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PMAA Priorities Report

TOP ISSUES

1. RFS Reform
2. ULSD Corrosion
3. RP 1200 (Reducing UST Compliance Costs)
4. Sleep Apnea/Speed Limiter
5. SWIPE Fees
6. SNAP Program
7. Fuel Neutral Policies
8. Biodiesel Tax Credit
9. Disaster Planning and Response
10. On-Demand Fueling

"Watch List"

Menu Labeling
Jones Act
85 Octane
Benefits of Oilheat
LUST Fund
E-Vapor Regulation and Predicate Date
Last-In, First-Out (LIFO)
Americans with Disabilities Act Reform

Motor Fuels Committee

- **RFS Reform**

The final 2017 biofuel volumes for the Renewable Fuel Standard (RFS) have been submitted by the EPA to the Office of Management and Budget (OMB), which puts the agency on track to issue the mandates by the November 30 deadline.

In June, PMAA submitted written comments to the EPA regarding the agency's proposed 2017 RFS standard for ethanol and 2018 standard for biomass biodiesel. The written comments follow up on PMAA's meeting with EPA on the proposed 2017 RFS standard back in May and testimony at an EPA hearing on RFS in June.

The EPA's proposed 2017 renewable fuel standards (RFS) would raise the total amount of biofuels required for blending into gasoline and diesel from 18.1 billion gallons in 2016 to 18.8 billion gallons (14.4 billion gallons proposed for ethanol blending). The 2017 renewable fuel standard is 3.8 percent higher than the 2016 level, but is still lower than the renewable fuel targets set by Congress in the 2007 Energy Independence and Security Act (EISA). The EPA is permitted to waive statutory blending targets set by Congress if justified by market or technological conditions. The EPA used its waiver authority in the 2017 RFS proposal to lower blending targets based on reduced demand for gasoline. The agency believes the 14.4 billion gallon ethanol blending target for 2017 is a fair target. However, PMAA is concerned that EPA estimates of 2017 gasoline consumption may be too optimistic and has urged the EPA to cap the ethanol mandate at 9.7 percent to prevent breaching the E10 blendwall and lower RIN prices. The EPA also proposed a 2.1 billion gallon biomass based diesel standard for 2018. This represents a 100 million gallon increase over 2016 blending requirements. PMAA raised no objection to the biomass based diesel fuel blending standard.

Now PMAA will meet with the Office of Management and Budget (OMB) to further discuss the RFS proposal since the EPA sent the final rule to the White House for review. In the meantime, it is important that you urge your lawmakers to cosponsor PMAA supported legislation known as "The Food and Fuel Consumer Protection Act," (H.R. 5180) which would cap the ethanol mandate at 9.7 percent of projected gasoline demand.

- **ULSD Corrosion**

On July 20, the EPA released its long awaited study on accelerated corrosion of UST system components storing and dispensing ultra-low sulfur diesel fuel (ULSD). The EPA found that 83 percent of the 42 UST systems studied had moderate to severe corrosion on metal components including; submersible turbine pump shafts, automatic tank gauge probe shafts, flapper valves, ball valves, inner walls of tanks and fuel suction tubes. While the EPA said accelerated corrosion "could be a very common occurrence" in UST systems storing diesel fuel, it acknowledged the sampling was

small and cannot be used to predict whether the incidence of moderate to severe corrosion on metal components is higher or lower in retail UST systems nationwide. The EPA is recommending that owners check their diesel fuel UST systems for similar corrosion.

The EPA study did not conduct any research into possible causes for accelerated corrosion in diesel fuel UST systems. There is currently no definitive research that has identified what causes accelerated corrosion although microbial growth is a leading factor. The Coordinating Research Council (CRC) is planning a study to research the cause of accelerated corrosion later this year. ***PMAA requested the CRC study to research possible causes that may occur above the terminal rack.***

The PMAA ULSD Corrosion Task Force is working closely with the EPA and other industry groups to address the issue of accelerated corrosion through further study, including research into potential fuel quality issues above the terminal rack that may lead to accelerated corrosion downstream.

- **PEI RP 1200 (Reducing UST Compliance Costs)**

Former PMAA Chairman Matt Bjornson represents PMAA on the PEI RP 1200 Committee. The EPA final UST regulation does not set out any specific test procedure and instead defers to RP-1200 which requires liquid testing to the top of the sump above the penetration points where pipes enter the sump area. Filling the sumps to the top with liquid to test for tightness is problematic because it generates a tremendous amount of hazardous waste water that must be properly handled and disposed. This generates additional expense and waste water to the test process. In addition, preparing the penetration points in the sump area with fittings and grommets that are liquid tight is extremely expensive and could cost as much as $8,000 per site.

A better sump tightness test method that states should adopt is to allow liquid testing only to the level where the sensor alarm will sound and shut down the system turbine. The sensor alarm is below the penetration points in the sump where leaks are more likely to occur. This test method is more protective of the environment than the liquid test method in RP-1200, and far less burdensome on tank owners.

PMAA is working with PEI to incorporate it into new and existing industry standards for tank inspection and testing. An RP-1200 meeting has been scheduled for December 2016. 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.

Convenience Store Committee

- **SNAP Program**

In March, the USDA released a proposed Supplemental Nutrition Assistance Program (SNAP) rule that went further than the requirements of the 2014 Farm Bill. Following final input from the PMAA Convenience Store Committee, PMAA submitted comments on "Enhancing Retailer Standards in the SNAP."

PMAA has serious concerns that the proposed rule goes much further in changing the retailer SNAP participation requirements than Congress intended in the statutory requirements of the 2014 Farm Bill. Unfortunately USDA also added these unnecessary requirements in the proposed rule: retailers would be ineligible for the program if 15% of "total food sales" are items that are cooked or heated on site; that "multiple ingredient" items (cold pizza) would not be counted in any staple food category and would not go toward meeting a retailer's "depth of stock" requirements. Currently multiple ingredient foods can be counted under the category of the main ingredient. In addition, the proposal would require that retailers always have six units of each of the 28 food items that are counted under the four categories of eligibility for SNAP participation. Currently stores are required to stock 28 items on a continuous basis but under the proposed rule, retailers would be required to stock 168 units of single-ingredient food items at all times.

PMAA is certain the proposed requirements could cause tens of thousands of convenience stores to stop participating in the SNAP program, at the detriment of people who lack easy access to transportation, particularly in rural areas and inner cities. To combat the SNAP proposed rule, the Senate Appropriations Committee passed its FY 2017 Agriculture Appropriations Bill which includes language offered by Agriculture Subcommittee Chairman Moran (R-KS). Moran's amendment would prevent FNS from using funds to establish stocking requirements, eliminate multiple ingredient foods

from the staple foods category, or prevent retailers from eligibility based on their percentage of heated or cooked food sales. The language passed without objection, sending clear congressional opposition to the proposed rule. The House Appropriations Committee passed similar language in April that would preclude FNS from finalizing or implementing its rule beyond the requirements in the 2014 Farm Bill. Meanwhile, the USDA sent the final rule to the Office of Management and Budget (OMB) on Halloween. A final ruling is expected by the end of the year.

- **Swipe Fees**

Over the past few months, the Durbin Amendment has been under attack via legislation that threatens to fully repeal it. House Financial Services Committee Chairman Hensarling's (R-TX) bill to provide an alternative to the 2010 Dodd-Frank Wall Street Reform Act, the "Financial CHOICE Act" would repeal the Durbin Amendment which would be extremely harmful for retailers. In September, the House Financial Services Committee approved the Financial Choice Act. The vote passed 30-26, with all Democrats and one Republican voting in the negative.

Repealing the Durbin amendment would be extremely harmful to retailers because it ultimately lowered debit card interchange fees which are the second highest expense to a retailer only behind labor. PMAA supported the Durbin amendment's passage in 2010 and is fighting to ensure it is not repealed. It is very important that you urge your House members to oppose the "Financial Choice Act".

Meanwhile, here are a few other actions that are of particular significance for marketers: First, because verifying a credit transaction using an EMV card is essentially the same as clearing a debit transaction, the fee should be the same as debit. Since EMV fees are higher than debit fees, retail groups asked the Federal Trade Commission to examine the issue. Also, Senator Durbin (D-IL), sent a letter to the Chair of the industry group EMVCo seeking answers to 10 questions that he hopes will clarify how the U.S. payment card market can be improved. Durbin asked whether chip technology is adequately protecting competition and consumers; about the lack of merchant and small payment network representation on EMVCo; the influence of foreign card networks; and whether EMVCo believes chip and PIN authentication should be discontinued in non-U.S. markets. Visa and MasterCard have yet to respond.

Late last year, Senator Shelby (R-AL) tried to weaken the Durbin amendment by attempting to attach language to the 2015 omnibus spending package, but fortunately, Congress did not include the language. The MPC is on the lookout of a possible Shelby play to weaken Durbin again in 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.

Since the House and Senate have passed competing energy bills, they have gone to conference to resolve their differences. Unfortunately, the final House energy bill includes a hodgepodge of more than three dozen House-passed bills, including the "North American Energy Security and Infrastructure Act" (H.R. 8) that was approved in a party-line vote late last year. This is of concern to PMAA because it is not fuel neutral since it would expedite interstate natural gas pipeline approvals and does nothing to expedite oil pipelines. Specifically, the bill would expand the federal land eligible for natural gas pipeline siting, including designation as National Energy Security Corridors, to include land in the National Park System.

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.

The Senate also passed S. 2012, the "Energy Policy Modernization Act of 2015," which would require the DOE to approve or deny the use and operation of an LNG export facility no later than 45 days after an environmental review conducted by the Federal Energy Regulatory Commission (FERC). It would also require the DOE to gather and distribute data on the destinations of LNG exports. Fortunately, the Senate bill does not include language expediting interstate natural gas pipeline approvals.

- **Biodiesel Tax Credit**

Late last year, Congress passed a tax extenders package that included the $1 per-gallon biodiesel blender's tax credit. Maintaining the credit at the blender level was a huge victory for petroleum marketers because, like this year, there was a legislative push to move the biodiesel blender's credit to the production level. PMAA remains concerned with limited access to supply, blending logistics in the tax and dyed system and we are concerned that the credit would not be passed to consumers 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.

PMAA opposes moving the blender's credit to the production level because it would effectively kill any below the rack biodiesel blending and subsequent savings to consumers. Leaving the biodiesel tax credit at the blender level will ensure that the fuel remains competitive in the marketplace. Petroleum marketers have legitimate concerns that much of the tax credit will be pocketed by producers and not passed on to marketers and consumers. In the current environment where biodiesel is not competitive with conventional diesel without the tax credit, it is essential that the credit be passed on to the consumer.

Recently, Rep. Diane Black (R-TN) introduced a bill that would extend the biodiesel credit through December 31, 2018. H.R. 5994, the "Biodiesel and Renewable Diesel Incentive Extension Act of 2016" would extend the credit that is set to expire at the end of this year and it would maintain the credit at the blender level. PMAA fully supports this legislation.

PMAA is fighting the continued push for a producers credit and continues to meet with Members of Congress to encourage support of a straight extension of the credit (like that in H.R. 5994) again, and to oppose all legislative efforts to move the tax credit to a producer level. Tax extender language may move when Congress returns to work following the November elections.

Other Priorities

- **Sleep Apnea**

The DOT's Federal Motor Carrier Safety Administration (FMCSA) has issued an advanced notice of proposed rulemaking seeking public input on the impact of future screening, evaluation and treatment of CDL drivers for obstructive sleep apnea (OSA). The proposed rule is important to petroleum marketers because if promulgated, it could disqualify CDL even moderately overweight drivers with a body mass index greater than 33 bmi and a neck circumference over 17 inches.

The controversial proposal has been floating around the FMCSA for the past 15 years but was recently given a boost by a study by the National Transportation Safety Bureau (NTSB) pointing to a recent series of truck and train accidents that are linked to OSA, a respiratory disorder characterized by a reduction or cessation of breathing during sleep. The FMCSA said undiagnosed or inadequately treated moderate to severe OSA can cause unintended sleep episodes and deficits in attention, concentration, situational awareness, memory, and the capacity to safely respond to hazards when driving commercial motor vehicle.

There are currently no OSA screening or treatment requirements in DOT regulations. However, a series of voluntary guidance for medical professionals issued by the DOT recommends using a 33 bmi and 17 inch neck circumference as thresholds for treating CDL drivers with OSA. Drivers who surpass the threshold would be required to undergo invasive and expensive OSA treatment, obtain annual medical exemptions from FMCSA and in more severe cases, be disqualified from driving a commercial motor vehicle. PMAA opposes OSA screening and treatment for short haul drivers and will attend public hearings, meet with FMCSA officials, work with Congress and submit written comments as the rulemaking process continues.

- **Speed Limiters**

During PMAA's Fall Conference, both the PMAA Motor Fuels Committee and the PMAA Heating Fuels Committee confirmed ongoing disapproval of the proposed speed limiters rule. Speed limiters, also called speed governors, are electronic controlled modules (ECM) that are capable of limiting the maximum speed in heavy duty trucks.

The Department of Transportation (DOT) September 7, 2016 proposal would establish safety standards requiring all newly manufactured U.S. trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating more than 26,000 pounds to come equipped with speed limiting devices. The 118 page proposal discusses the benefits of setting the maximum speed at 60, 65, and 68 miles per hour, but the Agencies will consider other speeds based on public input.

The proposed rule would also require each new heavy duty truck vehicle to be equipped with means to read and record the vehicle's current speed setting and the two previous speed settings (including the time and date the settings were changed) through its On-Board Diagnostic connection. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting devices for the service life of the vehicle. The good news is that the speed limiter requirement is not retroactive and applies only to newly manufactured trucks.

PMAA will submit comments opposing the rulemaking prior to the November 7, 2016 deadline. There is no clear evidence that the use of speed limiters will improve safety. Data suggests that high speed related truck crashes are rare events and the reduction of speed may have negative effects on safety. PMAA is supporting efforts urging House members to oppose language that was included in the Senate Veterans Affairs Appropriation bill which would also mandate speed limiters on heavy-duty trucks. Such legislation is completely inappropriate given the active rulemaking on this very issue.

The final rule is not likely to take effect until well in to 2018.

- **On-Demand Fueling**

Recently the NFPA 30A Technical Committee addressed proposed language related to what is now referred to as On-Demand Mobile Fueling. On-Demand Mobile Fueling is defined as the retail practice of fueling motor vehicles of the general public while the owner's vehicle is parked and might be unattended. This practice is already occurring in California and Texas, and state and local fire officials are looking for direction on how to regulate this practice.

The committee is proposing a new chapter be added to NFPA 30A on On-Demand Mobile Fueling. The proposed language is based on language developed by the California State Fire Marshall's Mobile Fueling Task Force which was submitted in a public comment to NFPA. Similar language has also been proposed to be added to the International Fire Code (IFC).

The proposed language is designed to regulate on-demand mobile fueling by providing specific requirements related to the operations, vehicles, and equipment and requiring approval by the authority having jurisdiction (AHJ) including the operations, location, safety and emergency response plan, and vehicle operator training. In addition, fueling must be from an approved vehicle or metal safety can and is prohibited on roads, public right-of-ways, in buildings, or covered parking areas and within 25 feet of buildings, property lines, or combustible storage.

In general, the draft language provides a good basis for regulating this activity. PMAA and other groups were able to incorporate appropriate requirements that require mobile fueling activities to comply with fire and safety procedures and equipment requirements similar to a retail fueling facility and that limit the locations where this type of refueling can occur. It is important to note that there are other issues not related to NFPA 30A that may need to be addressed including weights and measures and DOT requirements for transporting hazardous materials. These are outside the purview of NFPA so they are not addressed in the proposed language. The proposed language will be included in the second draft revision and subject to a formal ballot of the Technical Committee. The ballot requires a 2/3 majority to pass and be incorporated into the next version of NFPA 30A.

- **Menu Labeling**

In February, the House passed via a 266-144 bipartisan vote, the "Common Sense Nutrition Disclosure Act." The bipartisan legislation, H.R. 2017, introduced by Reps. McMorris Rogers (R-WA) and Sanchez (D-CA), 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. Furthermore, 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. Lastly, 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. The Food and Drug Administration (FDA) has a May 2017 compliance date for the new regulations that were originally passed as part of Obamacare in 2010.

Companion legislation (S. 2217) was introduced by Senators Blunt (R-MO) and King (I-ME). The language could be attached to an appropriations bill and PMAA is strongly supporting these efforts.

- **Manager Overtime**

On May 17, 2016 the Department of Labor (DOL) announced a final rule that doubles the minimum salary threshold required to qualify for the Fair Labor Standards Act's ("FLSA") "white collar exemption" to $47,476 per year ($913 per week). The current annual requirement is $23,660 ($455 per week). The new salary threshold will go into effect on December 1, 2016.

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.

Several bills have been introduced to nullify the final rule and/or delay it; however, President Obama has indicated he would veto such legislation. Most notably, the only bill that might have traction would delay the implementation of the overtime rule by three years. H.R. 5813, known as the "Overtime Reform and Enhancement Act", was introduced by Reps. Schrader (D-OR), Cooper (D-TN), Cuellar (D-TX) and Peterson (D-MN). PMAA applauds all efforts to prevent enforcement of costly regulations by the Obama Administration. The "Overtime Reform and Enhancement Act" will likely pass if it comes to a full House vote, but will then need to be approved by the Senate which could be difficult.

Additionally, the House Appropriations Committee passed a $161 billion appropriations bill by a vote of 31-19. The legislation contains a PMAA-supported provision that would prohibit the DOL from implementing the new manager overtime rule.

The U.S. Chamber of Commerce, leading more than 50 business groups, recently filed a lawsuit against the DOL challenging its final overtime rule. The Chamber argues that the DOL exceeded its statutory authority in issuing the regulation. Additionally, 21 states filed a lawsuit challenging the DOL overtime rule. They argue that the overtime regulations are illegal because they are set to ratchet up the threshold for eligibility automatically every three years without valid Congressional authorization.

Bottom line: PMAA urges you to be ready to comply with the final overtime rule by December 1, 2016.

- **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 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 contributes 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 "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. PMAA is currently participating in writing the updates for the handbook.

- **Jones Act Reform**

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 has been 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, to date there hasn't been any momentum toward making changes to the Act but PMAA will continue to keep this on the congressional radar.

- **85 Octane**

Several states allow the use of 85 octane and repealing it would ultimately harm petroleum marketers and consumers by restricting supply which would lead to higher prices at the pump. There has been limited evidence presented regarding harm to engines or complaints from consumers regarding engine damage - or any other problems - due to 85 octane gasoline. Furthermore, there is simply not enough information to determine whether the overall environmental impact of an 87 octane standard will be positive or negative.

PMAA members voted to maintain 85 octane at retail, and ultimately, the auto manufacturers didn't have enough votes to repeal 85 octane on an ASTM ballot in September.

- **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; and 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 costs

by consumers and heating oil dealers, removing a significant barrier to the widespread introduction of use of renewable home heating fuel.

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, 2015. EPA is proposing 2.1 billion for 2018. PMAA has no concerns over the biodiesel mandate because it supports BioHeat® which is cleaner than natural gas.

- **Leaking Underground Storage Tanks (LUST) Fund**

In the 1980s, Congress and the EPA began to address the problem of underground storage tanks (UST) releases by creating the LUST Trust Fund financed by a federal one-tenth cents ($0.001) per gallon tax on motor fuels. States and EPA have made tremendous progress by cleaning 86 percent of the 528,000 releases. However, there is still a backlog of 72,000 waiting to be completed. Petroleum marketers have supported the LUST fund and have paid $3.8 billion in LUST taxes since its inception.

In July, for the first time in seven years, the House passed its' Interior-EPA spending bill by a vote of 231-196. In this bill, the Leaking Underground Storage Tank (LUST) fund would receive $96 billion, a 2.7 percent increase over this year's budget, but well under the $150 million PMAA asked for. The Senate did not consider its version of the bill before the August recess; therefore it will likely come up in a Continuing Resolution. However, because of the funding cuts and the riders to block implementation of some rules, the President will veto the bill if it makes it to the White House.

In recent years, Congress and the President have woefully underfunded the program, appropriating around $90 million each year. To make matters much worse, Congress has transferred $3.4 billion from the LUST Fund to help keep the Highway Trust Fund (HFT) solvent, leaving only $481 million in the coffers now. PMAA opposes all such LUST fund transfers, and has continued to urge Congress not to transfer the remaining $485 million in LUST funds to the HTF.

- **E-Vapor Regulation and Predicate Date**

In May, 2016, the FDA released its long awaited final rules for e-cigarettes, cigars, pipe tobacco and other tobacco products it had not previously regulated. Under the rules, the newly regulated tobacco products will be subject to the same general requirements to which cigarettes and smokeless tobacco are already subject, including those related to: adulterated and misbranded products; ingredients listing; health documents submission; reporting of harmful and potentially harmful constituents; and registration and product listing. The rules became effective on August 8, 2016.

As part of the final rules, the FDA maintained the February 15, 2007 predicate date. This date is important as it determines which pathways a product can take to stay in and/or enter the marketplace. Products that were not in the market on February 15, 2007, nor have a comparable product that was in the market on this date, must submit a Pre-Market Tobacco Application (PMTA). The PMTA requires a product to meet a regulatory hurdle that is very complex and costly. Some have estimated that a single PMTA could cost up to several million dollars. As such, the regulatory hurdle to enter the marketplace will be much higher for e-cigarettes than for traditional cigarettes. Because of the speed at which innovation has occurred with e-vapor products since 2007, essentially all products currently being sold to consumers fall into this regulatory trap.

As of August 8, retailers: Must not sell e-cigarettes, hookah or pipe tobacco, or cigars to people under 18 years of age; they must check photo ID of everyone under age 27 who is attempting to purchase such products; they must not sell tobacco products covered under the rule in a vending machine (except in a facility where people under age 18 are not allowed on the premises); and must not give away free samples of any newly regulated tobacco products (this provision also applies to manufacturers, importers, and distributors).

PMAA advocated against portions of this FDA rule and supports legislation to change the rule to be less burdensome for manufacturers, retailers and consumers. PMAA will continue to support all legislation that would change the rule.

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

LIFO is an inventory accounting method used by many 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. 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.

In June, House Republicans released a tax blueprint proposal which specifically calls for the retention of LIFO. The blueprint states: "With respect to inventory, the Blueprint will preserve the last-in-first-out (LIFO) method of accounting. The Committee on Ways and Means will continue to evaluate options for making the treatment of inventory more effective and efficient in the context of this new tax system."

This is a significant reversal of previous GOP tax reform proposals which have called for LIFO repeal – and it is a result of the effort the business community has made to educate legislators on the issue over the past decade. PMAA remains an active participant in the LIFO Coalition (SaveLifo.org) which has clearly and consistently communicated to Congress on the need to preserve the LIFO method of accounting. The LIFO Coalition recently met with House Ways and Means Committee staff to discuss the preservation of LIFO and will meet again with the staff soon.

- **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.

Recently, the House Judiciary Committee passed H.R. 3765, the "ADA Education and Reform Act," which aims to put an end to "drive-by" lawsuits where attorneys look for minor, easily correctable Americans with Disabilities Act (ADA) infractions so they can file a lawsuit and make some cash. This bill which was introduced by Rep. Poe (R-TX), prohibits sending demand letters or other pre-suit notifications alleging a violation of ADA public accommodation requirements if the notification does not specify the circumstances under which an individual was actually denied access. The notification must specify: the property address, the specific ADA sections alleged to have been violated, whether a request for assistance in removing an architectural barrier was made, and whether the barrier was permanent or temporary.

The bill also prohibits commencement of civil action based on the failure to remove an architectural barrier to access an existing public accommodation unless: the aggrieved person has provided to the owners or operators a written notice specific enough to identify the barrier, and the owners or operators fail to provide the person with a written description outlining improvements that will be made to improve the barrier or they fail to remove the barrier or make substantial progress after providing such a description.

The vast majority of retail station owners strive to serve their customers to the best of their ability and rely on the ADA to help ensure that customers with disabilities can use their services. Many small to medium sized businesses cannot afford a court case and are forced to settle and pay fees for a violation that they did not commit. PMAA supports this legislation that would minimize the ability of predatory attorneys to harm petroleum marketers.