



1901 N. FORT MYER DRIVE • SUITE 500 • ARLINGTON, VA 22209-1604 • 703-351-8000 • FAX 703-351-9160

**To:** PMAA Members  
**From:** Rob Underwood, President  
**Date:** November 2, 2015  
**Subject:** November 2015 Priorities Update

The following is an update on PMAA 2015 priorities:

### **Motor Fuels Committee**

**RFS Reform/Blendwall:** Earlier this year, EPA announced proposed volume requirements under the Renewable Fuel Standard (RFS) program for the years 2014, 2015 and 2016. A final rule is expected by December 1st. The agency also proposed volume requirements for biomass-based diesel for 2017. EPA exercised its statutory authority to mandate blending volumes lower than those required under the Clean Air Act (CAA) after acknowledging factors that constrain availability including lack of certified refueling infrastructure and the current vehicle fleet. Ethanol blends move from 13.25 billion gallons in 2014 to 14 billion gallons in 2016, a one billion gallon decrease over the 2016 statutory blending mandate. However, PMAA still has concerns with the 2016 corn ethanol mandate because it could force higher ethanol blends in the motor fuels market.

PMAA continues to aggressively oppose any E15 mandate without a pathway to demonstrate legal compatibility for UST systems and liability protection. Prior to the announcement PMAA met with the White House Office of Management and Budget (OMB) to reiterate marketers' concerns over demonstration guidelines adopted by the EPA Office of Underground Storage Tanks which do not provide a realistic pathway to legally dispense E15 in existing UST systems. PMAA also expressed concern that federal summer RVP requirements could not be met with E15 blends since the 1 psi RVP waiver allowance under the Clean Air Act only applies to ethanol blends between 9 percent and 10 percent. Without a similar waiver for E15, refiners would be forced to create a lower RVP blend stock that would be more costly and less fungible, creating supply bottlenecks throughout the gasoline distribution chain. Finally, PMAA highlighted its rebuttal letter concerning the ethanol lobby's attempt to downplay infrastructure concerns.

Regarding the biodiesel mandate, PMAA told the Obama Administration that it supports the proposed volumes for 2014-2017.

**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, 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 is seriously flawed and unnecessarily expensive. 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.

At this time, PEI RP-1200 is the only standard recognized by the EPA to implement the requirements of the rule. Petroleum marketers must follow this standard when conducting inspections and testing. PMAA's Task Force is continuing its dialogue with PEI and other interested parties and will soon have a plan moving forward about an alternative testing method to be presented to RP 1200. State program authorities may also adopt methods to implement the rule that differs from PEI RP-1200. Marketers are encouraged to work

with their state programs to come up with alternative methods that are less burdensome and costly but equally protective of the environment.

**New Ozone Standards:** On October 1, the EPA set the new ozone standard at 70 parts per billion (ppb), a significant reduction from the 75ppb level set in 2008. The 70 ppm standard is not as low as many feared and is considered a compromise between industry and environmental interests.

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

However, EPA says that all but 14 of the 241 counties (except those inside California which is under a statewide RFG mandate) currently in nonattainment with the new 70 parts per billion standard will come into attainment by 2025 with no further action required. The EPA credits existing air pollution regulations including the Tier II gasoline requirements and the clean diesel program for reducing the number of counties to 14 that must take additional action to come into attainment. The 14 counties that may see the mandatory introduction of RFG and lower RVP requirements are: Suffolk, Queens and Richmond Counties, NY; Larimer and Jefferson Counties, CO; Tarrant, Harris and Brazoria Counties, TX; Jefferson County, KY; Sheboygan County, WI; Allegheny County, PA; Harford County, MD; Fairfield and New Haven Counties in Connecticut.

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

PMAA opposed lowering of the ozone standard in written comments to the White House and continues to support legislation to roll back the new ozone mandate. Although the standard has been finalized, some industry and environmental groups are now suing the EPA including Murray Energy, an energy company, and Earthjustice, an environmentalist group. Additionally, Arizona, Arkansas, North Dakota and Oklahoma are suing the EPA and more states are expected to join the lawsuit.

### **Convenience Store Committee**

**Manager Overtime:** Under the Department of Labor's proposed manager overtime rule changes, petroleum marketing companies may be forced to pay exempt employees a minimum of \$50,440 in 2016 with automatic threshold increases every year thereafter. The proposal more than doubles the current minimum salary needed to comply as exempt from overtime requirements.

As a consequence, 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. Petroleum marketing companies face fierce competition and thin profit margins and simply cannot absorb significant volatility, uncertainty and increases in labor costs. Gasoline prices would likely increase due to the increased cost to comply with the proposed rule.

Although no changes in the duties test were included in the proposed rulemaking, the DOL also sought comments on what, if any, changes should be made to the duties test; whether employees should be required to spend a minimum amount of time performing work that is their primary duty in order to qualify for an exemption; whether the DOL should reinstitute the long/short duties test used prior to the 2004 revisions to the regulations; and whether the concurrent duties regulation for executive employees should be changed.

PMAA opposes any changes to the duties test because it will negatively impact how a petroleum marketing business currently operates. Managers occasionally need to be involved in non-exempt duties to ensure that a petroleum marketing company runs efficiently. Performing hands-on work at the manager's own discretion to ensure that operations are successfully executed in no way compromises the fact the manager's most important responsibility is performing exempt work. Any attempt to artificially cap the amount of time exempt managers can spend on non-exempt work would place significant administrative burdens on petroleum marketers, increase labor costs, cause customer service to suffer and result in an increase in wage-and-hour litigation.

**Menu Labeling:** This Summer, the FDA delayed compliance with the menu labeling rule until December 1, 2016. While the delay is a welcome short term fix, the rule needs permanent modification. Legislation strongly supported by PMAA was introduced to provide relief from the final rule for retailers. Reps. Cathy McMorris Rodgers (R-WA) and Loretta Sanchez (D-CA) reintroduced, the "Common Sense Nutrition Disclosure Act," (H.R. 2017) earlier this year which would modify the Menu Labeling language in Obamacare to permit retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Recently companion legislation was introduced by Senators Blunt (R-MO) and Angus King (I-ME). Under the existing regulations, every area where food is on display must each include calorie information for every item sold there. Furthermore, the bill

would clarify that advertisements and posters do not need to be labeled and would provide flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals.

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

During a recent House Subcommittee on Health hearing on the legislation, it was announced that in order to make the bill more palatable to those who oppose it, language that would exempt retailers who derive 50 percent or less of their revenue from food for immediate consumption and/or prepared and processed on-site would be removed from H.R. 2017. While PMAA opposed removing the exemption language, the remaining portion of the bill is still solid and would give retailers the flexibility they need to comply with the menu-labeling regulations.

### **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.

Meanwhile, the President’s FY 2016 Low Income Home Energy Assistance Program (LIHEAP) budget proposal encourages states to use LIHEAP funds to promote “fuel switching” from heating oil and propane to so-called “less expensive fuels” (presumably natural gas or wood pellets) as a long-term solution for reducing the energy needs of low income households. “Fuel switching” would produce no measurable gains in energy cost savings or efficiency. While the average cost of converting a home from oil to natural gas is approximately \$10,000, in some cases, the total cost can exceed \$18,000. Moreover, studies show that such conversions simply do not pay for themselves over the long run in terms of cost savings when fluctuating natural gas prices are considered. PMAA is working with Reps. Dent (R-PA) and Frelinghuysen (R-NJ) in urging the Obama Administration to work with heating oil customers to make simple, cost effective upgrades that are fuel neutral and produce true cost reductions and energy efficiency for the LIHEAP program.

Meanwhile, despite passage of the Natural Gas Pipeline Permitting Act (H.R. 161) in the House, PMAA continues to urge the Senate not to include the bill in future comprehensive energy policy legislation. PMAA opposes H.R. 161 because it is not fuel neutral since it would expedite interstate natural gas pipeline approvals at the Federal Energy Regulatory Commission (FERC). 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.

**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 new 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 are: 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.

Also, PMAA urges Congress to pass a simple two-year extension of the \$1-per-gallon biodiesel blender's tax credit and maintain the RFS's biodiesel mandate in order to ensure a successful future for Bioheat®.

**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) will provide public testimony on the proposed rule and submit 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 is also working with the House Energy and Commerce Committee including members Rep. John Shimkus (R-IL), Ed Whitfield (R-KY), GK Butterfield (D-NC), Chris Collins (R-NY) and Kurt Schrader (D-OR) on legislation and/or a bipartisan Congressional letter to give oilheat dealers more time to comment on the proposed rule.

### **Other Priorities**

#### **New Issue\*\*\*\***

**Placarding:** The federal Hazardous Materials Regulations (HMR) require petroleum marketers to affix placards with hazardous material identification numbers and related product characteristic markings on all cargo tank vehicles containing petroleum products. The purpose of the placards is to inform emergency responders of the identity and hazardous characteristics (flash point, toxic by inhalation, etc) of product contained in the compartments of cargo tank vehicles. This information is necessary for emergency responders to safely remediate accidental releases of hazardous materials from cargo tanks vehicles.

Under a special provision of the HMR (49 CFR 172.336), petroleum marketers may placard cargo tank vehicles to the lowest flashpoint of the products contained in separate compartments of the cargo tank. 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 instead of affixing multiple product placards to each compartment.

In 2000, Pipeline Hazardous Safety Administration (PHMSA) issued a letter to allow cargo tank shipments entirely of diesel fuel or heating oil to be placarded with the placard for gasoline, even though no gasoline was contained in any compartment of the cargo tank. This allowed petroleum marketers who shipped diesel fuel, heating oil and gasoline in separate loads to affix permanent 1203 placards to their cargo tank vehicles rather than changing the placard with each subsequent load of a different product. The interpretation stood for 15 years until PHMSA issued interpretative letter # 14-0178 on June 26, 2015. PHMSA's new interpretation of 49 CFR 172.336 limits placarding to the lowest flash point to shipments where at least one cargo tank compartment contains gasoline.

The change was made without opportunity for public comment. It means that small business petroleum marketers must invest approximately \$500 per cargo tank vehicle to switch out permanent placards with new interchangeable placards. Add to this, the expense of removing cargo tanks from service to undergo the placard retrofit together with the additional labor costs associated with changing placards after each load, and the annual costs to marketers resulting from this arbitrary change is significantly higher. Moreover, it should be noted that many emergency responders and state and local enforcement officials share PMAA's concern over the new interpretation and are requesting clarification from PHMSA. To date PHMSA has not been responsive to calls for clarification of the June 26 interpretation.

PMAA is working with the House Subcommittee on Railroads, Pipelines, and Hazardous Materials and the Senate Commerce Committee on ways to revert back to the previous interpretation.

**Biodiesel Tax Credit:** In July, the Senate Finance Committee approved 23 to 3 a bill that would extend fifty-two tax provisions that expired on December 31, 2014. The package also included language important to PMAA, a two year renewal of the biodiesel blenders tax credit that expired December 31, 2014. However, Senators Grassley (R-Iowa), Cantwell (D-WA), Thune (R-SD) introduced an amendment that was passed by the committee that would move the credit from the blender to the producer. PMAA is opposed to the

amendment because the credit will not likely be passed on to the marketer if it is taken at the production level. Furthermore, the language would disconnect the credit from biodiesel consumption, and simply be a subsidy for domestic production which is contrary to the original intent of the biodiesel tax credit which was to promote the use of biodiesel in the marketplace. PMAA is working closely with NATSO, NACS and SIGMA to maintain the biodiesel credit at the blender level and meeting with House and Senate leadership as well as the tax writing committees.

Furthermore, in the early 1990's the excise tax system was switched to a tax or dye system. Essentially, if product was dyed, it was sold without tax, and if it was clear, the highway tax of 24.3 cents per gallon was applied. This system was imposed on a mature petroleum industry with a well-developed infrastructure. The impact of this provision to biodiesel and the heating oil sector has not been explored by the Congress, and it is possible that such changes could increase biodiesel purchase prices to homeowner's by \$.24 per gallon, or \$200 per year. Under the Senate Finance bill if undyed diesel is distributed to heating oil companies, who would then blend it into the red petroleum they have in their own storage facilities or their own trucks, that fuel will have \$.24 of tax imposed on it. The heating oil retailer will have to pay that tax to the biodiesel supplier, and then pass that tax on to their customers. The customers would then have to fill out a refund form to receive a refund on this highway tax payment. The recordkeeping on this would be a nightmare, particularly since the winter extends through two taxable years. Additionally, many customers, including the elderly on fixed incomes, do not file long form 1040s. Thus, it is likely that they will be paying a new tax.

On tax day, PMAA submitted a letter to Senate Finance Committee Chairman Hatch (R-UT) and Ranking Member Wyden (D-OR) outlining our viewpoints on tax overhaul. PMAA urged Congress to pass a simple two-year extension of the \$1-per-gallon biodiesel blender's tax credit and oppose efforts to move the blender's credit to the production level which would negatively impact small business petroleum marketers and consumers. An extension of the biodiesel blenders tax credit will also benefit heating fuels dealers through the use of Bioheat® coupled with ultra-low sulfur heating oil (ULSHO).

**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 ULSO (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.

It is unclear if Congress will reauthorize the CFTC this year. PMAA and NEFI support a clean CFTC reauthorization.

**Motor Carrier Financial Responsibility Requirements:** Last year, FMCSA published an Advanced Notice of Proposed Rulemaking (ANPRM) that PMAA believes is the basis for a planned increase in financial responsibility (FR) requirements (insurance) for commercial motor vehicles. FMCSA has publicly entertained the idea of increasing requirements to as much as \$4.5 million per truck for general freight, and a hike to as high as \$10 million for petroleum marketers from the current \$750,000 in liability insurance for general freight, \$1 million for home heating oil and \$5 million for gasoline and other hazardous materials. Under this scenario, premiums would be increased approximately 500 percent.

Petroleum marketers in town in May for PMAA's Washington Conference "Day on the Hill" educated Congress on why there is no need to increase insurance minimums. Current FR requirements have been more than sufficient in ensuring over 99 percent of claims filed in motor vehicle crashes are fully covered since they were implemented subsequent to the passage of the Motor Carrier Act of 1980. In the rare instance that coverage is inadequate, claimants can pursue compensation in court for damages not covered by the carrier's insurance (assuming the motor carrier is at fault). FMCSA's ANPRM also ignores current market forces in the insurance industry that increase financial responsibility minimums when necessary to provide full coverage for damages based on risk. Ultimately, companies that cannot afford the increase would go out of business, resulting in less competition and increased prices. Furthermore, some insurance companies may not even be able to underwrite this level of exposure.

Included in the Transportation-Housing spending bill is PMAA supported language which prohibits the Federal Motor Carrier Safety Administration (FMCSA) from using funds to issue and implement new Motor Carrier Financial responsibility requirements. Furthermore the House Transportation bill requires the Federal Motor Carrier Safety Administration (FMCSA) to conduct a comprehensive study of passenger carrier industries' accident and claims histories before being permitted to proceed to radically increase minimum insurance rates.

**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.

In September 2015, Second Circuit Court of Appeals heard oral arguments on whether a \$5.7 billion Visa/MasterCard settlement while a decision by the Second Circuit may take several more months. Petroleum marketers need not take any action as a result of this decision. Everyone involved must wait for the appeals process to conclude.

**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. Sen. Shelby's language is included in the Senate Appropriations Committee FY 2016 Financial Services and General Government Appropriations bill which passed out of committee on July 23 by a 16 to 14 party line vote. 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.

**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 and S.1668) 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. Last year, a bipartisan letter led by Senators Enzi (R-WY) and Donnelly (D-IN) was sent to Treasury Secretary Lew over their concerns regarding LIFO repeal. The letter stressed that repealing LIFO would result in businesses paying a retroactive tax that would hinder growth and increase unemployment. Additionally, 113 Representatives signed a letter in support of maintaining the LIFO accounting method.

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 urges Congress to keep LIFO repeal language out of any tax overhaul proposal.

**Highway Bill/Gas Tax Increase/LUST Fund Raid:** In late October, Congress passed another temporary highway policy extension through November 20. Included in the highway extension bill is language which would reset the federal excise tax rates on volume-based LNG to the energy-equivalent tax rate of diesel and CNG and propane to the energy-equivalent tax rate of gasoline starting January 1, 2016. The three-month extension is just the latest in a long line of highway policy extensions. Since 2009, Congress has pumped \$73 billion into the HTF from the General Treasury fund and other budgetary maneuvers given that the motor fuels excise tax is inadequate to maintain the HTF's solvency.

Meanwhile, the Senate also passed its own multiyear highway bill which includes three years of funding, six years of policy authorization along with a reauthorization of the Export-Import Bank through September 2019 by a vote of 65 - 34. This will serve as the Senate's starting point for fall negotiations on the Highway bill. Unfortunately, the Senate's highway reauthorization bill includes language that would raid \$100 million each year from the Leaking Underground Storage Tank (LUST) fund between 2015 and 2017. PMAA remains strongly opposed to any efforts to raid the remaining \$485 million from the Federal LUST Fund to keep the HTF solvent, therefore, PMAA has been working with the House to ensure that the LUST funds stays intact or at least future funds will be used for its intended purpose. PMAA sent a letter to Congress to oppose the Senate language. The Senate highway bill also contains language notable to marketers that studies the efficacy of the Federal Motor Carrier Safety Administration's (FMCSA) system of analyzing safety based violations from inspections and crash data to determinate a commercial motor carrier's on-road performance, known as the Safety Measurement System (SMS).

The Department of Transportation (DOT) indicated in early September that the federal government is projected to run out of money for the Highway Trust Fund (HTF) in June 2016, six months later than previously projected. Congress will still have to pass a transportation spending bill by October 29 but this alleviates pressure to complete a long term funding bill right away.

Lawmakers cast the last extension in July as a stopgap on the road to a multiyear highway bill this fall, but the update from the DOT could lure lawmakers back to another temporary transportation spending and authorization patch through June 2016. A multi-year House transportation funding bill is still on the table for 2015.

Congress has been grappling since 2005 with a transportation funding shortfall that is estimated to be about \$16 billion per year, and it has not passed a transportation bill that lasts longer than two years in that span. Since 2009, Congress has pumped \$73 billion into the HTF from the General Treasury fund and other budgetary maneuvers given that the motor fuels excise tax is inadequate to maintain the HTF's solvency. Transportation advocates are pushing for a gas tax increase to pay for a long-term transportation bill, but House and Senate leadership in Congress have all but ruled out a tax hike.