforcement by state and federal officials and new prevention measures including expanded use of secondary containment under certain conditions. The provision is an authorization to spend LUST money, but does not actually appropriate any new funding from fund. The LUST fund collects money each year from a tax on motor vehicle fuel. However, Congress must appropriate any money from the trust fund before EPA can spend it. EPA has not determined whether funds in future agency budgets will be allocated for these newly permitted uses. The new UST requirements will take several billion dollars to implement, a far cry from the paltry \$75 million annual allocation that the EPA divides among the states, territories and tribal lands each year. State UST authorities are caught in a Catch 22; they can't afford to enforce the new requirements without significantly increased federal funding yet they risk losing existing LUST allocations if they don't implement the revised UST regulations. Since the nearly \$2 billion in the LUST fund is on "paper" only (Congress "borrows" LUST funds for other purposes) nobody really know how or if the additional funding will be

appropriated. Without federal funding states would likely raise UST fees along with other measures to help make up the shortfall.

## **Senators Seek to Boost Renewable Fuels Standard**

On January 4, five U. S. Senators introduced the Biofuels Security Act which will require U.S. production of 60 billion gallons of ethanol and biodiesel for the U. S. fuel supply by 2030. The bill would also require large oil companies to install more E-85 pumps at retail locations over the next 10 years. The bill would also mandate a 10 percent annual increase in the production of Flexible Fuel Vehicles over the next decade.

PMAA will be taking all measures to educate legislators on the problems created by fuels and equipment mandates. PMAA has historically supported the increased use of biofuels, however, mandates usually create shortages and shortages always create higher prices. The measure also places significant costs on retailers who will be the ones responsible for changing infrastructure to accommodate sales of E-85.

## **EIA Releases New "State Energy Profiles"**

The Energy Information Administration (EIA) recently released "State Energy Profiles" a new gateway to EIA's state energy data, plus individual State Profiles that present key facts and statistics about state energy markets and industries.

Many of the statistics in the profiles will be updated

simultaneously with data updates on other parts of the EIA web site.

The state profiles include the following information:

- Energy maps display state energy infrastructure and renewable energy potential.
- Quick Facts provide the most important state energy information.
- Data tables provide the most current state-level statistics from EIA surveys.
- Associated links take users to specific web pages on which EIA's detailed data and time series can be found.
- Access to reference pages which provide a comprehensive list of EIA's state-level information plus direct links to the information.

To access the State Energy Profiles, go to <http://tonto.eia.doe.gov/state>.

## **2006—A Year of Challenge in the Petroleum Industry**

The year 2006 will long be remembers in the petroleum industry. This past year saw the near-month price of crude oil on the New York Mercantile Exchange hit an all-time high in August, then retreat to significantly lower levels in subsequent months. The U. S. average retail price for regular gasoline remained at or above \$3 per gallon for four consecutive weeks during the summer, before declining to an average of \$2.26 per gallon over the last quarter of the year. This year also saw OPEC cuts its production targets for the first time since April 2004. On the distribution side, 2006 was called the "Year of the Fuel Spec," due to the introduction of ULSD and the rapid phase-out of MTBE, both of which created major challenges throughout the system.

## Federated Announces Risk Management Strategies to Protect Against Common Carrier Liability Exposure

Hiring common carriers to pick up fuel at terminals and deliver it to bulk storage facility, directly to convenience store, or to other customers, presents an exposure that petroleum marketers seldom consider.

In a study of recent claims data, Federated Mutual Insurance Companies, one of the country's largest insurers of petroleum marketers, found that firms have an increased exposure when hiring common carriers to meet demand. The growing trend to hire common carriers to reduce operating expenses costs has heightened concern over this issue for petroleum marketers and their insurers.

A serious accident involving a contracted delivery company could present problems for the petroleum marketer. If the common carrier's insurer does not settle the claim, the marketer may be brought into a lawsuit. The potential liability exposure arises from a jury's possible perception that the marketer has great control over the carrier hired to transport their product. Yet the marketer actually has very little control, especially over people hired by the common carrier. There are steps, however, that can help minimize this liability exposure.

Members insured with Federated will soon receive a brochure in the mail that outlines some preventive measures that can be taken when doing business with a common carrier. The brochure includes suggestions for selecting a common carrier, obtaining proof of insurance and scrutinizing contracts before entering into an agreement with a delivery company or individual.

Contact Federated if you have questions about your liability policies or need copies of the common carrier liability brochure.

## PMAA's Ultimate Napa Wine Experience February 27–28

PMAA and marketers from across the country will be gathering for the ultimate Napa Valley wine experience, February 27–28, 2007. PMAA and its Western Region Associations have joined together to offer marketers and their spouses a true "insider's" encounter of the Napa wine country and its finest and most unusual wines. This event is intended to offer an intimate wine tasting experience at premium Napa wineries, those that tourists seldom visit.

The event will be a fundraiser for PMAA's Small Business Committee PAC, which is used to support candidates for Congress who are small business friendly and supportive of the petroleum marketers. For more information visit PMAA's Web site at [www.pmaa.org](http://www.pmaa.org).

## Briefs ...

Congress passed a number of tax incentives recently aimed at cleaning up "**brownfields**". The legislation would provide tax incentives for private developers to clean up brownfields sites. The brownfields provision would allow a developer to write off clean-up costs for a contaminated site in the year the clean-up takes place instead of capitalizing the cost over a period of several years. The tax incentive had been in place since 1997, but it expired 12/31/05. The legislation extends the incentive to 12/31/07, and is retroactive to 2006. The measure also includes a provision that allows developers that want to redevelop petroleum-contaminated sites, such as former gas stations, to claim the tax incentive for the first time. The measure is awaiting the president's signature.

Senator Ted Stevens (R-Alaska) introduced legislation (s-183) recently that would **increase the corporate average fuel economy standard for passenger vehicles** to 40 miles per hour by 2017. The current standard for passenger cars is 27.5 mpg. In March 2006, the U.S. DOT announced regulations to raise the CAFE standard for SUV's light trucks and minivans from 21.6 mpg to 24 MPG by 2011. The bill was a surprise since Stevens has never indicated any support for CAFE increases in the past.

## New DOT Rule Changes HAZMAT Shipping Paper Requirements

The U.S. DOT issued a final rule recently harmonizing federal hazardous material regulations (HMR) with international standards. The rule is important to petroleum marketers because it changes the way shipping papers for hazardous materials are prepared. Specifically, the final rule changes the sequence of hazardous material product description that must be placed on

shipping papers for petroleum products. Under the new requirement, the hazardous material identification number must be entered first, followed by the product shipping name. Until now, the HMR always required that the product shipping name be entered first, followed by the hazardous materials identification number.

Below is a comparison of the old and new hazardous material product information sequence for shipping papers:

The new sequencing will require petroleum marketers to print new shipping papers or change computer programs that prepare shipping papers. The good news is that the changes are not required until January 1, 2013. However, you may begin using the new sequencing information as of January 1, 2007 (but you are not required to do so until 1/1/13). Petroleum marketers should expect a period of enforcement confusion over this issue at roadside inspections.

Old Sequence	New Sequence
Diesel Fuel, 3, NA1993, PG III	NA1993, Diesel Fuel, 3, PG III
Fuel Oil, (No. 1,2,4,5 or 6) 3, NA1993, PG III	NA1993, Fuel Oil (1,2,4,5 or 6), 3, PG III
Gasoline, 3, UN1203, PG II	UN1203, Gasoline, 3, PG II
Gasohol, 3, NA 203, PG II	UN1203, Gasohol, 3, PG II
Kerosene, 3, UN1223, PG III	UN1223, Kerosene, 3, PG III

*(Remember all product sequences must be followed by quantity in gallons)*



### Classified Ad

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County: Greenbrier**

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*For more information, call Mike Hall      (304) 549-8126*



# Convenience Store News

## The Check Is in The Mail

Three new merchant advisories have been prepared for merchants by the law firm ConstantineCannon, lead counsel in the VisaCheck/MasterMoney Antitrust Litigation, which was settled in June 2003. One advisory, released December 26, 2006, and again yesterday, informs merchants that counsel has directed the Claims Administrator (Garden City Group) to mail checks to Class Members for overcharges on Visa and MasterCard signature debit and credit card transactions during the period October 1992 to July 2003.

This round of payments includes claims that were filed and approved by March 10, 2006, that did not involve the consolidation of multiple store locations or divisions. Claims which required consolidation and were filed and approved by October 20, 2006, are also being paid at this time.

This distribution of approximately 128,000 payments involves more than \$300 million and is the third round of payments, the first having occurred in December 2005 and the second in June 2006, involving more than \$650 million in claims paid. Counsel expects that the remaining claim forms involving payments for signature debit and credit card overcharges will be approved and ready for payment before the end of 2007.

Merchants may also visit the Visa Check/MasterMoney Antitrust Litigation Web site to determine

whether their claims are among those being paid in this distribution. This can be done by clicking on the sidebar option titled "DECEMBER 2006 CLAIMS DISTRIBUTION" and entering the Claim Number and Control Number found on their claim forms.

Among the 128,000 checks to be mailed by the Claims Administrator during the next three days, there are approximately 29,400 checks of \$1,000 or more; 1,790 checks of \$10,000 or more; 308 checks of \$100,000 or more; and 40 checks of \$1,000,000 or more. Please consult the Web site and look out for these checks, which will arrive in a "two-window" envelope, bearing the return address "Visa Check / MasterMoney Litigation Settlement Fund."

The third advisory, also released yesterday, addresses the provisions of the settlement that establish the fact merchants who want to accept Visa and/or MasterCard credit cards are not required to accept Visa and/or MasterCard-branded debit cards (sometimes called the "Visa Check Card," "Debit MasterCard" or "MasterMoney"). Likewise, merchants who want to accept Visa and/or MasterCard-branded debit cards are not required to accept Visa and/or MasterCard credit cards.

Visa and MasterCard member banks have re-issued more than 250 million ATM/debit cards with the word "Debit" on the face of these cards so that merchants and consumers can easily

distinguish Visa and MasterCard debit cards from Visa and MasterCard credit cards. Visa and MasterCard member banks also have re-issued all of their ATM/debit cards with electronic identifiers (the Bank Identification Numbers, or "BINs") that are distinct and different from the BINs assigned to Visa and MasterCard credit cards, so that merchants with certain point of sale equipment can electronically distinguish debit cards from credit cards. Merchants may request a complete list of the BINs assigned to Visa and/or MasterCard signature debit cards from their processor/acquirer.

Counsel expects that payments for online PIN debit overcharges will be made to all or most qualifying Class Members in 2007.

## NACS Lists Issues for 2007

NACS continues to assess the political situation it is likely to be this new year and to develop strategies regarding various legislative initiatives that could affect the convenience and petroleum retailing industry. Among those issues to which we are most attentive are:

- Credit card interchange rates
- Petroleum price gouging
- Regulation of tobacco products by the Food and Drug Administration
- Renewable fuel mandates, especially those directed at retailers
- Remote sales of cigarettes
- Small business tax initiatives
- Affordable healthcare programs



# Grocery Highlights

## N.G.A. Looks At Issues Impacting Grocery Industry in 110th Congress

Expectations will be high for the new Democratic majority—the biggest issue of the 110th Congress will be what to do about the war in Iraq. Democratic leaders will undoubtedly conduct numerous oversight hearings and press for a change of course.

Additionally, Democrats have listed lobbying reform as one of their top priorities. A package of reforms is likely to be considered that would increase disclosure statements, ban lobbyist funded travel, and ban retired Members of Congress from lobbying their former colleagues for two years.

Below are some issues that we may be working on in this Congress that would impact the grocery industry:

### **Minimum Wage**

A minimum wage increase will likely pass early in the 110th Congress. The federal minimum wage will likely rise to \$7.25 an hour and will be phased-in over a period of two years.

### **Taxes**

Repeal or reform of the death tax is improbable in the 110th Congress. Democratic taxwriters have indicated that their first priority will be to reform the Alternative Minimum Tax which is impacting a growing number of middle-class families. Scrutiny of the LIFO provisions of the tax code may also intensify.

### **Financial Services**

Rep. Barney Frank (D-MA) has become the new chairman of the House Financial Services Committee. He has been a champion of closing the industrial loan company loophole in federal banking law which Wal-Mart is currently trying to use to establish a bank. Rep. Frank will likely act quickly on this matter. Rep. Frank is also expected to scrutinize the credit-card industry—which will likely include an examination of credit and debit card interchange fees.

### **Antitrust**

Democrats are less likely to heed the call of the Antitrust Modernization Commission (AMC) to repeal the Robinson-Patman Act and gut other laws important to maintaining a level playing field for small businesses. The AMC is the brainchild of outgoing House Judiciary Committee Chairman Jim Sensenbrenner (R-WI). The AMC will report its finding to Congress in April of this year. Despite the changed political dynamic, it will be important for small businesses to express

opposition to the finding of the AMC. Democratic Judiciary Committee Chairmen in both chambers are likely to call for stricter enforcement of antitrust laws.

### **Health Care**

The focus of the health care debate will likely shift from market-based proposals supported by the GOP such as association health plans to solutions in which government plays a greater role. Democratic priorities include allowing the reimportation of prescription drugs from Canada, allowing the federal government to negotiate lower prices for prescription drugs under the Medicare program and filling the hole in the Medicare Part D benefit. Congress is also likely to scrutinize the managed care industry.

### **Immigration**

With Democrats now in charge, Congress is likely to approve a guest worker proposal favored by President Bush and the business community over legislation that passed the House in 2006. H. R. 4437, which passed in December 2005, would have required all U. S. employers to use an electronic verification system to confirm the employment eligibility of all newly hired workers and previous hires.

## Building Blocks

*By Michael Sansolo*

Imagine you are building a new store. There are probably many decisions you relish making: from the departments you will include to the kind of décor package you will offer. It's unlikely, however, that you are going to get really excited about the foundation.

However, without the foundation—and for that matter, the walls and roof—you aren't going to have much of a store. Except for important sanitation issues, no one spends a whole lot of time focusing on the frame of the building. Likewise your customers will care much more about the service, the prices and the products. The foundation, the ceiling and walls are just necessities.

So is technology. This analogy about the foundation, walls and roof was hammered home at FMI's recent MARKETECHNICS technology show, an event that unfortunately few operations executives or independent operators attend. Consultant Tom Murphy, who previously was the chief technology strategist for Kroger, used the analogy to help small operators understand how to get in the right mindset to deal with the budgetary challenges of technology.

Technology, as Murphy explained, isn't what attracts shoppers. Neither is it what builds sales or profits or a distinct market position. However, all the same could be said about the basic attributes of a building. And just as you can't have a store with a floor, you can't operate today's without technology.

The message for operators like you is critical, especially because of a significant change FMI is making in our show calendar. Starting in May 2007, the FMI technology show will become part of the May FMI show many of you now attend. So attending the event will be easier than ever. But even with a year to plan, there are critical issues about technology that you must consider.

1. Technology is complex and can be expensive, but in today's business it is more important than ever. Technology can help you better serve customers and better run your store than ever before, if you apply it correctly. Steal a page from larger companies when it comes to looking at technology by thinking of your business first and foremost. Think about the problems you would like to solve in your stores and then look for technologies that help you solve them. Invest where you can help your business.
2. Work with your wholesaler and your information technology department as much as possible. Your wholesaler likely has in-house technology experts who can help you identify the best places to invest and can help with in-house support when there are problems. In addition, your wholesaler may be able to link you to other retailers using specific solutions who could provide you feedback. Likewise, your information technology specialist might help you find a technological tool to solve some basic business problems. Use whatever resources you can find. As part of this, talk to fellow operators about the technologies they use. A significant percentage of

retailers now feature self-scanning checkout, for instance. If you are thinking of installing them, see if you can find other retailers to talk with about these systems.

3. Don't try to find perfect solutions. One pitfall that many companies make, according to Tom Murphy, is overspending to solve a problem. Murphy says there are a surprisingly large number of off-the-shelf programs and computers that can solve most of the problems you might have. Again, finding other independents to share experiences can be vital.
- Last, and possibly most important, don't ignore the importance of these decisions. Technology may feel very complex, but it's just a tool to make you a better competitor. You need every tool possible to compete to your maximum ability today.

Technology may intimidate some, but it's a necessary part of business today. You can't afford to let your competitors have an unfair advantage in any aspect of business, whether it's cost control or merchandising. Technology can help in both places.

To help all parts of our industry prepare for these offerings next May, FMI will offer special workshops and other educational tools to make the technology part of the exhibitor floor as easy to use as possible. But the really hard part falls to you to prepare yourself and your company for how to best understand technology and how it is such a vital building block for today's companies.

## Another Year, Another challenge

*By Michael Sansolo*

Whenever new issues erupted for the supermarket industry, Ed Walzer, my mentor and the long-time editor of *Progressive Grocer*, had a simple saying he loved to offer: "In times like these, it pays to remember that there have always been times like these."

It's worth thinking about that as we start a new year, and we think of the challenges we face today and those faced by this industry throughout its long history. This lesson came back to me vividly recently when discussing the 80th anniversary of IGA, certainly one of the more unique and enduring institutions in the food industry. There is no way of knowing what IGA founder J. Frank Grimes would think of the world of 2007, with our incredible range of changes and complexity. Then again, he might survey the situation and think he had seen it all before.

Think about today's major issues and how they have and have not changed:

**Shoppers:** Today we all talk about the complexity of consumer demands, made only more complicated by the new waves of shoppers arriving daily in the U.S. from far away lands. Yet, the world of the 1920s was equally in changes, and the only difference in the immigration patterns is the names of the countries those immigrants left.

What has kept good retailers - and manufacturers - relevant for all these years is the ability to understand the changing nature of their own communities, to stay in touch with the needs and wants of the shoppers they serve. That means new products, new services and new thinking.

**Competition:** There may be those who would point to today's channel blurring and the challenge of battling large chains with their consolidated buying power. Here again, history holds lessons.

Every decade has seen the emergence of competitive formats that in some way threatened, challenged and reshaped the industry. For example, the 1920s had powerhouse companies and many of the same concerns about the power of large companies that we discuss today. There's no more sure sign of channel blurring than this: all the supermarket formats that IGA operators employ today didn't even exist in 1926 when IGA was founded. (The supermarket wasn't really created until the 1930s.)

IGA's founder would look at today's stores and see retailers doing everything they can to keep up with the times and give shoppers the experience they seek, just as they had in 1926.

Whatever the issue, the similarities are striking. If you think there is uncertainty in our world today, think about 1926 with the First World War still a vivid memory and with communism and fascism growing around the globe. The Roaring 20s were soon to give way to the Great Depression. And while we marvel at our new technologies today, the 20s were an equal period of new ideas and invention, even if today those technologies seem so dated to us.

No doubt if any of us are lucky enough to see the world of 2086 - 80 years from now - we'd see a world that makes the challenges and changes we face pale by comparison. But the genius of a great idea is that it holds up in changing times.

So if Grimes or any other industry luminary from the first part of the 20th Century were here today, they would see so much that has changed and yet, so much that is the same. They would also see that great ideas about serving customers, utilizing modern technologies and changing with the times, still holds up pretty well.

## Less Shoplifting in Health and Beauty Aisle

*By Alex Mindlen  
New York Times*

Cosmetics and health-care products were the items most likely to be shoplifted in 2000, according to a report on supermarket theft recently issued by the Food Marketing Institute, a trade group. Last year, they were the third most shoplifted category, after meat and analgesics.

The decline partly reflects increased security for pseudoephedrine, a decongestant that can be used to make the drug methamphetamine. By the end of 2005, 34 states had passed laws restricting sales of medicines with the chemical, and often requiring stores to keep them under lock and key.

The report also suggested that self-service checkout lanes, where customers scan and pay for their purchases themselves, are surprisingly theft-free. Of the roughly 5,400 stores in the survey with self-checkout lanes, 63.6 percent reported no increase in theft rates.

"Individuals in the self-checkout lane, they think they're being watched more than ever before, and they probably are," said Wayne Breckenridge, director of education for the Food Marketing Institute.

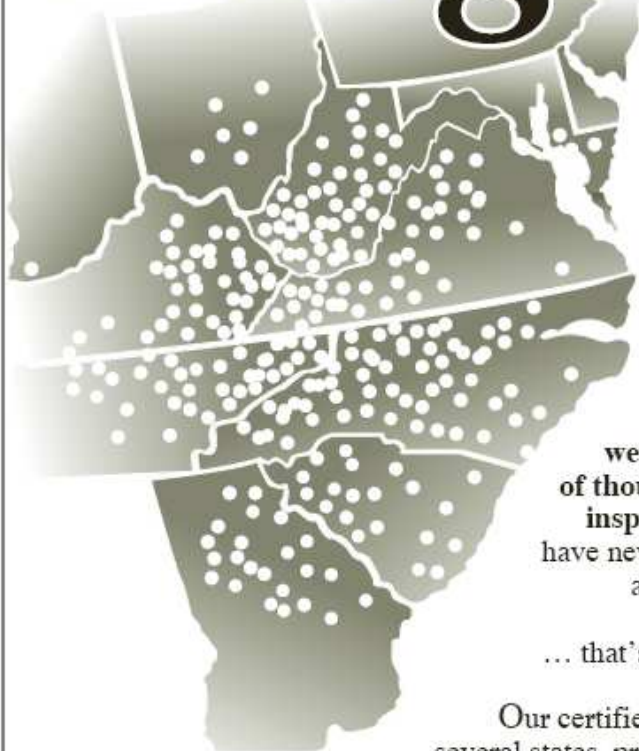
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# Association News

## New Member

We would like to welcome the following member to the Association:

### Supplier and Associate

#### **Merchants Distributors, Inc.**

P.O. Box 2148

Hickory, NC 28603

Phone: (828) 725-4306

Fax: (828) 725-4341

Email:

tim.markham@merchantsdistributors.com

Web site:

[www.merchantsdistributors.com](http://www.merchantsdistributors.com)

**Contact: Tim Markham,  
Director of Sales**

There is **strength in numbers** and we would like to increase ours! If you know of a company who would be a good candidate for membership in the association, either an active member or associate and supplier, please fill out the enclosed form and fax back to the Association Office at (304) 343-5810.

## Association Activities

### **Scholarship Applications**

We are currently in the process of revamping our scholarship applications. We will be mailing out to members upon completion, which should be in early February.

### **Trade Show**

We will be mailing trade show materials to all OMEGA members and past exhibitors at the end of the month. Booths are assigned on a first-come, first-serve basis, so make sure to get your reservations in early! Also, if you are interested in participating in the golf outing and have a morning or afternoon preference, it is a good idea to sign up early for that as well!

### **Membership Dues**

Membership dues invoices were mailed on December 15th to OMEGA members. If you have not paid your 2007 dues yet, please do so as soon as possible.

### **Newsletter**

We are trying to be more efficient at the OMEGA Office. One way to accomplish this is to cut down on our mailing costs. If you would be willing to receive the monthly newsletter via email, please contact Traci Nelson in the Association Office and will begin emailing you this publication with the February edition.

## Mark Your Calendar!

**Feb. 7, 2007**

**OMEGA Board Of  
Directors Meeting  
Legislative Reception  
Charleston, WV**

**April 25–27, 2007**

**PMAA Washington  
Conference and Day on  
the Hill  
Washington Court Hotel  
Washington, DC**

**May 6–8, 2007**

**FMI Show  
McCormick Place  
Chicago, IL**

**May 21–23, 2007**

**OMEGA Trade Expo and  
Golf Outing  
Stonewall Resort  
Daniels, WV**

**November 6– 9, 2007**

**NACS Show/PMAA  
Meeting  
Atlanta, GA**

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