



State News

2016 Election Recap

Statewide

Governor – Jim Justice
Attorney General – Patrick Morrisey
Secretary of State – Mac Warner
Auditor – J. B. McCuskey
Treasurer – John Perdue
Commissioner of Agriculture – Kent Leonhardt

We look forward to working with Governor-Elect Jim Justice and have pledged to do everything that we can do work with him in his endeavor to build jobs and make WV stronger.

We know with the projected budget shortfall that he has his hands full but are confident that he will surround himself with those that will enable him to make good decisions and many changes.

State Senate

Going into the election there were 16 Senators not up for election this cycle: Senators Ferns, Leonhardt, Hall, Woefel, Maynard, Stollings, Gaunch, Mullins, Miller, Karnes, Romano, Beach, Sypolt, Trump, Unger and Takubo. Ten of these are Republican and six are Democrat.

Republicans expanded their majority from 18/16 to 22/12 in the State Senate. Senate Republicans will caucus Dec. 3 to select a new president. The new President will choose committee chairman. At the current time, Mitch Carmichael is the front-runner for President.

Here are the highlights of the races:

- Republicans won two Northern Panhandle districts previously held by Democrats. Delegate Ryan Weld defeated incumbent Jack Yost in the 1st District, while Glen Dale doctor Mike Maroney, a political newcomer, took the seat held for nearly 20 years by Senate Minority Leader Jeff Kessler, who did not seek re-election after running for the gubernatorial nomination last spring.
- Wood County Delegate Mike Azinger kept the 3rd District seat in Republican control, winning the unexpired term over Democrat Greg Smith.
- In one of the night's biggest races, Senate Majority Leader Mitch Carmichael (R-Jackson) withstood heavy union and trial lawyer opposition to defeat Democrat Brian Prim by 886 votes.
- Democrats did flip the 8th District seat, when union contractor Glenn Jeffries defeated GOP incumbent Chris Walters by 2,400 votes.

(Continued on Page 2)



From the Director

As 2016 comes to an end, we would like to take this opportunity to thank you for your continued support of WVWA. If there are ways that we can improve or issues we need to address, please do not hesitate to let us know.

We have lots to look forward to in 2017. It appears that additional legal reform, tax reform, education, infrastructure and the drug epidemic will be on the top of the of House and Senate leadership's agendas for the 2017 Legislative Session.

We are anxious to work with Governor Jim Justice. He ran on "Jobs, Jobs, Jobs" and to us that means "Sales, Sales, Sales". We do think he will be good for WV. He is full of passion and ideas.

The challenge for all will be balancing the budget. Predictions are that the State will have a deficit of approximately \$400 million next year. While both Governor Justice and legislative leaders say "no new taxes," it may be very difficult this session for us to defend no new taxes on our industry.

We billed annual membership dues this week. We would like to thank every company who is a member of the WV Wholesalers Association. We appreciate the trust you have placed in us and we look forward to serving you in 2016.

The new WVWA Membership Directory is awaiting the gubernatorial appointments before going to the printer. Most likely members will receive their copy in February.

Please mark your calendar for the Mid-Atlantic Legislative Conference, which will be held May 31st and June 1st at The Greenbrier. Information will be distributed to members early in 2016.

We look forward to working with you in the coming year and many years to come. We wish you, your employees and families a very prosperous 2016.

(Continued from Page 1)

- Republicans won an open seat that has been held by Democrats in the 10th District when Monroe County funeral home director Kenny Mann defeated Democratic Delegate Dave Perry for the seat previously held by Democrat Bill Laird, who did not seek re-election.
- Republicans picked up a seat in the 14th District, where Delegate Randy Smith (R-Preston) defeated Democratic incumbent Bob Williams. (OMEGA supported Bob Williams in this race as he had been a true friend to our industry in the unfair trade issue and others.)
- In the 16th Senatorial District, Republican Patricia Rucker won the Eastern Panhandle seat over Delegate Stephen Skinner, in a seat previously held by Democrat Herb Snyder.
- Other incumbents winning new four-year terms to the State Senate were – Corey Palumbo (D-Kanawha*), Craig Blair (R-Berkeley)*, Roman Prezioso (D-Marion)*, Doug Facemire (D-Braxton), Greg Boso (R-Nicholas*), Bob Plymale (D-Wayne)* and Sue Cline (R-Wyoming)*. Other first-time winners were Chandler Swope (R-Mercer)* and Richard Ojeda (D-Logan).

House of Delegates

One in three house members will be new in 2017. At this time it is assumed that Tim Armstead will once again be elected as the Speaker. In the end Republicans still outnumber Democrats by 27 seats with a 63/37 majority.

Here are the highlights of the races:

- The unlikely Republican victories included Mark Dean knocking off incumbent Phyllis White (D-Mingo) in the 21st District, Zach Maynard leading the ticket in the Lincoln County-based 22nd District, Patrick Martin in the 46th District and Guy Ward winning a seat in the 50th District, which has most of its precincts in Marion County.
- Six incumbent Democrats lost their seats in the House, while five Republicans suffered the same fate.

- The Democrats defeated were: Delegate Phyllis White, Mingo County; Frank "Bucky" Blackwell, Wyoming County; Peggy Smith, Lewis County; Tim Manchin, Marion County; Steve Shaffer, Preston County; and Nancy Guthrie, Kanawha County. Guthrie lost her 36th District seat by four votes. White, Blackwell and Shaffer were appointed to the House.
- Republican incumbents losing Tuesday night were: David Evans, Marshall County; Michael Ihle, Jackson County; Michel Moffatt, Putnam County; Ray Canterbury, Greenbrier County; and Terry Waxman, Harrison County. GOP newcomers replaced Moffatt, Ihle and Waxman in multi-member House districts.
- Four Democrats who won House seats will be making a return appearance in the state Legislature: Joshua Barrett, Phillip Diserio, and Richard Iaquina, who are former delegates. Shirley Love was a former state senator.
- U.S. Sen. Shelley Moore Capito will have two family members serving in the House of Delegates next year. Her son, Moore Capito, was the top vote-getter in the four-seat 35th District in Kanawha County. His cousin, Riley Moore, won a narrow victory in Jefferson County's 67th District.
- Also, Josh Higginbotham, who won a seat in the House 13th District, will become the youngest member of the House of Delegates. Higginbotham, 20, is 12 days younger than Delegate Saira Blair, R-Berkeley, who was re-elected.

The WVWA PAC supported twelve of those winning Senate seats for a success rate of 86% and an 88% percent success rate in the House races. (Three of those we supported were incumbent Republicans who lost.) Overall WVWA PAC had an 87% success rate when looking at the two statewide races included with the Senate and House races.

We look forward to working with Governor-Elect Jim Justice and have pledged to do everything that we can do work with him in his endeavor to build jobs and make WV stronger.

The 2017 Session won't start until the second week of February in order to give the new governor time to settle in, make appointments and get his agenda together. It's time to start focusing on the 2017 Legislative Session. If you have legislative ideas that will help our industries, please feel free to share those with us.

Below is the Legislative Calendar:

January 9 –11 Interims
January 16 - Inauguration of Governor Jim Justice
February 8 – Session Begins / Governor Justice 1st State of the State
April 15 – Session Concludes

Governor - Elect Announces Transition Team

The Transition Team for the Governor-elect recently announced that experts from West Virginia University and Marshall University will play a key role in the transition policy committees. West Virginia's two research institutions are partnering with the Justice Transition Team to facilitate policy discussions and proposals for the new administration.

The Provost of Marshall University, Gayle L. Ormiston, Ph.D., and the Provost of WVU, Joyce McConnell, JD, LL.M., will serve as co-coordinators of the Justice Transition Team. WVU and Marshall are volunteering a group of experts made up of their respective research departments and faculty members to lead discussions for each of the transition policy committees.

In conjunction with the Governor-elect's transition team, the experts from WVU and Marshall will help run all of the policy committee meetings. Both universities have volunteered to compile findings from each committee and facilitate the presentation of recommendations to Governor-elect Jim Justice. Following the in-depth policy discussions, WVU and Marshall will be collaborating to provide additional research to the Governor-elect and his transition team.

The work of the policy committees will serve as an invaluable resource for the Justice Administration for the next four years. Further details on the policy committees will be announced shortly.

Justice Names Nick Casey Chief of Staff

Governor-elect Jim Justice has announced that Nick Casey will serve as his chief of staff. Casey is a lifelong West Virginian who works as an attorney and a certified public accountant (CPA) in Charleston. He brings a mix of private sector experience and knowledge of state government to his new role as Justice's top aide.

Nick Casey was previously the managing partner of Lewis, Glasser, Casey, & Rollins. In 2013, he was elected treasurer of the American Bar Association. Before that, Casey was the president of the West Virginia State Bar Association and the Kanawha County Bar Association. He earned his Accounting degree from the University of Kentucky and his law degree from the West Virginia University College of Law.

Justice Names Transition Policy Committee Chairs

Governor-elect Jim Justice's transition team named the co-chairs for each of the transition policy committees.

Larry Puccio, the chairman of the Justice Transition Team, said the eight committees will be will share ideas and make policy recommendations to Justice.

Experts from West Virginia University and Marshall University will facilitate the committee meetings and compile the findings for the Justice Administration. The Provost of Marshall Gayle Ormiston and the Provost of WVU Joyce McConnell are the co-coordinators.

The Transition Policy Committee Co-Chairs are listed below:

Economic Development:

Richard Adams
Hon. Carte Goodwin
Marshall Reynolds
Woody Thrasher

Public Education:

Jeff Bryant
Miller Hall

Higher Education:

Joyce McConnell, JD, LL.M., Provost of WVU
Gayle L. Ormiston, Ph.D., Provost of Marshall University

DHHR – Healthcare:

Dr. Clay Marsh
Michael Sellards
Hon. Martha Walker
Albert Wright, Jr., Pharm.D.

Drug Epidemic:

U.S. Attorney Bill Ihlenfeld, II
Interim Fire Chief Jan Rader
Huntington Mayor Steve Williams

Infrastructure:

Mike Clowser
Kyle Shaffer
Steve White

Energy/Environment:

Tony Alexander
David Alvarez
Ralph Ballard
Paul Hardesty
Hon. Mike Ross

Tourism:

Dave Arnold
Elmer Coppoolse
Anthony Figaretti
Dewey Guida

Also, Justice announced **Derek Scarbro** will serve as the director of the transition team and Grant Herring will serve as the communications director.

WV's Tax Competitiveness Ranking Rises

A survey of all 50 states and the District of Columbia found good news for West Virginia's tax competitiveness.

West Virginia ranked 18th overall for the most competitive tax code in the nation, according to the pro-business tank Tax Foundation.

That is up nine slots from three years ago, when West Virginia ranked 27th. Wyoming ranked the most competitive, and New Jersey ranked the least.

The Foundation projects the average West Virginia taxpayer will pay \$3,331 in state and local taxes during 2016.

The survey examined seven different taxes to arrive at the ranking of 18. In corporate tax structure the Mountain State ranked No. 17. The state came in at No. 26 for individual income tax structure; sales tax structure was ranked No. 15. West Virginia came in at No. 13 in property tax structure, and in unemployment insurance tax structure it ranked No. 27, the survey found.

The Tax Foundation said West Virginia's tax structure is mirroring a national trend.

Now No Ruling on Whether W.Va. Goes Right-to-Work until 2017

It will be 2017 before there's a decision on whether West Virginia becomes a right-to-work state.

Lawyers for West Virginia labor organizations and for state government discussed their positions and precedents about right-to-work during a hearing recently before Kanawha Circuit Judge Jennifer Bailey.

As the hearing ended, Bailey said she will need time to consider the arguments. She suggested the lawyers on both sides plan to get back together after the holiday season.

The law — still called Senate Bill 1 — was introduced in the Senate and sent to Judiciary on the very first day of the 2016 legislative session, Jan. 13. It passed both houses and was sent to Gov. Earl Ray Tomblin by Feb. 8. He swiftly vetoed it Feb. 11, and both houses overrode his veto the very next day.

The law went into effect July 1. Judge Bailey approved a temporary injunction supported by unions on August 10.

After a three-hour hearing that was densely-packed with case law and responses, Bailey said she will need more time to consider right-to-work.

Mountain State Business Index Sees Small Increase in October

The Mountain State Business Index increased 0.1 percent in October, marking measurable gains in the West Virginia economy in five of the past seven months.

Economists at West Virginia University said this also represents the index's best overall stretch of performance in nearly two years, and provides mounting evidence that even though some regions in West Virginia are still struggling, the state's economy as a whole is in the early stages of a mild recovery.

"Our economic optimism continues to rise given the recent stabilization and, now, growth that we see occurring in the Mountain State Business Index," said John Deskins, director of the WVU Bureau of Business and Economic Research, which operates within the College of Business and Economics and produces the MSBI. "It appears the recession in West Virginia has come to an end and some growth is occurring; however, it remains uncertain as to when the state will see robust economic growth."

WV Budget Deficit Tops \$90 Million

While West Virginia Gov. Earl Ray Tomblin has ordered mid-year budget adjustments, the Legislature is still going to have to take action in January to help plug an estimated \$165 million budget deficit.

State revenue secretary Bob Kiss told members of the Legislature's joint finance committee during legislative interim meetings on Tuesday, Dec. 6, 2016 that the budget shortfall so far this fiscal year comes to about \$91.5 million. Kiss expects the total deficit for the fiscal year to be about \$165 million.

To that end, Tomblin ordered a combination of budget cuts and redirection of state funds in November. Kiss said state finance officials decided to move about \$25 million from state accounts to the general revenue fund, while making about \$60 million in budget cuts.

Those cuts come largely from Medicaid, but Tomblin also ordered a 2 percent cut for most state agencies, and a 1 percent cut for education. Total impact of the cuts and redirection of funds comes to about \$85 million.

But that still means lawmakers will have to find about \$80 million when they come back into regular session this winter. He said state officials likely will suggest one-time sweeps of money and dipping into the rainy day fund to come up with at least part of the money to plug the deficit.

But Kiss repeated warnings that the state has a "structural hole" in the budget caused by decreasing revenues. He said state agencies have been cut about as much as they can be without seriously affecting services, and warned one-time sweeps of money can only be done for so long before the money is gone. That leaves the Legislature faced with the problem of trying to find new revenue streams. During the 2016 session, senators and delegates reluctantly agreed to raise the state's tobacco tax, but additional tax increases may be required to balance the state budget.

WVU Researchers Present Tepid Economic Outlook

The big picture from the 23rd annual West Virginia Economic Outlook Conference was that things aren't as bad in West Virginia as they could have been, following the nation's recession, and they should be getting a little better, especially in the North-Central and Eastern Panhandle regions.

The Outlook was presented Oct. 4 in Charleston by the West Virginia University Bureau of Business and Economic Research, which operates within the College of Business and Economics.

Projections were for the construction, natural gas and service industries to lead West Virginia's economy during the next five years, but the state's older, unhealthy and low-participating workforce would drag down significant economic advancement.

Deskins said West Virginia is expected to see just 0.6 percent job growth in the next five years, compared to 1 percent nationally, so it will take more than five years for the state to get back to its 2012 peak levels. He presented a breakdown of the state's employment distribution, which was led by government at 20 percent, trade, transportation and utilities at 19 percent and education and health services at 17 percent. He compared that to the state's GDP by sector, which was led by trade, transportation and utilities at 18 percent, government at 16 percent and financial activities tied at 13 percent with natural resources and mining.

BBER Research Assistant Professor Brian Lego pointed out only 53 percent of the state's adult population is either working or looking for work, which is the lowest labor force participation among all 50 states.

Federal News

Congress Avoids Government Shutdown

Lawmakers in Congress avoided a shutdown of the government by passing a continuing resolution (CR) that will extend current funding

through April 28, 2017. Unfortunately, the CR, which was passed by Congress and signed into law by President Obama, does not include the provision promoted by CDA to change the predicate date established by the Center for Tobacco Products (CTP) for newly deemed tobacco products.

ACA Reporting Deadline Delay

Prior to the Thanksgiving holiday the IRS announced the deadline for providing employees with the 1095-B and 1095-C forms for 2016 has been extended to March 2, 2017 (the deadline was originally January 31, 2017).

Two Regulations Blocked in November

In November, two regulations that would have an adverse impact on nearly every employer in America have been struck down by federal courts in Texas.

- **Persuader Rule:** Judge Samuel Cummins sitting in Texas ruled that the Department of Labor's "persuader rule", which would have required employers to report any contact with advisors on union related matters, even attorneys and including regulatory advice on union matters from FMA, was "...defective to its core." Judge Cummins order prohibited the rule from going into effect nationwide. The Department of Labor could appeal to the Fifth Circuit Court of Appeals, however, the new Trump Administration may decide not to pursue the appeal.
- **Overtime Rule:** Judge Amos L. Mazzant also sitting in Texas, issued an injunction against the new Department of Labor overtime regulation which was scheduled to go into effect Thursday December 1, 2016. The new regulation would have doubled the limit that employees earned before they could be deemed eligible for the white collar exemption to being paid overtime. During oral arguments Judge Mazzant called the rule "radical" and "drastic". The regulation will be heard at trial and could still survive, however, the standard by which judges issue injunctions require that there is a strong likelihood that the plaintiff (those challenging the overtime rule) will prevail at trial. The injunction is effective nationwide.

IRS Reminders

The federal Internal Revenue Service has issued a couple of reminders pertaining to the end of 2016 and the beginning of 2017.

Filing W-2s. Under federal legislation enacted late last year as part of the PATH Act, which extended many expiring tax provisions, employers are now required to file their copies of Forms W-2 and 1099-MISC, used to report payments to employees and independent contractors, respectively, by January 31 of the new year, rather than the end of February (or the end of March, if the employer filed electronically). Although an employer may still request an extension of time to file, IRS will now grant only one 30-day extension, and even that will not be automatic. The change was made in order to let IRS detect refund fraud more easily.

PTIN Renewals. Anybody who is paid to prepare a federal tax return – and there are 725,000 such people! -- needs to have a Preparer Tax ID Number, or PTIN. All the current PTINs expire with the end of 2016, and must be renewed if a preparer is going to stay in business. Renewal can either be done on-line at www.irs.gov, or by mail, though if you try the latter, IRS warns that it will take weeks. Either way, there's a \$50 fee. More detail on both these issues may be found at links available on the home page of www.irs.gov.

Predicate Date

The Convenience Distributors Association (CDA) supports efforts in Congress to clarify the FDA deeming authority specifically urging a change in the “predicate date” by which new tobacco and tobacco-derived products such as premium cigars and electronic cigarettes must undergo expensive and unnecessary regulatory hurdles imposed by the Food and Drug Administration (FDA). Without such Congressional action many of these products will no longer be available. At CDA’s request, Jan Vineyard has been working with Senator Manchin’s Office on this issue.

FTC Releases 2014 Cigarette and Smokeless Tobacco Sales and Marketing Reports

The Federal Trade Commission (FTC) has released its most recent Federal Trade Commission Cigarette Report and Smokeless Tobacco Report. Among the findings was a decline in U.S. cigarette sales from \$256.7 billion in 2013 to \$253.8 billion in 2014. Visit the FTC website at <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-releases-2014-cigarette-smokeless-tobacco-sales-marketing> for more information.

CDC Report Shows the Smoking Rate Among U.S. Adults Dropped 6% from 2005 - 2015

A new CDC report shows the smoking rate among U.S. adults dropped 6% from 2005 to 2015. Smokers are lighting up less in the United States, NPR reports. A new report from the Centers for Disease Control and Prevention found that the smoking rate among the adult population dropped from 21% in 2005 to 15% in 2015. The rate declined 1.7 percentage points between 2014 and 2015—a huge decrease, according to the study in Morbidity and Mortality Weekly Report. Overall, 8.6 million fewer adults are smoking today than in 2005.

Court Hearing Held on Two FDA Deeming Regulation Lawsuits

The first court hearing on the FDA’s tobacco deeming regulations occurred in mid-October on two consolidated lawsuits, including the Nicopure Labs, LLC lawsuit and a lawsuit filed by the Right to be Smoke-Free Coalition plus ten other vaping organizations. The U.S. District Court judge assigned to these cases consolidated the two lawsuits because the claims against the FDA deeming regulations are very similar. During the hearing the judge heard arguments from the attorneys representing the plaintiffs as well as two attorneys from the U.S. Department of Justice who represented the FDA.

The most significant claims made by the plaintiffs in the lawsuits include the following:

1. The FDA has exceeded its statutory authority because the agency should not be regulating vaping devices as a “tobacco product” merely because they are used to consume liquid nicotine.
2. The deeming regulations are arbitrary and capricious (i.e., a clear error in judgment and not based on relevant facts) because of the extraordinary burden on vape manufacturers to file Pre-Market Tobacco Applications (PMTA), the unreasonable regulation of less harmful vaping devices and e-liquids in comparison with traditional cigarettes, and the frustration of innovation and advancements in public health through vaping devices and e-liquids.
3. The deeming regulations overstate the benefits of the new regulations, fail to quantify the benefits of the new regulations, underestimate the tremendous costs to the industry, and erroneously conclude that the regulations outweigh the costs.
4. The FDA had the authority and the statutory duty to change the grandfather date of February 15, 2007 to a more current date for e-vapor products so that manufacturers of these products would not need to file Pre-Market Tobacco Applications.

The judge took the cases under advisement and will issue a decision in the near future.

OSHA's Enforcement of Employee Rights Provisions Go Into Effect

On Dec.1, after two delays and a court challenge, OSHA's employee rights provisions within the new electronic reporting final rule went into effect. The section now being enforced (§1904.35) requires that employers: (1) inform each employee of how he or she is to report a work-related injury and illness; (2) provide access to their injury and illness records for employees and their representatives; and (3) not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

Health Groups Sue FDA Over Cigarette Warning Labels

Eight public health groups filed a lawsuit against the U.S Food and Drug Administration to force the government to require graphic warning labels on packs of cigarettes.

The lawsuit was filed on Oct. 4 in the U.S. District Court of Massachusetts by the American Academy of Pediatrics, the Massachusetts Chapter of the American Academy of Pediatrics, the American Cancer Society, the American Cancer Society Cancer Action Network, the American Heart Association, the American Lung Association, the Campaign for Tobacco-Free Kids, Truth Initiative and several individual pediatricians.

The groups maintain that the FDA is required by law to issue a final rule implementing Section 201(a) of the Family Smoking Prevention and Tobacco Control Act of 2009, which requires cigarette packages and advertisements to bear color graphic images and specified textual warnings.

On June 21, 2011, the FDA announced the nine graphic cigarette health warnings required to appear on every pack of cigarettes, carton and cigarette advertisement no later than September 2012. However, reports the Wall Street Journal, tobacco companies sued, and those labels were struck down in federal court on First Amendment grounds in 2013. The FDA has not taken up the issue of graphic warning labels since.

Grassroots Website to Protect E-Cigarette and Vape Category

Almost the entire e-cigarette and vape category (and about 50% of the cigar category) are about to be regulated away. There is a legislative fix (the Cole-Bishop Amendment) that NACS is pushing for inclusion in the Omnibus legislation that Congress will act upon soon. NACS has created a website, www.stopthevapeban.com, that explains the issue (all items with red underlining or in blue text are hyper-linked to background information) and allows both vape users and retailers to contact their Members of Congress to urge support. Time is of the essence ...the website will be pulled down after Congress adjourns in December. We encourage you to visit this website and share it with your customers.

USDA Releases Final Rule on Retailer Acceptance of Food Stamps; Concerns Remain

The U.S. Department of Agriculture's (USDA) Food and Nutrition Service's (FNS) final rule, released on December 8, 2016, changes the eligibility requirements for retailers participating in the food stamp program. The final rule makes some changes that were necessary to ensure people could get the food they need, but still has some provisions that may risk hurting Supplemental Nutrition Assistance Program (SNAP) beneficiaries.

The -USDA removed several problematic provisions from the final rule, which would have made it impossible for tens of thousands of retailers to meet its requirement. Those provisions included a ban on multiple-ingredient items (such as vegetable beef stew), and an expanded definition of "accessory foods" that would have knocked out healthy grab-and-go items (such as hummus and pretzel packs) from counting toward a retailer's stocking requirements. FNS has also changed the provision that retailers stock six of every SNAP item on shelves at all times and now will require three of every item to be on shelves.

FDA Finalizes Revised Guidance on Health Document Submission Requirements

The U.S. Food and Drug Administration (FDA) has finalized the revised guidance, "Health Document Submission Requirements for Tobacco Products," which provides information to assist those making health document submissions to the FDA as required by the Family Smoking Prevention and Tobacco Control Act.

This guidance describes FDA's current thinking regarding the submission of health-related documents required by section 904(a)(4) of the Food, Drug, and Cosmetic Act (FD&C Act)(21 U.S.C. 387d(a)(4)). This guidance is intended for manufacturers and importers of cigarettes, cigarette tobacco, roll your own tobacco (RYO), smokeless tobacco and those tobacco products subject to FDA's final rule, Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act (81 FR 28974) (the deeming rule).

This guidance explains, among other things:

- The statutory requirement to submit health documents
- Definitions
- Who should submit health documents
- FDA's compliance policies
- What information to include in health document submissions
- How to make health document submissions
- When to make health document submissions

The guidance document is available at <http://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM208916.pdf>.

Surgeon General Declares E-Cigarettes 'Unsafe'

Report calls for no-smoking policies, age limit, marketing regulation

In what could become the basis for new restrictions on electronic cigarettes, the U.S. surgeon general released a report Dec. 8 that calls the products "unsafe" and "addictive," declaring the vapor or "aerosol" released "potentially harmful" to users and those around them.

Referring to the report, Surgeon General Vivek Murthy said the use of e-cigarettes has seen "dramatic growth among youth due in part to easy access, lack of information and widespread advertising."

The report said that, while nicotine is a highly addictive drug at any age, youth and young adults are uniquely vulnerable to the long-term consequences of exposing the brain to nicotine, and concludes that use of nicotine by young people in any delivery format is unsafe. The report also referred to "secondhand aerosol" and how the exhaled vapors can expose others to potentially harmful chemicals.

While saying more research is required to declare cause and effect, Murthy said that within the youth demographic, a strong correlation also exists between the use of e-cigarettes and the additional use of traditional cigarettes.

More than 150 experts were involved in the writing and review of the report, which includes e-cigarettes, cigalikes, e-hookahs, mods, vape pens, vapes and tank systems, Murthy said.

The report also called for action on a number of fronts, including:

- Continuing to regulate e-cigarettes at the federal level
- Raising and strongly enforcing minimum age-of-sale laws for all tobacco products, including e-cigarettes
- Incorporating e-cigarettes into smoke-free policies
- Regulating e-cigarette marketing
- Sponsoring media campaigns that discuss the harms of e-cigarettes to young people
- Expanding research efforts related to e-cigarettes



The 2016 Elections and its Impact on Distributors

A decisive win by Donald Trump, along with GOP control of both the House and Senate, may signal a more streamlined legislative process and less roadblocks on such issues as deregulation and tax cuts. Issues such as Obamacare and the overtime rule may also see action. While he has not stated outright opposition to the overtime rule, Trump has indicated that he favors delaying the rule at the very least. In addition, Congressional Republicans, led now by Senate Majority Leader Mitch McConnell (R-KY) and House Speaker Paul D. Ryan (R-WI), have made clear their intention to overhaul the nation's tax code and roll back the health care law instituted by President Obama. In his victory speech, Trump stated, "we have a great economic plan - we will double our growth and have the strongest economy anywhere in the world." House Democratic Leader Nancy Pelosi (D-CA) fended off a challenge to her long leadership reign by defeating Rep. Tim Ryan (D-OH). Pelosi got 134 votes to Ryan's 63 — winning 68% of the votes.

In the Senate, the GOP maintained control, although by a slightly narrower margin - 51 Republican seats held, down from the previous 54 as of publication. 36 Democrats and 30 Republicans were not up for re-election. The Democrats gained two seats and the Republicans lost two seats in the Senate for a final tally of 48 Democrats and 52 Republicans.

In the House, the GOP majority was chipped away at, although the party still holds a significant majority there - 239 to 194 as of this writing. The Republican sweep of the legislative and executive branches of government should ease the way for a more conservative policy agenda. However, the vitriol as a result of a bruising election season may create problems for the party going forward.

From an industry perspective, the GOP wins foretell a more pro-business and anti-regulation administration. While many of Trump's policy priorities are unknown, he has made clear his affinity for overhauling the tax code, boosting the nation's border security and rolling back health care initiatives instituted in the Obama administration. Deregulation and tax cuts along with more spending on infrastructure are also on the new president's policy agenda.

CDA Sends Letter to CTP's Mitch Zeller

In response to concerns raised by our CDA distributor members, CDA sent a letter to the Center for Tobacco Products (CTP) Director Mitch Zeller. The letter outlines concerns over the lack of transparency with respect to the agency's application process for newly deemed tobacco products. Specifically, that the agency may be holding products in good faith that will not be going forward in the application process or that may be going forward but are likely to be disapproved.

On Thursday, November 17th, NATO conducted a webinar titled "Local Tobacco Ordinances: The New Battleground for Retailers." The webinar has now been posted to NATO's website for viewing. To watch the webinar, visit <http://www.natocentral.org/webinars> and then click on the webinar titled "Local Tobacco Ordinances: The New Battleground for Retailers" to bring up the video of the event.

This webinar was made possible through sponsorships provided by Altria Group Distribution Company, Cheyenne International, Cumberland Farms, Farner Bocken Company, RaceTrac and R.J. Reynolds Tobacco Company.

Date Change for CDA's Day on the Hill - May 16 & 17, 2017

CDA has settled on dates for its annual Day on the Hill program of May 16 & 17, 2017. Working with Congress is not always easy. The Grand Hyatt hotel has been reserved and more details will be forthcoming. CDA would like to thank our sponsors, Altria Group Distribution Co. and Altria Client Services and R. J. Reynolds Tobacco Co., for their support and generosity in hosting the dinner and breakfast events. Please mark your calendars and join us in Washington, D.C. on May 16 & 17!

Convenience Distribution MARKETPLACE

**February 13 - 15, 2017
Hilton Orlando
Orlando, Florida**

The Convenience Distribution Marketplace 2017 is a celebration of the convenience products wholesale distribution industry. Drawing distributors from across the country, attendees learn in distributor-focused education sessions, meet up with peers and partners at CDA's annual awards luncheon, take part in great networking events and

do business on the highly-targeted one-day Marketplace floor.

Visit <https://cda2017.expotracker.net/index.aspx> to register today.



Save the Date!

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