

Final 2015 PMAA Priorities Report

Motor Fuels Committee

- **RFS Reform/Blendwall**

On December 1, EPA issued a final rule which sets the Renewable Fuel Standard (RFS) blending mandates for years 2014, 2015 and 2016. The RFS is important to petroleum marketers because it ultimately determines whether E15 gasoline is mandated to meet annual refiner blending mandates. The existing RFS ethanol blending mandates have already pushed E10 blends into virtually every gasoline market in the country. Any significant increase in the ethanol blending standard will force refiners to move to E15 blends unless gasoline demand rises to offset new blending mandates. The EPA was under court order to finalize the multiple year standards, an order that is based on a court approved agreement between the EPA and refiners designed to get the long overdue standards back on schedule.

Below are the final blending volumes for 2014-2017

Final Renewable Fuel Volumes	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
<i>Corn Ethanol (billion gallons)</i>	13.61	14.05	14.5	n/a
Cellulosic biofuel (million gallons)	33	123	230	n/a
Biomass-based diesel (billion gallons)	1.63	1.73	1.90	2.00
Advanced biofuel (billion gallons)	2.67	2.88	3.61	n/a
Total Renewable fuel (billion gallons)	16.28	16.93	18.11	n/a

The new biofuels blending volumes for 2014, 2015 and 2016 are unlikely to require the introduction of E15 gasoline. PMAA is opposed to volumetric ethanol blending mandates for gasoline that would require the introduction of E15 until all practical and legal UST compatibility issues are settled for petroleum marketers. PMAA advocated this position to the EPA via written comments and public testimony. PMAA also met with the White House Office of Management and Budget to express the industry's concern over a possible E15 mandate should ethanol blending levels be set too high in this round of annual renewable fuel blending requirements.

The Agency has been under intense political pressure from both the refiners and renewable fuels industry over whether an E15 gasoline mandate is a viable remedy to overcome the RFS blend wall. EPA's acknowledgement that there are constraints in the motor fuels market to accommodate increasing volumes of ethanol including concerns related to retail infrastructure compatibility was justification to lower the ethanol mandate compared to the statutory levels set by Congress in 2007.

During 2016 PMAA will continuously remind the EPA and Congress of the compatibility issue.

- **Underground Storage Tanks**

The EPA published the final UST system testing and inspection rule on July 15, 2015. The PMAA UST Task Force worked closely with the Small Business Administration (SBA), the White House Office of

Management and Budget (OMB), key members of Congress as well as EPA's Office of Underground Storage Tanks to reduce compliance costs on tank owners to the greatest extent possible. The PMAA UST Task force was successful in this effort reducing annual costs of the final rule from \$6,966 per site to \$2,377 per site. Overall, total annual compliance costs on the industry as a whole were reduced from \$1.5 billion to \$530 million as a result of PMAA's efforts.

PMAA was successful in achieving three of its primary goals aimed at reducing compliance costs imposed by the rule. First, PMAA convinced the EPA to drop regularly scheduled testing of the interstitial spaces of UST secondary containment equipment. PMAA's second goal of delaying implementation of testing and inspection requirements was also successful. PMAA was able to delay these requirements for three years instead of the EPA's proposed 90 day implementation schedule. PMAA also met its third primary goal to reduce the frequency of sump inspections from 30 days to once per year. PMAA achieved many additional cost reductions as well. PMAA's effort on behalf of tank owners was unparalleled in the industry.

While PMAA is pleased with the gains made regarding our concerns with the UST final rule (reducing annual compliance costs from \$6,966 to \$2,377 per station per year), more work must be accomplished to further reduce compliance costs and burdens imposed by the final rule. Specifically, PMAA believes the current test method for sumps can be improved to reduce compliance costs and better protect the environment. PMAA has developed a less costly and more effective alternative sump test method and is working with PEI to incorporate it into new and existing industry standards for tank inspection and testing. PMAA has also provided guidance to state association executives on methods for state regulators to make implementation of the UST rule on the state level less burdensome. Due to these ongoing efforts definitive compliance guidance is not available at this time. However, given the three year implementation schedule for most provisions under the rule there is plenty of time to get clarifications and changes needed for a compliance guideline.

- **New Ozone Standards**

On October 1, the EPA set the new ozone standard at 70 parts per billion (ppb), a reduction from the 75ppb level set in 2008. Although the 70 ppm standard is not as low as many feared and is considered a compromise between industry and environmental interests, the ozone final rule still places a burden on some counties which could mean RFG and lower RVP fuels. On Dec. 23, 2015, a coalition of industry groups led by the U.S. Chamber of Commerce and the National Association of Manufacturers sued the EPA over the finalized ozone standard. Joining the Chamber and NAM was the American Coke & Coal Chemicals Institute, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Independent Petroleum Association of America, National Oilseed Processors Association, Portland Cement Association, and Utility Air Regulatory Group. The groups argue that the new standard is unattainable and will result in job losses. Conversely, environmentalists believe the new ozone mandate is not low enough, but have yet to weigh in whether they will sue the EPA.

Earlier this year, five states, led by Arizona, have sued the EPA over the new ozone standard, claiming it would push too many counties into nonattainment. PMAA opposed lowering the ozone standard in written comments to the White House and continues to support legislation to roll back the new ozone mandate including Rep. Flores' (R-TX) bill known as "The Ozone National Ambient Air Quality Standard Deadline Harmonization Act" which brings certainty to states and localities by allowing adequate time for implementation of the 2008 standard and resulting air quality benefits.

Convenience Store Committee

- **Manager Overtime**

On July 7, 2015, the Department of Labor (DOL) announced new proposed overtime rules which sets forth three key proposed changes to the current FLSA regulations: (1) A new minimum salary level to qualify for the white collar exemption standard salary-level test, which is set at the 40th percentile of weekly earning for full-time salaried workers. In 2013, this amount was \$921 per week, or \$47,892 annually. The DOL projects that in 2016, when the rule will likely take effect, the 40th percentile will be about \$970 per week, or \$50,440 annually; (2) A new minimum total annual compensation requirement to qualify for the highly compensated exemption set at the 90th percentile of weekly earnings for full-time salaried workers. In 2013, this was \$122,148 annually. The DOL does not propose what the amount will be in 2016; (3) A newly established mechanism for annually updating the minimum salary and compensation levels for these exemptions going forward.

Under these proposed rule changes, many employers would be faced with the possibility of reducing hours worked to 40 or less per workweek, in order to avoid overtime pay. Management would need to be diligent in watching hours worked for those employees who do not meet the new salary requirements, or would be legally obligated to pay overtime pay at a rate of 1-1/2 times their normal rate of pay for all hours worked over 40.

Many retailers may choose not to have exempt employees in their businesses. By increasing the threshold for overtime-eligible employees, companies may be forced to cut bonuses and benefits to boost the managers' base salaries and lower hourly rates to compensate for the expense of paying salaried managers more.

PMAA opposed the proposed rule in its comments sent on September 4, 2015. PMAA will be supporting legal and Congressional efforts to delay and/or kill the rule when it's finalized – likely by summer 2016.

- **Health Care Reform**

On December 3, under the budget reconciliation package, the Senate voted 52-47 by a simple majority to repeal large portions of Obamacare. The bill is a symbolic victory for Republicans, as it is the first time they have been able to accomplish this after five years of failed attempts. The Senate bill repeals the employer mandate penalty and repeals the authority for healthcare exchanges. The Senate bill will now head to the House for passage which only requires a simple majority. The House has already passed its bill which repeals certain provisions in Obamacare including the individual and employer mandates, the medical device tax, and the "Cadillac" tax, which is an excise tax on expensive healthcare plans provided by employers to their employees. The vote comes at a time when some plans sold via Obamacare insurance exchanges have been struggling with weak enrollment, higher-than-expected medical costs and increased premiums.

The legislation will certainly face a veto from President Obama, his signature law. PMAA strongly supports legislation to repeal the employer mandate of Obamacare.

- **Menu Labeling**

In November 2015 the House Energy and Commerce committee passed the "Common Sense Nutrition Disclosure Act" introduced by Reps. Cathy McMorris Rogers (R-WA) and Loretta Sanchez (D-CA). This bipartisan legislation modifies the Menu-Labeling language in Obamacare to permit retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. The bill clarifies that advertisements and posters do not need to be labeled and provides flexibility in disclosing

the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. Furthermore, the bill ensures that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulates that individual store locations are not required to have an employee “certify” that the establishment has taken reasonable steps to comply with the requirements. Stores would have 90 days to correct any alleged violation without facing enforcement action.

This legislation is important because it gives retailers the flexibility they need to comply with the menu-labeling regulations. PMAA is pleased that the bill was passed in Committee and is optimistic that it will ultimately be passed on the House floor. Companion legislation (S. 2217) was introduced by Senators Roy Blunt (R-MO) and Angus King (I-ME). Meanwhile, the Omnibus spending bill that passed in December blocks funding for the FDA implementation of the menu labeling rule until September 30, 2016.

Heating Fuels Committee

- **Fuel Neutral Policies**

Unfair policies that favor one fuel over another, “fuel switching,” are threatening thousands of home heating oil businesses. Policy makers fail to acknowledge recent technological advances in heating oil efficiency. New high efficient oilheat equipment combined with the near elimination of sulfur content and BioHeat® makes heating oil cheaper, more efficient, safer and cleaner than natural gas. Unlike electric and natural gas utilities, oilheat infrastructure was developed without taxpayer or ratepayer money and none is needed to maintain it. Incentivizing oilheat customers to make costly conversions to natural gas and other fuels is not fair and is unlikely to result in lower heating costs or emissions. Additionally, Congress should be treating both oil and natural gas pipelines fairly but recent legislation favors natural gas over oil.

The House passed the “North American Energy Security and Infrastructure Act” (H.R. 8) which concerns PMAA because it is not fuel neutral since it would expedite interstate natural gas pipeline approvals at the Federal Energy Regulatory Commission (FERC) and does nothing to expedite oil pipelines. Rather than deregulate the natural gas pipeline permitting process, Congress should require that regulators and gas companies increase system efficiency by requiring that the thousands of miles of existing natural gas pipelines that are aging or obsolete be repaired or replaced. PMAA continues to urge the Senate not to include the language in future comprehensive energy policy legislation.

Meanwhile, the Omnibus Spending bill that was enacted in December 2015 provides \$3.39 billion for the LIHEAP, which is far less than the President’s FY 2016 LIHEAP budget request of nearly \$4.5 billion. PMAA was concerned with language in the President’s budget which required states to spend at least 10 percent (and up to 40 percent) of their LIHEAP formula and another \$200 million in merit-based grants in support of programs that encourage “fuel switching.” Fortunately, the President’s request **wasn’t included** in the omnibus spending package. PMAA worked with Rep. Charlie Dent (R-PA) to highlight these concerns during a Congressional hearing on LIHEAP earlier this year.

- **Benefits of Oilheat**

The National Oilheat Research Alliance (NORA) issued a landmark industry report on the utilization rate and analysis of the use of biofuels in heating oil equipment. The report, ***Developing a Renewable Biofuel Option for the Home Heating Sector***, is important to heating oil dealers because it demonstrates the significant economic and environmental benefits of biofuels along with important information

regarding its efficiency as a home heating fuel, compatibility with existing heating oil equipment and data on market penetration and acceptance. The report was required by Congress as part of NORA's reauthorization in 2014.

Key findings of the report include: The transition to ultra-low sulfur heating oil (ULSHO) lowers maintenance, improves efficiency and reduces pollution from heating systems; B20 blends using ULSHO as a blend stock are lower in greenhouse gas emissions (GHG) than natural gas when measured over 100 years; Blends of two percent (B2) or more are lower in GHG than natural gas when evaluated over 20 years; Performance studies of B20 blends on basic burner operation are equal to that of unblended heating oil. The report concluded that biodiesel fuel and the move to renewable fuels present new opportunities for the heating oil industry and consumers. The transition can be made with minimal capital costs by consumers and heating oil dealers, removing a significant barrier to the widespread introduction of use of renewable home heating fuel.

ASTM International published new heating oil grades containing 6 percent to 20 percent biodiesel. A blend of B12, coupled with Ultra-Low-Sulfur-Heating-Oil (ULSHO), burns cleaner than natural gas. Emissions reductions could even be more significant for Bioheat[®] compared to natural gas if the impact of methane leaks from wellhead production and local distribution is considered. ULSHO and Bioheat[®] decrease CO2 emissions, sulfates, hydrocarbons and particulate matter. Tests conducted by the National Oilheat Research Alliance (NORA) found that a blend of 80 percent ULSHO and 20 percent biodiesel (B20) reduced sulfur dioxide emissions by 80 percent and nitrogen oxide emissions by 20 percent. ULSHO and Bioheat[®] improve overall heating system efficiency and longevity, and can save consumers on their monthly bills and in system maintenance costs. Cleaner fuels will empower our heating fuels next generation of high efficiency equipment which will be more compact and will use cheaper materials. Meanwhile, as the heating oil industry transitions to ULSHO, companies will no longer be required to purchase and maintain separate storage tanks or delivery trucks for high-sulfur and low-sulfur fuels, saving these companies thousands of dollars, ULSHO is more efficient and environmentally secure, making heating oil companies more competitive.

Meanwhile, EPA requires 1.9 billion gallons of biodiesel for 2016 and 2 billion gallons for 2017 under the RFS final rule released on December 1. PMAA has no concerns over the biodiesel mandate because it supports BioHeat[®] which is cleaner than natural gas.

Other Priorities

- **Placarding**

The U.S. DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an interpretive letter in June 2015 that eliminated the long standing special exception for placarding to the lowest flash point when hauling alternating straight loads of diesel fuel and gasoline in a cargo tank truck. Under the new interpretation, placarding to the lowest flash point is now limited to split loads of gasoline and diesel fuel shipped in different compartments of the same cargo tank shipment. This change in interpretation is causing considerable confusion among marketers and state enforcement authorities as to when it is proper to display the UN1203 gasoline and the NA 1993 diesel fuel placards on cargo tank trucks. Marketers have for many years used the UN1203 placard for alternating shipments of diesel fuel and gasoline which is no longer allowed under the new interpretation. State enforcement authorities are split on whether to enforce the new interpretation, leading to uneven enforcement within states and between states. As a result, marketers are increasingly being cited for improper placarding.

PMAA has secured language in the Senate Committee on Commerce, Science, and Transportation bipartisan bill known as the "SAFE PIPES Act" which seeks to improve the safety of the nation's oil and natural gas pipelines and overhaul procedures at PHMSA. Section 4 of the bill is language that would force PHMSA to revert back to placarding to the lowest flash point for both split loads and alternating straight loads of diesel fuel and gasoline. This is a cost saving provision for marketers because they can ship diesel fuel, gasoline and heating fuel in different compartments of the same cargo tank vehicle under a gasoline placard, as well as ship straight loads of gasoline or diesel under the gasoline placard instead of affixing or switching multiple product placards. The provision can also benefit emergency responders because it reduces the number of placards on the cargo tank which makes identifying the appropriate response in an emergency simple and reliable. Action on this bill is likely to resume in early 2016. On the regulatory side, PMAA signed a petition along with the American Trucking Associations (ATA) and the National Tank Truck Carriers (NTTC) urging PHMSA to reverse its interpretation.

- **Proposed AFUE Standards for Boilers**

PMAA is part of a heating oil coalition opposing a DOE proposed efficiency standard for boilers. The proposed rule would amend existing annual fuel rating efficiency (AFUE) standards for residential boilers using natural gas, propane and heating oil. AFUE is the ratio of annual heat output of the furnace or boiler compared to the total annual fossil fuel energy consumed by a furnace or boiler. The DOE's Notice of Proposed Rulemaking (NPRM) proposes new minimum AFUE levels of 85 for gas and 86 for oil fired hot water boilers. Currently the AFUE standard for gas and oil fired hot water boilers are 82 and 84, respectively.

PMAA is concerned that the proposed standards are not technically feasible for natural draft systems and imposes an unjustified economic burden on both manufacturers and consumers. PMAA along with NEFI and the Oil Heat Manufacturers Association (OMA) has provided public testimony on the proposed rule and submitted written comments opposing new AFUE standards until a new laboratory and field study is completed on oil heating appliance venting and how these issues may affect efficiency standards. The coalition has asked NORA to conduct the study. PMAA sent Secretary of Energy Steven Chu a letter expressing our concerns.

PMAA is also working with House Energy and Commerce Committee members Rep. Chris Collins (R-NY) and Rep. G.K. Butterfield (D-NC) to give more time for oilheat dealers to comment on the proposed rule. PMAA currently has a letter being circulated in the House.

- **Biodiesel Tax Credit**

In December 2015, Congress passed a tax extenders package that would revive over 50 expired tax incentives through 2016 which includes the \$1 per-gallon biodiesel blender's tax credit and a 30 percent investment tax credit for alternative fuel pumps. This was a huge victory for petroleum marketers because there was a legislative push to move the biodiesel blender's credit to the production level. PMAA was concerned with limited access to supply, blending logistics in the tax and dyed system and we didn't think that the credit would be passed on to marketers if moved to a production credit. PMAA actively lobbied Congress on this, particularly on behalf of heating oil dealers and their consumers who almost certainly would have experienced an increase in the price of heating oil.

- **Jones Act Reform**

With the southern leg of the Keystone XL pipeline operational and the U.S. shale oil boom at its height, crude oil supplies are now reaching the Gulf Coast at record levels which has led to a renewed interest in repealing and/or reforming the Jones Act. Signed into law by President Woodrow Wilson in 1920, the

Jones Act regulates maritime commerce in U.S. waters and between U.S. ports which requires that all goods transported between U.S. ports be carried in U.S. owned ships, built and registered in the U.S., and manned by U.S. citizens. The Congressional Research Service (CRS) reported last summer that the majority of U.S. refineries are located near navigable waters to take advantage of both oil imports and exports. However, for refineries switching from imported to domestic crude oil, the advantage diminishes considerably due to the Jones Act. The Report also stated that Texas oil is moving to refineries in Eastern Canada and bypassing U.S. Mid-Atlantic refineries due to the higher cost of Jones Act compliant ships.

Sen. McCain proposed an amendment during debate of the Keystone XL pipeline approval bill that would ease Jones Act restrictions. However, the amendment was not considered. This is still useful in educating Congress on why the Act needs reform. McCain's amendment mirrors a previous bill he submitted known as the Open America's Water Act which would repeal the Jones Act.

PMAA supports efforts to reform the Jones Act to alleviate the Gulf Coast supply glut which will bring cheaper motor fuels and heating oil prices to consumers. There was some discussion in Congress to loosen the nearly 40-year-old restrictions on US crude exports in exchange for modifications to the Jones Act to appease refiners during the 2016 omnibus spending negotiations. Unfortunately, no changes were included in the final omnibus spending package that passed Congress before Christmas.

- **Futures Market Reform**

The Commodity Markets Oversight Coalition (CMOC), chaired by PMAA and NEFI, continues to urge the CFTC to finalize its proposed position limits rule that would cap the number of futures contracts a speculator can hold in the NYMEX Light Sweet Crude Oil (CL), NYMEX RBOB Gasoline (RB) and the NYMEX NY Harbor ULSD (HO) contracts. The new proposed rule was released in light of the CFTC dropping its appeal on its initial position limits rule which was vacated by the U.S. District Court of DC. Congress gave the CFTC the authority to set position limits to prevent investment banks, hedge funds and other financial entities from having too much concentration in the oil markets. The CFTC reopened the comment period on a proposed rulemaking which closed in March 2015. CMOC still has concerns regarding the creation of a conditional spot month limit exemption, the spot month limit of 25 percent of estimated deliverable supply (set too high) and a hedge exemption proposal for commodity index funds.

Authorization for the CFTC lapsed in September 2013. The House Agriculture Committee began its series of hearings relating to the oversight and reauthorization of the CFTC. PMAA member Howard Peterson of Peterson's Oil Service in Worcester, Massachusetts testified on behalf of his company, PMAA and NEFI at one of the House Ag Committee's hearings in March. Peterson asked Congress to strengthen fraud and manipulation prevention and penalties; to allow the CFTC to finalize position limits; to adequately fund the Commission; to keep legitimate hedgers who take physical delivery from being weighed down in regulations that are meant for the Wall Street banks; and to provide \$322 million as requested by the CFTC for FY 2016.

PMAA and NEFI support a clean CFTC reauthorization.

- **FDA Jurisdiction over Electronic Cigarettes**

In April 2014, the FDA announced that it plans to regulate the three billion dollar market for e-cigarettes as well as cigars to limit sales to minors, ban free samples, and require nicotine addiction warnings as well as ingredient lists. If the current proposal is finalized, it is expected to be heavily litigated. PMAA

staff reviewed the proposal and submitted comments. A final e-cig rule should be finalized sometime before President Obama leaves office.

Meanwhile, Senators Durbin (D-IL), Blumenthal (D-CT), Reed (D-RI), and Brown (D-OH) again introduced a bill (S. 450) to amend the Internal Revenue Code of 1986 to provide tax rate parity among all tobacco products. The legislation was first introduced in 2010 and would establish tax parity across products, including e-cigarettes. The FDA is proposing to deem e-cigarettes as a tobacco product and subject to their regulations. Without Republican co-sponsors, the legislation is unlikely to advance.

- **Motor Carrier Financial Responsibility Requirements**

Congress recently passed a 5-year, \$305 billion highway spending bill with PMAA supported language which requires the Federal Motor Carrier Safety Administration (FMCSA) to conduct a comprehensive study of commercial motor vehicle accidents and claims histories before initiating any proposed rule that would increase minimum levels of financial responsibility pursuant to 49 CFR 387.9. This is a major victory for PMAA because FMCSA recently added increases in minimum levels of insurance for cargo tank vehicles to its published regulatory agenda. The FMCSA is contemplating a possible increase in minimum levels of financial responsibility from the current \$1 million level for petroleum cargo tanks up to \$10 million. PMAA argued that the private insurance market should determine minimum levels of responsibility based on actuarial risk formulas and not a FMCSA one-size fits all minimum that is not supported by current industry safety data.

- **Interchange Fees - Credit Cards**

A proposed settlement of longstanding antitrust litigation between retailers and the credit card industry was reached to address Visa and MasterCard's anticompetitive interchange fee practices. As expected, Federal Judge John Gleeson approved the proposed settlement in the interchange fee class action litigation against Visa and MasterCard. A dozen plaintiffs appealed the decision which could delay the settlement for another year or so because it offers money damages of only about two months' worth of interchange fees paid by retailers, limited modifications to surcharging rules, and most notably, prevents retailers from challenging anti-competitive interchange fees in the future. The decision by Judge Gleeson is important but it is only one more step in a long process. Petroleum marketers need not take any action as a result of this decision. Everyone involved must wait for the appeals process to conclude.

Meanwhile, the European Parliament overwhelmingly voted in favor of capping interchange fees, 0.2 percent for debit and 0.3 percent for credit transactions, and also set limits on Visa and MasterCard's "Honor All Cards" rule. For debit cards, the new rules also allow individual EU member states to set lower percentage caps and impose maximum fee amounts. The European Commission anticipates that the new rules could lead to a reduction of about 6 billion Euros (approximately \$6.3 billion) each year in hidden fees for consumers.

- **Interchange Fees - Debit Cards**

The U.S. Supreme Court, without comment, denied the request of retail associations to review the Federal Reserve's debit swipe fee rules. PMAA supports the plaintiff's position that the Fed did not reduce how much banks can collect for debit-card transactions enough in capping swipe fees at 21 cents per transaction. The retail industry's case includes the argument that the Fed is allowing banks to recoup the fixed costs for their debit-card programs, including the money spent on network hardware, software and labor. However, a provision in the Dodd-Frank law says banks cannot collect costs "not specific to a particular electronic debit transaction." The Obama Administration defended the rule, saying the Fed board reasonably concluded that any line between variable and fixed costs would be

artificial and unworkable. Although this is disappointing, the plaintiffs of the case, along with PMAA and other members of the Merchants Payment Coalition, will continue to fight for reasonable debit card interchange fees.

Meanwhile, Senator Richard Shelby (R-AL) is trying to weaken debit card interchange fee reform “the Durbin amendment” which was included in the “Dodd-Frank Act.” Following passage of Dodd-Frank, the Fed ultimately provided some consumer relief by capping debit interchange fees at 21 cents per transaction and 0.05 percent of the transaction plus an extra penny for card issuers for fraud prevention. Banks and credit unions with \$10 billion or less were exempted under the law. The language would exempt more banks from the fee reform by indexing the \$10 billion asset threshold to the national Gross Domestic Product (GDP) which will harm consumers and retailers by making fewer banks subject to the fee caps. PMAA, along with the Merchants Payments Coalition (MPC), is adamantly opposed to any weakening of the Durbin amendment. The big banks tried to attach the Shelby language to the omnibus spending package, but fortunately, Congress didn’t include the language.

- **Keystone XL Pipeline**

After years of remaining silent on the issue, President Obama rejected the Keystone XL pipeline on November 6, a move that was not surprising to many.

Senate Majority Leader Mitch McConnell (R-KY) responded by saying, “given this project's importance to North American energy independence, the question still remains not if but when Keystone will be built.” Senator John Hoeven (R-ND) stated that “it’s ironic that after delaying construction for more than seven years, President Obama now finds it pressing to make a decision just as the company is asking for a pause.” Although many Republicans in the House and Senate are frustrated by the President’s announcement, many remain optimistic that the Keystone pipeline will eventually be built.

PMAA is extremely disappointed with the President’s decision letting politics play into his decision instead of sound policy. The fight is not over. If a Republican is elected President next November, one of the very first things on his or her agenda will undoubtedly be to build the pipeline.

PMAA will continue to aggressively push for the passage and construction of the Keystone XL pipeline.

- **Restrictions on Menthol Cigarettes**

In Europe, several governments are attempting to ban menthol cigarettes, believing they attract youth and now the FDA is considering increased regulations as well. In 2013, the FDA issued an advanced notice of proposed rulemaking (ANPRM) in which PMAA filed comments in opposition to FDA limits (or ban) of menthol cigarettes. It is PMAA’s position that additional restrictions on menthol cigarettes are not justified and will have harmful unintended consequences. Menthol cigarettes comprise a significant portion of the cigarette marketplace and that demand will be exploited by criminals. Additionally, menthol restrictions will increase government operating costs while dramatically reducing state and federal government revenues. The FDA will consider all comments, data, research, and other information submitted on the ANPRM to determine whether to issue a formal Notice of Proposed Rulemaking (NPRM), which would give stakeholders another opportunity to weigh in on the specifics of the proposed rule. It’s unclear when and if the FDA will issue a NPRM.

Meanwhile, a federal judge ruled in favor of two tobacco companies that challenged a 2011 FDA committee report on menthol cigarettes, finding that three of the panel’s members had conflicts of interests. The judge ordered the FDA to assemble a new Tobacco Products Scientific Advisory

Committee (TPSAC) and barred the agency from using the panel's findings, which said removing menthol cigarettes from the market would benefit public health, describing the report as "tainted."

- **Online Lottery Sales**

PMAA members operate on small margins with lottery sales sometimes a part of those margins. Lottery sales also bring customers into the store, which increases store sales. If lottery sales are allowed for online purchasing, small business owners and their employees would be adversely affected. Furthermore, online sales would increase the number of minors who are playing the lottery as the face to face security of age verification is absent when online. The 2011 Department of Justice (DOJ) interpretation of the "Wire Act" provides what PMAA believes is a flawed opinion when it reversed a legal interpretation of the "Wire Act" and declared that the Act does not prohibit non-sports related gambling on the internet. While the "Unlawful Internet Gambling Enforcement Act" (UIGEA) already makes it illegal to gamble online, new legislation is needed in order to provide certainty to regulators who are struggling to keep up with constant changes in technology.

PMAA urges lawmakers to cosponsor the "Restoration of America's Wire Act," (H.R. 707) which would reverse the Department of Justice's flawed 2011 opinion, and clarify that the Wire Act prohibits both sports gambling and non-sports gambling conducted over the Internet. The legislation would not change existing, legal state gaming activities, such as lottery terminals.

- **Last-In, First-Out (LIFO)**

LIFO is an inventory accounting method used by PMAA member companies to determine tax liability. Primarily, LIFO is used to manage the costs of inflation. If inventory costs are rising, LIFO is a more accurate way of measuring financial performance and calculating tax. LIFO takes into account greater costs of replacing inventory, thereby giving a more conservative measure of the financial condition of the business and the economic income to which tax should apply. LIFO has been used and accepted as a legitimate accounting method since the 1930's.

Last Congress, House Ways and Means Committee Chairman Camp (R-MI) introduced a major tax reform bill that would make sweeping changes to the U.S. tax code. Included in the legislation was a provision which would repeal the LIFO inventory accounting method. The Obama Administration has also proposed repealing LIFO. Many lawmakers are concerned with repealing LIFO.

Repealing LIFO would force PMAA member companies currently using this method to report their LIFO reserves as income, resulting in a massive tax increase for small business petroleum marketers across the country. Additionally, repealing LIFO would mean potentially higher future tax bills and would make it harder for PMAA member companies to manage inflation. PMAA will continue to urge Congress to keep LIFO repeal language out of any tax overhaul proposal.

- **Americans with Disabilities Act Reform**

The Department of Justice (DOJ) published final regulations that implement major changes to current Americans with Disabilities Act (ADA) accessibility guidelines. The final action set in motion nearly 1,000 new standards — and approximately 450 impact convenience stores. In recent years, convenience store owners have fallen victim to predatory lawsuits that serve the interests of trial lawyers while doing little to help the individuals that the ADA was designed to protect.

Reps. Calvert (R-CA) and Duncan Hunter (R-CA) reintroduced the "ADA Compliance for Customer Entry to Stores and Services (ACCESS) Act" (H.R. 241) during 2015. The bill would help small businesses

comply with the ADA and stop frivolous ADA lawsuits that have hurt so many businesses. The legislation would require that written notice be provided to the retailer prior to filing an ADA violation lawsuit. Within 60 days of receipt of the notice, the retailer would have to provide the plaintiff with a description of the improvements necessary to address the barrier and make the corrections within 120 days. PMAA supports the ACCESS Act.

- **Disaster Planning and Response**

Petroleum marketers are at ground zero in supplying fuel and home heating oil before, during and after a disaster occurs. Because the sequence of events following a natural disaster are often similar in terms of access to fuel supplies, PMAA organized a task force that continues to examine the bottle necks and to make recommendations to federal and state governments to streamline the process.

Following Super Storm Sandy, a great deal of planning and coordination has been taking place between the government and industry in order to better establish policies and communications for disaster planning and response. The role and timing of waivers is a key consideration in the review of processes. PMAA's Task Force successfully worked with other members of the Oil and Natural Gas (ONG) Sector Coordinating Council (SCC) to create a document for use in planning for and responding to a disaster. ONG SCC was established under the National Infrastructure Protection Plan (NIPP) as a partnership that allows federal, state, and local governments (GCC) to work together and with their private sector partners to implement protection and resiliency activities across the nation. PMAA also contributed to an annual infrastructure report released by the National Petroleum Council.

During an emergency, federal, state and local government entities generally want both priority for fuel as if by branded contract and lowest price as if by spot unbranded. If the government entity has the ability to receive fuel in bulk they will generally get to receive fuel first. The supply that may be available unbranded is going to be used by all that can access it, and marketers also prioritize government for first access to their unbranded supply. In some cases, marketers use their "branded contract" volume to supply some of the critical infrastructure customers. During an emergency there tends to be a "rolling" affect the regional market will experience, not just in the immediate impact zone but potentially hundreds of miles away.

PMAA also served on the National Petroleum Councils' Emergency Preparedness Coordinating Subcommittee in order to ensure that petroleum marketers were fairly and broadly considered in formulating the 2014 "Enhancing Emergency Preparedness For Natural Disasters, Government and Oil & Natural Gas Industry Actions to Prepare, Respond and Recover" handbook. For a copy of the handbook contact PMAA at [703-351-8000](tel:703-351-8000).

- **ULSD Corrosion**

In 2011 PMAA joined a group of industry stakeholders funding an independent study to determine the cause of accelerated corrosion in underground storage tanks containing ULSD. An interim report by the independent third party laboratory conducting the study concluded that accelerated corrosion was caused by introduction of ethanol into ULSD tanks due to switch loading gasoline and diesel fuel in transports cargo tanks. The PMAA Executive Committee decided that the study was inconclusive due to the small sampling involved, and decided to withdraw funding for additional research due to development of new fuel additives designed to prevent accelerated corrosion.

Furthermore, the EPA is conducting a field study to determine the cause of ULSD corrosion in USTs. Once again, field sampling criteria have been problematic and as a result are now being re-done. The

EPA study is expected to be completed soon, at which time the agency will consider whether new regulations to prevent ULSD corrosion are needed.

- **Highway Bill/Gas Tax Increase/LUST Fund Raid**

A five-year, \$305 billion highway bill known as the Fixing America's Surface Transportation (FAST) Act was enacted on December 4, 2015. In addition to setting funding levels for highways, transit, passenger rail and bridge programs, the FAST Act revives the expired Export-Import Bank. The legislation doesn't include a gas tax increase. Unfortunately, the highway bill does include a \$300 million transfer from the LUST Fund to the Highway Trust Fund.

The highway bill contains many provisions that are important to marketers. The provisions are outlined below:

Withdraws PHMSA's Wetlines Proposed Mandate for Good

On January 27, 2011, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a proposed rule regarding the transportation of gasoline in the external product piping (wetlines) on cargo tanks transporting flammable liquids. The proposed rule limited the amount of gasoline in each wetline to one liter. Transports usually have four wetlines – one per compartment. The proposed rule gave tank truck operators 12 years to retrofit existing tanks with bottom protection like steel rails or install purging equipment, and any trailer manufactured two years after the date of regulation would have to be equipped with in line purging devices or steel guard rails to shield the wetlines from impact.

PMAA led efforts to oppose the proposed rule and we are pleased the bill withdraws the 2011 wetlines proposed mandate. In the 2012 Highway Bill, PMAA saved marketers a minimum of \$8,000 per transport by asking Congress to include a provision which prevented DOT from arbitrarily adopting a wetlines mandate until a Government Accountability Office (GAO) report was completed. In September 2013, the GAO cited that DOT did not have adequate information to determine whether a wetlines device mandate was necessary to improve safety. The Highway bill puts an end to the 2011 wetlines mandate permanently.

Safety Data Postings/FMCSA's Compliance, Safety, Accountability Program (CSA)

In a significant step forward for petroleum marketers, the highway bill requires DOT to commission a study on the accuracy of the CSA program and take steps to address problems in identifying risk and the use of crash data where a motor carrier was free from fault. Until the study and corrections are complete FMCSA will have to take down its safety scores for trucks and motor carriers.

Early in 2015, the Government Accountability Office (GAO) issued a critical report on the quality of the safety data used by the DOT to determine motor carrier safety. The GAO found that the safety data collected is not a reliable predictor of motor carrier safety. The CSA program uses data from enforcement activity, roadside inspections and accidents involving commercial motor vehicles to set individual motor carrier safety scores, which in turn are used to establish a predictive crash risk. Motor carriers with a predictive crash risk over a certain threshold are targeted for FMCSA intervention. Intervention begins with an initial warning letter followed by closer FMCSA oversight including targeted roadside enforcement and investigative safety audits. Carriers with the poorest safety ratings can be ordered out of service by FMCSA. The GAO report criticized the CSA data saying that of the 800 violations included in the motor carrier risk model, only two - speeding and failure to wear a seat belt, were reliable predictors of crashes. In addition, the CSA model was criticized for not including a

sufficient amount of data on all carriers to establish a baseline risk for crashes. As a result, many motor carriers with no history of crashes have received a high predictive crash rate.

Monitor these Issues

- **RINs Integrity**

Final EPA rules were released on July 2, 2014 which provide protection for downstream RIN owners with a significant focus on protecting Obligated Parties. Obligated Parties consist of refiners, importers and fuel reformulators that are required to meet the RFS mandates on renewable fuel usage each year. Obligated Parties may achieve mandate levels via wet gallon purchases and/or through the purchasing of Renewable Fuel Identification Numbers (RINs).

The RINAlliance represents almost 200 blenders nationwide that track RIN activity and RIN marketing events through the RINAlliance system of record, and sell RINs to Obligated Parties. RINAlliance provides its clients with EPA required quarterly reporting, attestations and RIN aggregating/marketing RINs via annual contracts with Obligated Parties. The RINAlliance program manages 1.5 billion RINs annually with a focus on RFS compliance and maximizing profits for its Blenders.

The rules also include requirements for fuel exporters, shifting some compliance burdens to blenders, and staying relatively silent on new RIN separation requirements. EPA also stated that they are NOT currently finalizing rules which would require suppliers to disclose biodiesel content of 5 percent or less.

These final rules directly impact petroleum marketers/blenders that are accepting RINs on neat gallons of renewable fuels.