

ExecutiveMemo

www.ima-net.org



A newsletter of the Illinois Manufacturers' Association

June 3, 2009, 2009

BRIEFLY

SBA's guaranteed ARC loan program designed to help struggling businesses

Small businesses suffering financial hardship as a result of the slow economy may be eligible to receive temporary relief to get their cash flow back on track through a new loan program.

Beginning on June 15, SBA will start guaranteeing America's Recovery Capital (ARC) loans. ARC loans are deferred-payment loans of up to \$35,000 available to established, viable, for-profit small businesses that need short-term help to make their principal and interest payments on existing qualifying debt. ARC loans are interest-free to the borrower, 100 percent guaranteed by the SBA, and have no SBA fees associated with them.

As part of the Recovery Act, the ARC program was created as a no-interest, deferred payment loan to help small businesses that have a history of good performance, but as a result of the tough economy, are struggling to make debt payments.

For more information on ARC loans, visit www.sba.gov.

Inaugural Dr. School Foundation Lecture on U.S./China Relations — Managing U.S./China Economic and Trade Relations: Thoughts for the Years Ahead

Ambassador Carla Anderson Hills, Chairman and Chief Executive Officer, Hills & Company, and Former United States Trade Representative

WHEN: THURSDAY, JUNE 4, 2009

WHERE: The RitzCarlton, Chicago, 160 East Pearson Street

Chicago Council on Global Affairs members—\$10 / nonmembers—\$20

President's Circle, Corporate Members, and Student Members complimentary.

Learn more and register online at www.thechicagocouncil.org.

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Editor: Stefany Henson (shenson@ima-net.org).

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USEPA proposes rule impacting existing reciprocating internal combustion engines of all sizes

The USEPA issued a major rule proposal on March 5, 2009, that will affect owners and operators of existing stationary reciprocating internal combustion engines (RICE). These types of engines are used for a variety of purposes at commercial and industrial facilities, such as providing back-up electricity and powering fire pumps. The proposal would establish national emissions standards for Hazardous Air Pollutants (HAPs) for the

following categories of engines:

- Existing stationary RICE with a site rating of less than or equal to 500 HP located at major sources of HAPs, (i.e., facilities with potential emissions of at least 10 tons/year of an individual HAP or 25 tons/year of any combination of HAPs),
- Existing nonemergency compression ignition (CI) engines with a site rating greater than 500 HP located at major

See **USEPA RULE**, page 2

General Assembly adjourns – Return imminent?

The Illinois General Assembly adjourned by its scheduled May 31 deadline after passing a limited budget to fund state government operations in FY10. After failing to pass an income tax or sales tax increase to address the budget deficit, lawmakers passed a budget package that reduced grants funds for state agencies by 50 percent from their introduced level. As a result, Governor Quinn threatened to veto the state budget and called on lawmakers to pass a "humane" budget that would not reduce social spending programs, including Medicaid.

The Governor and four legislative leaders began meeting following adjournment to try and reach consensus on additional state spending. Republican lawmakers called for significant structural spending reforms before they would consider voting in favor of a general tax increase. Proposals include a major reform of the state's pension systems to move toward the private sector model of a defined contribution program. In addition, lawmakers are proposing that Illinois use a managed care system in government health care to help control costs. It is possible that the

General Assembly may return to the Capitol if a new agreement on revenue and spending is reached.

The General Assembly did consider two dueling income tax plans. SB 2252 was an initiative of Governor Pat Quinn (D) that sought to increase the individual income tax from 3 to 4.5 percent with a corresponding increase in the corporate income tax from 4.8 percent to 7.2 percent. Revenues under this plan would be used to make the state's full pension payment and address the current budget deficit. SB 2252 was defeated by a vote of 42-74-2.

A second proposal (HB 174) unveiled by several Democrat senators sought to raise the individual income tax from 3 percent to 5 percent while the corporate rate would rise from 4.8 percent to 5 percent. In addition, HB 174 applied the state's 6.25 percent sales tax on thirty-nine services including dry cleaning, movie rentals, sporting events, taxis, and other services. It provided limited property tax relief and increased a low-income tax credit. HB 174 narrowly passed the Senate by a vote of 31-27-1 but was not voted on in the House.

IMA'S EXECUTIVE MEMO IS UNDERWRITTEN BY:

plante
moran

MORE THAN 850 BENEFIT PLANS AUDITED.

Plans audited range from \$100,000 to \$22 billion in assets.

sources of HAPs, and

- Existing stationary RICE of any power rating located at a HAP area sources (i.e. anything that emits a HAP but is not a major source).

Hazardous Air Pollutant limits were established in 2004 and 2008 for new and reconstructed stationary RICE located at major sources and area sources and this proposal expands the regulatory umbrella to existing engines.

USEPA'S proposal establishes numeric emissions limits for existing stationary RICE at major sources. A single set of standards would apply during both normal operation and periods of start-up and malfunction. Existing stationary nonemergency diesel-fueled engines located at major sources, rated at greater than 300 HP, and with a displacement of less than 30 liters per cylinder will be required to use only diesel fuel meeting specific sulfur and cetane index or aromatic content requirements.

For existing stationary RICE at area sources, owner and operators will be required to either meet numeric emissions standards or comply with management practices such as routine replacement of oil filters, spark plugs, hoses, belts, and so forth.

Because of a recent court ruling that vacated the USEPA's previous approach of not requiring that emission standards be met during startup, shutdown, or malfunction, the USEPA is also proposing to amend existing HAP regulations for new and reconstructed RICE major sources to require that emissions standards previously applicable only under normal operating conditions also apply during periods of start-up, shutdown, and malfunction. However, the USEPA is also proposing an alternative limited exemption for certain engines that use catalytic controls so that such engines would be subject to relaxed emission limits during periods of startup and malfunction, but not shutdown.

There are several other provisions of the proposed rule that set operating specifications for certain control technologies and establish requirements for compliance demonstrations, reporting, and recordkeeping.

The comment period for this rule was extended on April 14th from May 4th until June 3rd. The IMA will be submitting comments on behalf of its members. Please contact Mark Denzler by email at mdenzler@ima-net.org for further information.

The USEPA's proposed NESHAP for existing RICE is available at www.epa.gov/ttn/atw/rice/ricepg.html.

IMA legislation extends key tax incentives

The Illinois Manufacturers' Association successfully lobbied the General Assembly to extend three key tax incentives used by the manufacturing sector. HB 1691, which passed unanimously in the House and Senate, extends the sunset dates for the Manufacturers Purchase Credit, Graphic Arts Machinery & Equipment Exemption, and Investment Tax Credit until July 31, 2014. Without this legislation, these key economic incentives would have expired on August 1 of this year.

Illinois House Speaker Michael J. Madigan noted that "the Illinois Manufacturers' Association is responsible for the successful extension of these tax incentives. Their strong arguments on behalf of the manufacturing sector along with their influence and respect persuaded lawmakers to help the industry in this tough economic time." The IMA appreciates the effort of Speaker Madigan and other lawmakers who helped attain this victory.

Leadership development that sticks: Accelerating the development of your future leaders

It's not surprising that baby boomers (those born between 1946 and 1964) comprise a significant number of today's middle managers and senior leaders. However, it may surprise you that 76 million baby boomers are approaching retirement; by 2010, half of them will be between the ages of 54 and 64. When they retire, they'll take their deep knowledge and experience with them. Sobering, isn't it?

How will your organization accelerate the transfer of leadership to the next generation? How can prospective leaders best be prepared for those roles critical to the future success of your organization?

Focused assessment and development

activities systematically engage boomers in the transfer of knowledge and accelerate the development of your organization's next generation of leaders. This, in turn, will prepare your organization for success despite demographic and economic pressures. While those pressures may not be in your control, maximizing your efforts to develop internal talent is. Ensuring the success of your organization from one group of leaders to the next should not be left to chance.

Consider the following best practices:

- 1. Conduct personalized assessments:** A meaningful and thorough leadership assessment should include a deep understanding of the executive's education and experience, understanding of their interests and achievements outside of work, and their personal goals and ambitions. Taking a holistic approach to executive assessment will ensure that their strengths will be fully leveraged, promoting ongoing growth and leadership development.
- 2. Link development goals to organizational objectives:** Development goals don't exist in a vacuum. Each leader's development goals must be directly linked to current business imperatives. All assessment and development activities should be tracked by one individual in your organization to ensure the relevance of those efforts to current organizational objectives. If there are patterns of gaps among key leaders, executive education can be leveraged as a tool to accelerate the filling of those gaps.
- 3. Define specific action steps:** Once development goals are identified, get help identifying six to eight specific action steps the leaders might take to achieve each goal. This approach allows the leaders the freedom to customize action steps that are the most appealing and realistic for them and their unique circumstances. When it comes to grooming top talent, the cookbook approach will never work. An innovative and creative coach can help customize an approach that will keep even the most dynamic leader engaged.

See **FUTURE LEADERS**, page 3

Five benefits of customized leadership development . . .

- **Top talent stays with your organization.**
- **Your organization becomes an employer of choice and attracts new talent.**
- **You build a leadership pipeline for the future; multiple people are prepared to take on leadership roles, and you won't run the risk of hiring high-priced talent that doesn't "fit" with your organization's culture.**
- **Development has a positive impact for the leaders being developed, their supervisors, and their organizations.**
- **Individual leadership goals are aligned with key business objectives.**

4. **Provide leadership support:** The direct supervisor of the executive being developed plays a key role in creating and refining the development plan. This supervisor should be fully briefed on the results of the leadership assessment and the related development goals. The supervisor must be instrumental in helping to prioritize those goals. Furthermore, the supervisor needs to stay involved as the internal “sponsor” who accepts accountability for the ongoing development of the executive. The executive coach can act as a source of support for the supervisor should the development efforts get derailed or lose momentum.
5. **Practice new skills and behaviors:** Practice is critical for successful leadership development initiatives. Without practice, leaders default to past behaviors. Action learning is one targeted leadership development approach whereby executives participate in real-life, business-based projects and activities aimed specifically at developing those gaps identified in their leadership assessment. Integral to the action learning projects are ongoing opportunities for guided reflection along with peer and supervisor feedback.
6. **Schedule regular follow-up activities:** Continuous feedback is a key component of effective leadership development plans. Executive coaches provide supportive and specific suggestions as the leaders experiment with new behaviors and skills. Direct supervisors become key sources of “real-world” feedback related to the goals and action steps created. Continuous feedback ensures that the development plan becomes a living and breathing document rather than a placeholder on the shelf.

Thoughtful and intentional leadership development initiatives provide your organization with a more secure footing with which to face impending baby boomer retirements. It will also create “organizational stickiness,” whereby talented individuals will continue to feel both challenged and appreciated as a result of customized and continuous development opportunities.

For more information on leadership development best practices, feel free to call Mazy Gillis, PhD, Associate, Organizational

Development & Personnel Assessment, 248-223-3790, email: mazy.gillis@plantemoran.com or Steve Gravenkemper, PhD, Partner, Organizational Development & Personnel Assessment, 248-223-3699, email: steve.gravenkemper@plantemoran.com.

Privilege in an electronic world: Cost vs. safety

The next time you check your e-mail inbox, count how many e-mails you received the previous day. Yesterday I received eighty-two. Now, count how many computers with e-mail in-boxes there are in your organization, and multiply. After I did that calculation for our firm, I looked out my window and saw twenty or so highrise office buildings, each filled with people, each person with a computer, each computer with an inbox, and each in-box refilled daily. The number of emails received each minute in downtown Chicago alone is staggering.

This is a frightening prospect for lawyers and clients who are involved in, or are contemplating litigation with attendant discovery burdens. Ever since e-mail communications became commonplace, courts have struggled to balance attorney-client and attorney work product privileges with practicalities. No judge or barrister practicing at the bar in England in 1577—when the attorney-client privilege was first recognized—could have imagined how the privilege, which excused a solicitor from testifying regarding a matter on which he had been retained, could possibly be applied with justice in our world. Back then, and indeed, until very recently, attorney-client communications were likely to be in person or by letter. Even with the advent of faxes and word processors, though the volume of documents increased, it remained relatively easy to locate and segregate privileged communications—letters and faxes were kept on paper in filing cabinets and could be reviewed. E-mails and other electronic data and information, however, are nearly impossible to review and segregate without enormous cost; and unreviewed materials cannot be produced for an adversary without important risk of disclosure.

Fortunately, Congress, in enacting Rule 502 to the Federal Rules of Evidence last September, imposed some uniformity and predictability into the process by addressing the issue with a commonsense approach that is cost effective and that preserves the privileges. The most important change under Rule 502 is that while reducing the costs of discovery in federal courts, it greatly reduces the risk of a waiver of these privileges in other state and federal proceedings.

Before the adoption of Rule 502, the inadvertent production of a single privileged

See **PRIVILEGE**, page 4

DATES OF NOTE

More information/events may be found at <http://www.ima-net.org/calendar.cfm> and <http://www.ima-net.org/MIT/open.cfm>
Email: jstanley@ima-net.org

June 11, 2009

From RSM McGladrey: Optimize your financial performance using your current ERP system ONLINE WEBINAR — 10:00-11:00 a.m. (CT)

This webinar will help you assess your financial operational effectiveness to identify opportunities for improvement, efficiency and cost savings. Our experienced presenters will also discuss best operational practices and direct you toward action steps that could help you improve or achieve profitability. You will receive log-in information in a confirmation e-mail after you register. Cost: free
<http://events.rsmcgladrey.com/content/McGladrey-Recession-Strategies-Webinar-Series>

June 17, 2009

IMA-MIT Event: Assertive Communication Skills: Communicating with Authority & Impact — DePaul University O'Hare Campus 3166 S. River Rd, Des Plaines

Workers today need to be able to communicate effectively in order to increase their credibility and effectiveness in dealing with coworkers, clients and customers and management. Assertive communication provides the speaking and listening skills necessary to productively relate in today's complex work environment.

June 23, 2009

IMA-MIT Event: Project Management Skills for Non Project Managers DePaul University O'Hare Campus 3166 S. River Rd, Des Plaines

Project Management for Non-project Managers will provide non-project managers with the project management knowledge, skills, tools and techniques to make the transition to a project leadership role and ensure optimum project execution.

July 16, 2009

IMA-MIT Event: Consultative Selling Skills for Sales Professional — DePaul University O'Hare Campus, 3166 S. River Rd., Des Plaines

Be ready to turn your “lean and mean” sales team into ‘customer friendly’ advisors your clients will trust to help them make complex buying decisions. Get a better grasp of the needs and vision of your customers and develop great working relationships with key decision makers. Participants will be able to determine how their company's product can provide meaningful value to a client, even in a competitive or saturated market.

September 16, 2009

IMA EVENT: OSHA Recordkeeping — NIU-Naperville Campus, 1120 E. Diehl Rd., Naperville

8:30 am–Noon, Presenter: Jeff Risch, Partner, SmithAmundsen, LLC Cost: \$125 IMA members; each additional attendee \$100; \$150 Non-members. Contact: Kimberly McNamara, 800-482-0462, Ext. 2109, email: kmcnamara@ima-net.org.

Save the date . . .

**IMA's Young Leaders Council
Fall Conference**

October 2-4, 2009

Eagle Ridge Resort • Galena

document could lead to a broad waiver of the privilege regarding all documents relating to the same subject matter. Moreover, the effect of an inadvertent disclosure varied among the several federal circuit courts of appeal and from state to state. As might be expected, to avoid a finding of a broad waiver, counsel or their clients felt compelled to review each document for privileged material. Time-saving e-discovery tools, such as word searches for attorney names, while useful in identifying relevant documents, were not as effective as document-by-document review, and more important, were not uniformly recognized as reasonable approaches to protecting the privilege.

Earlier attempts to create some predictability and cost savings were not enough. In 2006, the Federal Rules of Civil Procedure were amended to allow courts to enter discovery orders based upon agreements of the parties that inadvertent disclosures would not constitute a waiver of a privilege. Those Rules also permitted parties to include “claw-back” and “quick-peek” agreements. Under a “claw-back” agreement, the parties agree in advance to return inadvertently produced documents which will not result in a waiver. Under a “quick-peek” agreement, a party allows the other side to review documents prior to its own review, and lets the other side decide what materials it wants copied. Only then does the producing party review the selected documents for privilege. In addition the new rules provided that in the event a privileged document was inadvertently produced, the receiving party, when notified by the producing party, was required to return, sequester or destroy the document. It could then seek an order declaring that a waiver had occurred.

These improvements, while helpful, were not sufficient because the federal courts had no authority to bind nonparties or other courts to these non-waiver agreements or discovery orders. If, for example, a party produced privileged documents to the other side pursuant to a nonwaiver agreement in federal court litigation, it was quite possible that when the disclosing party became involved in subsequent litigation with another party in another court, the subsequent court would not follow the prior agreement or court order and would instead determine that the privilege had been waived. As a result, parties remained reluctant to rely upon these agreements and continued to engage in extensive document review.

New Rule 502 directly addresses this issue by declaring that all federal court orders finding that there has been no waiver or approving the parties’ non-waiver agreement, must be respected in all other proceedings, whether in state or federal courts. Thus, a party can now be confident

that whatever order is entered by a federal court regarding waiver will be binding in all subsequent state and federal proceedings wherever conducted. There will no longer be different determinations with respect to disclosure based upon the jurisdiction or location of a subsequent court. These amendments are a great improvement over the former patchwork of decisions in various federal and state courts.

This Rule is not merely effective when the original proceeding is in a federal court. It also attempts to bring some uniformity in later federal court proceedings regarding the decisions made in prior state courts. A disclosure in a state court proceeding will not operate as a waiver of privilege in a subsequent federal court if it would not be deemed a waiver under Rule 502 or under the law of the state in which it was made. In other words, the federal court will apply whichever law promotes a finding non-waiver.

Rule 502 is not only procedural, but also substantive and sets forth the effect of disclosure of a privileged document to a federal agency or in a federal court proceeding. Prior to its enactment, the scope of attorney-client privilege and effect of disclosures were determined by federal common law for cases arising under federal law and by state law for cases arising under state law. The Rule provides a single set of rules for waiver of privilege in federal court. Rule 502 (a) provides that such disclosure will be deemed a subject matter waiver i.e., the waiver extends also to non-produced materials, only where (1) the waiver is intentional; (2) the disclosed and undisclosed documents concern the same subject matter; and (3) “they ought in fairness to be considered together.”

Importantly, Rule 502 limits the effect of inadvertent disclosure. It provides that the privilege is not waived by disclosure to a party in a federal court proceeding or to a federal agency if (1) the disclosure is inadvertent, (2) the holder of the privilege took reasonable steps to prevent disclosure, and (3) the holder of the privilege promptly requested return of the document when inadvertent production is discovered.

While Rule 502 will not eliminate all of the costs in time and money of protecting the attorney-client and work product privileges—and parties still need to protect privileged documents—it should greatly assist the parties and courts in reaching balanced and cost-effective methods for producing and reviewing documents.

Author Patrick T. Stanton is a partner with the law firm of Dykema specializing in litigation. He can be reached at 312-627-2282, email: pstanton@dykema.com. Reprinted with permission from the Business Law Quarterly, Second Quarter 2009, published by Dykema.

NAM: Congress should reject unprecedented expansion of employment mandates on small employers

Congress is considering passage of the Healthy Families Act (HFA), legislation that would require any firm that employs at least 15 people to provide a minimum of seven days of paid sick leave. Full-time workers would be entitled to a full seven days, and part-time workers would be entitled to a pro-rated portion of leave. Employees would be eligible for the leave almost immediately upon hiring and could take the leave with little or no advanced notice in increments as small as six minutes. The HFA is a one-size-fits-all requirement that provides little, if any, flexibility for an employer to design a leave benefit plan that matches the needs of their unique work force.

According to Jeri G. Kubicki, Vice President, Human Resources Policy, NAM, “As manufacturers struggle to create and retain jobs in the United States, it is not wise for Congress to propose a burdensome mandate on employers. This proposal will further increase costs and reduce flexibility for employers who are trying to survive in the current economic downturn. The HFA’s flawed approach would force employers to reduce wages or other benefits to pay for the leave mandate and associated compliance costs, thereby limiting benefit and compensation options. Manufacturers provide generous benefits to their employees. On average, manufacturing employees earn over 20 percent more in compensation than the rest of the workforce. The government should not limit employers’ ability to provide the best benefit packages for their workforce.

“Employer mandates make it even more difficult for manufacturers to preserve or create jobs and help drive economic recovery. We urge Congress to reject this misguided proposal and consider approaches that enhance manufacturers’ ability to provide generous benefits to their employees.”

The IMA encourages manufacturers to reach out to elected officials about the serious drawbacks of forcing a mandate upon businesses, particularly in a time of economic recession. Manufacturing and the economic opportunities it creates for communities across the United States will be among the leaders bringing the nation out of recession. But small businesses cannot do it if saddled with unnecessary new mandates like the Healthy Families Act.