SIGMA: America's Leading Fuel Marketers

3930 Pender Drive
Suite 340
Fairfax, VA 22030
Tel: 703-709-7000
Fax: 703-709-7007
www.sigma.org
sigma@sigma.org

SIGMA WEEKLY REPORT

Sponsored by Motiva Enterprises, LLC

June 10, 2016

SIGMA Needs You to Tell Congress to Oppose Bill to Repeal Swipe Fee Reform!

On June 7, 2016 Representative Jeb Hensarling (R-TX), Chairman of the House Financial Services Committee, unveiled legislation that would repeal the Dodd-Frank Wall Street Reform Act, including the so-called "Durbin Amendment" that limited interchange fees on debit card transactions. The proposal, the "Financial CHOICE Act," would undermine the free market and support price-fixing that benefits the largest banks and threatens consumers, merchants, and the entire economy.

SIGMA needs you to tell Congress to oppose the Hensarling bill! Click on the link below send a letter to your Member of Congress.

Click HERE to Tell Congress to Oppose the Financial CHOICE Act!

SIGMA Testifies at EPA RFS Hearing

On June 9th, SIGMA counsel Tim Columbus testified at an EPA public hearing on its 2017 Renewable Fuel Standard (RFS) proposal. In his written testimony, Mr. Columbus stated that SIGMA generally supports EPA's proposed rule outlining its proposed 2017 renewable volume obligations (RVOs) under the RFS program. EPA appropriately recognizes that the RFS has the potential to cause substantial upheaval in the retail fuels market if left unchanged and, in its proposed rule, addresses these potential problems without undermining the principles on which the RFS is premised – diversifying fuel supply, increasing the overall fuel supply, encouraging domestic renewable fuel production, and lowering fuel costs for American consumers, Mr. Columbus said.

SIGMA testified that the domestic market is simply unable to blend more ethanol into gasoline and stated that those that contend the RVOs should be set higher to match statutory requirements are ignoring two key factors: insufficient demand for higher ethanol blends and retailer liability concerns regarding storage of these products in existing underground tanks and equipment. In its testimony, SIGMA congratulated EPA on its wise decision to take advantage of its statutory authority to avoid the blend wall and associated economic harm by lowering annual volume obligations due to "inadequate domestic supply." By so doing, EPA recognized that the RVOs Congress established in 2007 bear no rational relationship to current market conditions. SIGMA stated that "while only time will tell how close EPA has balanced the need to promote renewables while staying under the blend wall," SIGMA "certainly agree[s] with the Agency that the statutory RVOs were not achievable and should be lowered to more reasonable levels, as EPA has proposed."

In his oral testimony in Kansas City, Missouri, Mr. Columbus also urged EPA not to change the definition of "obligated party" under the RFS program. Importantly for SIGMA members, the proposed rule does not revise the RFS regulations in a manner that would make blenders – rather than refiners and importers – "obligated parties." Some refiners have petitioned EPA in recent years to switch the

Copyright 2016

point of obligation from refiners and importers to blenders. As SIGMA has stated in previous comment letters to EPA, non-manufacturers have no control over the composition of the petroleum products with which renewable fuels must be blended in order to be sold as motor fuels. In stark contrast, manufacturers and importers of motor fuels have control over not only the composition of the products they sell, but also the terms under which they sell them. These facts indicate that it is the manufacturers and importers of motor fuels which are in the best position to achieve the requirements of the RFS and thus should remain "obligated parties" under the Program.

Other groups testifying at the hearing included representatives from Growth Energy, the National Corn Growers Association, the National Biodiesel Board, the Renewable Fuels Association, the American Petroleum Institute, American Fuel and Petrochemical Manufacturers, Valero, and the American Council for Capital Formation, as well as a number of state industry groups and individual companies. EPA is still accepting written comments through July 11th and intends to finalize the RVOs later this year.

Read SIGMA's Testimony [Note: You must be logged in to read the document.]

House Subcommittee Holds SNAP Hearing

On June 9th, the House Oversight and Government Reform Subcommittees on Government Operations and the Interior held a hearing to examine efforts to combat fraud in the Supplemental Nutrition Assistance Program (SNAP or Program) and improve program integrity of the Program. Witnesses at the hearing included Kevin Concannon, Under Secretary for Food, Nutrition, and Consumer Services, U.S. Department of Agriculture (USDA); Mary Mayhew, Maine Department of Health and Human Services; Mike Carroll, Secretary of the Florida Department of Children and Family Services; Kay Brown, Director, Education, Workforce, and Income Security, U.S. Government Accountability Office (GAO); and Stacy Dean, Vice President for Food Assistance Policy at the Center on Budget and Policy Priorities.

The hearing responded to the White House Office of Management and Budget's designation of SNAP as a high-error program, due to an estimated $2.6 billion in improper payments and a GAO recommendation that USDA reassess its current SNAP financial incentives and fraud detection tools and issue guidance to help states better detect fraud. In FY 2015, SNAP provided 46 million low-income individuals and/or households with $69 billion in food benefits.

Most of the hearing was spent discussing Program funding and examples of fraud, which generally occurs in two ways: SNAP beneficiaries falsify eligibility information to obtain benefits to which they are not entitled or they "traffic" their benefits, meaning they exchange their benefits for cash or other non-eligible items. At the very end of the hearing, however, Government Operations Subcommittee Chairman Mark Meadows (R-NC) reminded Undersecretary Concannon that the Food and Nutrition Service (FNS) should focus its efforts on fraud rates—not what is being stocked on retailers' shelves – and "not conflate fraud" with stocking requirements. With these words, Chairman Meadows criticized FNS' proposed rule on retailer eligibility standards in SNAP, on which SIGMA **filed comments** only a few weeks ago.

House Approves Ozone Standard Delay Legislation, Veto Threatened

On June 8th, the House approved legislation (H.R. 4775) introduced by Representative Pete Olson (R-TX) that would delay implementation of EPA's 2015 national ambient air quality standards for ozone for eight years. The bill, which passed by a vote of 234-177, also would revise the process for NAAQS reviews by EPA to

Copyright 2016

allow the agency to conduct reviews less frequently than the current five-year cycle and to consider the technological feasibility of meeting tougher standards as part of the review.

The legislation, which has the support of several industry groups – including the U.S. Chamber of Commerce and the National Association of Manufacturers –that opposed EPA's more stringent 70 parts per billion ozone standard, was criticized by House Democrats as containing a number of "radical provisions" that would fundamentally alter an important Clean Air Act program. Representative Olson disagreed with that assertion, stating that the bill contains "carefully thought-out, common-sense changes" to the Clean Air Act that would not change any existing standards or put cost consideration before science.

Prior to the vote, the White House issued a veto threat, with President Obama's advisors stating they would recommend that he veto the legislation if it is sent to him to sign. "H.R. 4775 would jeopardize progress toward cleaner air and significantly delay health benefits worth billions of dollars for millions of Americans, including those most vulnerable – children, older adults, and people with asthma," the White House statement of Administration policy said. Given opposition from the White House and most congressional Democrats, the legislation is highly unlikely to be enacted into law.

In addition to H.R. 4775, the House also plans to vote this week on two concurrent resolutions. The first, H. Con. Res. 89, expresses the sense of Congress that a carbon tax would be detrimental to the United States economy. The second, H. Con. Res 112, expresses the sense of Congress opposing the President's proposed $10 tax on every barrel of oil. Both measures are expected to pass along mostly party lines. Concurrent resolutions do not have the force of law.

House Education and the Workforce Committee Holds Hearing on New DOL Overtime Rules

On June 9th, the House Education and the Workforce Committee held a hearing to examine the Department of Labor's (DOL's) recently finalized overtime rules. In his opening statement, committee chairman John Kline (R-MN) said, the Department of Labor had an opportunity to build consensus around a set of responsible overtime reforms that would have garnered broad, bipartisan support. Yet DOL chose to take "an extreme, partisan approach that will hurt the very people they claim they want to help." "This rule will disrupt the lives of countless individuals and do nothing to remove the regulatory landmines that are harmful to workers and employers," Chairman Kline stated.

The hearing, entitled, "The Administration's Overtime Rule and Its Consequences for Workers, Students, Nonprofits, and Small Businesses," was called to investigate claims that the rule will lead to fewer jobs, stifle workplace flexibility, and limit opportunities to climb the economic ladder. Additionally, the committee expressed concern that the rule failed to simplify the existing maze of overtime regulations that routinely results in unnecessary litigation. The goal of the hearing was for Committee members to explore the impact DOL's action will have on workers and young Americans, as well as the ability of small businesses, nonprofits, and colleges and universities to provide important services in their communities. Witnesses at the hearing included Jared Bernstein, Senior Fellow, Center on Budget and Policy Priorities; Alexander J. Passantino, Esq., Sheyfarth Shaw LLP; Michael Rounds, Associate Vice Provost for Human Resources Management, University of Kansas; and Tina Sharby, Chief Human Resources Officer, Easter Seals, on behalf of the Society for Human Resource Management. The Partnership to Protect Workplace Opportunity, of which SIGMA is a member, sent a letter to

 Copyright 2016

the Committee expressing concerns with the Final Rule and urging members to co-sponsor H.R. 4227, legislation that would require DOL to conduct an economic analysis before pushing ahead with changes to the overtime regulations.

While Republicans were largely critical of DOL's updated overtime regulations, Democrats struck a more positive tone on the new rules. Ranking Member Bobby Scott (D-Virginia) called the rule a "long overdue step towards addressing income inequality by restoring and strengthening overtime protections for millions of Americans."

DOL's overtime rule doubled the minimum salary threshold required to qualify for the Fair Labor Standard Act's "white collar" exemptions to $47,476 per year ($913 per week), substantially greater than the yearly salary of $23,660 per year ($455 per week) contained in previous regulations. The new salary threshold will go into effect on December 1, 2016 and would then be updated automatically every three years beginning on January 1, 2020.2 DOL expects the final rule to reduce the number of employees exempt from overtime pay requirements by nearly 4.2 million people within the first year of its implementation.

The revised overtime regulations will have a significant impact on businesses of all shapes and sizes, including the fuel marketing and convenience industry —and employers will need to reevaluate the classification of their employee population with special attention to existing and potential overtime obligations based on the final rule.

To assist you in complying with the new rules, SIGMA has prepared a legal memorandum on the DOL overtime regulations.

Read the Compliance Memo [Note: You must be logged in to read the memo.]

EPA Final Truck Standards to OMB for Review

Late on June 3rd, EPA sent its final rule regulating carbon dioxide emissions for medium – and heavy-duty trucks to the White House Office of Management and Budget (OMB) for review, the last step before a final rule is issued. The rule, which is being issued along with updated corporate average fuel economy standards from the National Highway Traffic Safety Administration (NHTSA), is expected to be made public in August and would set new carbon dioxide emissions limits and fuel economy requirements for model year 2021 through 2027 tractors and model year 2018-2027 trailers.

Heavy-duty vehicles, such as tractor trailers, garbage trucks, school buses, and other large vehicles, make up only five percent of road traffic, but 20 percent of emissions and fuel use. Under the rule as proposed, emission and fuel use reductions of 24 percent would be required for freight-hauling tractors and 16 percent for vocational vehicles and large pickup trucks. In comments on the proposed rule, the trucking industry stated that the standards were based on overly optimistic estimates of how quickly new fuel economy measures and emissions controls could be deployed and how cost effective that would be for the industry.

Separately, EPA stated that it will soon issue its midterm review of light-duty vehicle rules. That report, which will be available for public comment, will evaluate whether standards for the remaining model years are appropriate or should be revised. Those standards for model years 2017-2025 require manufacturers to achieve an equivalent of 54.5 miles per gallon by 2025 if the required greenhouse gas emissions reductions are achieved solely through fuel economy improvements.

House Panel Approves Bill to End Use of Chevron Doctrine

On June 8th, the House Judiciary Committee passed the Separation of Powers Restoration

Copyright 2016

Act of 2016 (H.R. 4768) by a vote of 12-8. The bill, introduced by Representative John Ratcliffe (R-Texas), seeks to end use of the Chevron doctrine, which requires courts to defer to a federal agency's interpretation of the law unless their interpretation is "unreasonable." Instead, the bill would require courts to conduct a new (or de novo) review of "all relevant questions of law, including the interpretation of constitutional and statutory provisions and rules" without giving deference to agency expertise or to its interpretation of a statute.

Republican members of the Committee lauded the legislation because, as Representative Ratcliffe explained, the bill "restores the proper separation of powers" and "stops the dangerous practice of allowing unelected bureaucrats to grade their own papers." Judiciary Committee Chairman Bob Goodlatte (R-Virginia) agreed, noting that "[t]he modern federal administrative state is an institution unforeseen by the Framers of our Constitution" and that it is "rapidly mushrooming out of control."

Democrats, on the other hand, expressed concern that the bill would lengthen the rulemaking process. In an effort to shield some agencies from this outcome, Democrats proposed five amendments that would have exempted certain rules from the bill's proposed changes to existing judicial deference. For instance, Representative David Cicilline (D-Rhode Island) offered an amendment to exempt U.S. Food and Drug Administration rulemakings related to consumer safety while Representative Sheila Jackson Lee (D-Texas) offered an amendment to exempt Department of Homeland Security rules pertaining to national security. Democrats also proposed amendments that would have exempted Environmental Protection Agency rulemakings on drinking water safety and agency actions to protect citizens from discrimination. All five amendments failed.

A companion bill (S. 2724) has been introduced in the Senate by Senator Orrin Hatch (R-Utah). It has yet to move forward for consideration.

SIGMA Member Highlight: Jerry Nessenson Retires from ValvTect Petroleum

Gerald Nessenson ("Jerry"), founder and longtime president of ValvTect Petroleum Products™, has announced his retirement from ValvTect as of June 1, 2016.

Mr. Nessenson began his 50-year career in the petroleum industry with Texaco in 1966. In 1969, he jointed Bell Fuels™ and was responsible for expanding the company from a small Chicago heating oil distributor into a diversified company with a multi-state network of private brand gas stations, truck stops, and car washes. In addition, Bell became one of the first non-refiner fuel distributors to ship gasoline and diesel fuel through pipelines from the Gulf Coast to the Midwest.

During the 1970s oil embargos, Mr. Nessenson pioneered the exchange of crude oil for refined gasoline and diesel fuel with major refiners to keep Bell's customers supplied. In the late 1970s, Jerry converted one of the first gas stations in the Chicago area into a c-store and opened one of the first self-service stations in Illinois. In 1983, he helped design, build, and operate what was then the largest gas station built in the United States. When EPA announced the phase-out of lead in gasoline in 1984, Mr. Nessenson began researching for a lead substitute and in 1986 he began marketing ValvTect (named for valve protection) Lead Substitute additive to Bell's gasoline distributors who supplied marinas, farms, and older automobiles that needed an anti-wear additive.

In 1987, Jerry purchased ValvTect from Bell Fuels and began marketing to gasoline distributors nationwide. Today, over one billion gallons of gasoline, diesel fuel, and heating oil are formulated annually with ValvTect fuel additives and supplied by hundreds of ValvTect

 Copyright 2016

and Diesel Guard branded distributors in nearly every state in the U.S.

Mr. Nessenson, who served on SIGMA's Board of Directors, is active in the Wounded Warriors Project, Heart of a Marine Foundation, Semper Fi Fund, and the Red Cross. Most recently, he formed the consulting firm NESS Petroleum Marketer Solutions Company to help petroleum marketers develop and implement strategic growth, sales, and marketing plans.

Have You Registered for SIGMA's Summer Legislative Meeting and Day-on-the-Hill?
Registration is open for SIGMA's annual **Summer Legislative Meeting and Day-on-the-Hill**! This year, the meeting is July 12-13 and will be held at The Willard Hotel (note: new hotel). This is your opportunity to come to Washington to educate Congress on the effect its actions have on your company, our industry, and your employees – their constituents. In an election year, your message will be even more powerful.

Please plan to send at least one representative from your company to represent SIGMA this July. If you have come to this event before, you know how easy it is to participate…and absolutely no prior experience is necessary. SIGMA will make all of the arrangements for your meetings on the Hill and will send you in a group and/or with someone from Steptoe & Johnson to make it even easier. You will not be alone!

Register for the Meeting

Register for the SIGMA Annual Meeting Before the Rates Go Up!
The **2016 SIGMA Annual Meeting** will take place November 2-4, 2016 at the JW Marriott in Washington, DC. Featured education sessions include our Keynote Presentation Politics NOW from Stuart Rothenberg, Founding Editor and Publisher, *Rothenberg & Gonzales Political Report*, and Columnist, *Roll Call*, as well as a presentation on America's Energy Future: Challenges and Opportunities from Matthew Koch, Vice President, U.S. Chamber of Commerce's Institute for 21st Century Energy.

SIGMA's Annual Meeting is the largest gathering of SIGMA members throughout the year. CEO's, presidents, and knowledge leaders in the fuel marketing sphere attend this unparalleled forum for in-depth education, networking and innovative business strategy reviews. SIGMA committees convene to discuss and streamline initiatives—while preserving time for marketers to network with each other and with fuel suppliers.

This is an event you can't afford to miss, so register now while the rates are still low!

Register for the Meeting

Copyright 2016