

SIGMA WEEKLY REPORT

March 17, 2008

SUBCOMMITTEE APPROVES TOBACCO BILL

Late Wednesday night the House Energy and Commerce Subcommittee on Health approved legislation, H.R. 1108, that would require the FDA to regulate the manufacture and retail sale of tobacco. Though Republicans offered several amendments to stall the legislation's passage through the subcommittee, both sides ultimately agreed to move the legislation for a full committee markup.

Subcommittee Chairman Pallone and Rep. Waxman (the bill's sponsors) offered to work on retailer concerns such as covering Internet sales, reservation sales, and allowing the sale of smoking cessation products. The bill also made some concessions to retailer concerns like the Senate bill including:

- Provides ability for a hearing before a no tobacco sale order is imposed at the FDA regional office or at a federal, state or county facility within 100 miles of the retailer's location. This is from the Senate bill.
- Repeated violations changed to mean at least 5 within 3 years consistent with the Senate bill
- Provides that FDA must provide notice of violation before conducting a follow-up compliance check like the Senate bill.
- Provides that notice will go to retailer's address of record or to a registered agent if one is designated. This is an improvement over the Senate language.
- Notices of violation to go by certified or registered mail or personal delivery.
- Hearing can be by telephone or at nearest FDA regional or field office – retailer's choice. This is from the Senate bill.
- Adopted the Senate monetary penalties (including the mistake that the sixth violation within any undefined time period is a \$10,000 fine). The penalty for the first three violations is lower if the retailer uses an approved training program.
- Added an escalator clause to the monetary penalties such that FDA will raise them consistent with increases in the consumer price index. The Senate bill allowed FDA to raise the penalties but gave no guidance as to when to do that. The answer in this bill makes the problem worse.

In all, however, these changes do not yet touch the key concerns that SIGMA has raised with the bill.

A sticking point that has emerged, even for some Republicans who support the bill, is whether a user fee in the bill is actually a tax that belongs in the Ways and Means Committee's jurisdiction. The Senate could take up the bill as early as the next work period.

Please keep calling members of Congress to make sure they are talking about the problems with the retail provisions of the bill. Tell them that you have no problems with FDA regulating the manufacturing of tobacco, but that the legislation's provisions on retail sales unfairly threaten your livelihood, are unworkable, and are generally inequitable. Urge these Congressmen (or their staffs) to fix the retail provisions or eliminate them altogether. More information on the bill and SIGMA's position can be found in our [Legislative Issues Book](#).

WINDFALL PROFITS TAX PROPOSAL

After hitting \$111 per barrel in futures trading for the April contract on the New York Mercantile Exchange, oil closed at a record of \$110.33 per barrel. The price shock spilled over into the congressional debate over spending for the fiscal 2009 budget. Record oil company profits prompted Sens. Charles Schumer (D-NY) and Sherrod Brown (D-OH) to craft an amendment to reestablish a windfall profit tax on oil companies that would be dedicated to the Highway Trust Fund to finance infrastructure improvements. The Schumer-Brown proposal would require oil companies to calculate their annual profit for the five years from 2003 to 2007, then subtract the year that saw the greatest profit and calculate an average of the four remaining years. That figure, plus 10 percent, would represent the "reasonably inflated average profit," according to the proposal. Any profits earned by companies in 2008 or 2009 that exceed this level would be deemed a "windfall profit" and would be taxed at a special supplemental rate of 25 percent, the senators said.

In similar news, gasoline prices will peak near \$3.50 a gallon this spring but there is a chance that they will cross the \$4 per gallon threshold, according to the Energy Information Administration (EIA). The EIA expects gas to average \$3.21 a gallon this year, or 40 cents above the 2007 price. But even if it does peak at \$3.50 a gallon this spring, "there is a significant possibility" that for some shorter-time period or in some region or sub-region of the country, the price of gas will cross the \$4 a gallon threshold.

ESTATE TAX REFORM

At a hearing on March 12, Senate Finance Committee Chairman Max Baucus (D-MT.) and ranking Republican Charles Grassley (R-IA) said they will work toward estate tax reform as the current tax approaches a one-year repeal in 2010. While specific details of any legislative proposal were not discussed at the hearing, the legislators maintained they would support a "fiscally appropriate compromise" involving the one-year repeal followed by lower rates and higher exemptions. The two lawmakers heard testimony from three academics on alternatives to the estate tax, including an inheritance tax, transfer-type taxes, and an accessions tax. The estate tax is also being discussed on the Senate floor as senators debate the fiscal year 2009 budget resolution. Under current law, the exemption amount is \$2 million through 2008 and will increase to \$3.5 million for 2009 before a one-year estate tax repeal in 2010. The maximum tax rate is 45 percent between 2007 and 2009. In 2011, the estate tax will return to its 2002 levels with an exemption of \$1 million and a top tax rate of 55 percent.

EPA SETS NEW OZONE STANDARD

On Mar. 12, the Environmental Protection Agency (EPA) announced that it is tightening the primary national ambient air quality standard for ozone, although the new standard is not as stringent as the level recommended by EPA science advisers. The new standard is 0.075 part per million, which replaces the existing standard of 0.08 part per million. Because of rounding, the existing standard encompasses ozone levels as high as 0.084 part per million. EPA estimates that the revised ozone standards--both the primary standard to protect public health and a secondary standard aimed at preventing environmental degradation--will yield health benefits valued between \$2 billion and \$19 billion. Under the Clean Air Act, EPA is required to set the primary standard at a level necessary to protect public health with an adequate margin of safety. The agency's Clean Air Scientific Advisory Committee unanimously recommended in 2007 that the primary standard be set at a level between 0.060 ppm and 0.070 ppm. EPA proposed a standard of between 0.070 ppm and 0.075 ppm in June 2007. Back in 2004, EPA designated 474 counties as out of attainment of the 0.08 ppm standard. Some of these counties have since achieved attainment, but the new 0.075 ppm standard could throw more counties into nonattainment, and increase pollution-control requirements for those counties. Under the Clean Air Act, states will be required to submit recommendations for nonattainment areas by June 2009. EPA will make nonattainment designations in June 2010. States must have approved state implementation plans in 2013. And areas will be required to meet the new standard between 2013 and 2020.

BACTERIUM COULD LEAD TO LESS EXPENSIVE CELLULOSIC ETHANOL

Zymetis Inc., in partnership with the Maryland Technology Enterprise Institute at the University of Maryland, announced March 10 that it has discovered a bacterium in the Chesapeake Bay that could lead to the production of 75 billion gallons a year of less expensive, carbon-neutral ethanol. According to a press release, a bacterium called *Saccharophagus degradans* creates a mixture of enzymes that breaks down almost any source of biomass into sugars. The sugars then are converted into ethanol and other biofuels. The new process can break down any plant-based material into ethanol. The process is up to 33 percent cheaper than alternative methods of both cellulosic and grain ethanol production, making it competitive with gasoline, the statement said. Many scientists argue that economical production of cellulosic ethanol is crucial to meeting President Bush's "Twenty in Ten" initiative announced in last year's State of the Union address, which called for a reduction in gasoline consumption by 20 percent over the next decade through a combination of better fuel economy and more alternative fuels.

EPA ENDANGERMENT FINDING UNCERTAIN

Environmental Protection Agency Administrator Stephen Johnson March 13 refused to say whether he will issue a Clean Air Act finding that carbon dioxide presents a danger to public health and welfare. Testifying in a hearing before the House Select Committee on Energy Independence and Global Warming, Johnson said that a finding of endangerment from carbon dioxide would trigger a range of Clean Air Act requirements that could impose burdensome requirements on any facility that emits carbon dioxide. Johnson said he may issue an endangerment finding before the end of his term in January 2009, as part of a larger strategy on climate change, or he may not.

SPRING MASTERS PROGRAM

SIGMA is teaming up with FCStone to present "[Effective Hedging Strategies!](#)" Happening just prior to SIGMA's Spring Convention, this 2-day program will be held May 17-18 at the Westin Resort Hilton Head in Hilton Head Island, South Carolina. This course is designed to provide attendees with practical knowledge of all of the steps necessary to implement a successful hedging and risk management program. Attendees will learn how to manage price risk on pipeline barrels, protect retail margins, explore ways to buy and sell physical forward contracts, discover customizable business strategies, in-depth options coverage, and plan for future capital needs of hedging. [Register](#) today!