

# Regulation Digest Weekly

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Vol. 1 No. 33

## Opinion

- Advising the Management and Considering the Owners
- A Simpler Way to End Too Big to Fail
- Red Tape Is Strangling the Recovery
- How to Crash an Economy and Escape the Scene
- Regulators Must Think Before They Regulate

## Marketplace of Ideas

### American Action Forum

- The Week in Regulation: October 15-19, *Sam Batkins*
- Regulation Review: Dodd-Frank Security-Based Swaps Requirements, *Dan Goldbeck*

### American Enterprise Institute

- A heavy price for cheaper drugs, *Scott Gottlieb*
- Too big to ignore: The future of bailouts and Dodd-Frank after the 2012 election, *Peter J. Wallison*
- Broadband competition in the Internet ecosystem, *Jeffrey Eisenach*

### Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*

### Federal Regulations Advisor

- Monday Morning Regulatory Review – 10/22/12, *Leland Beck*

### The George Washington University Regulatory Studies Center

- Enhancing Science and Policy for Chemical Risk Assessments

## Feature Story

### Copyright Office Seeks Public Comment on Digital Orphan Works

The U.S. Copyright Office is [seeking comments](#) on the current copyright status of orphan works, a category of works which are copyrighted but for which the holder of the copyright cannot be contacted, either because of the copyright holder is unaware of the copyright, or because the copyright holder has gone out of business or is deceased and it is unclear to whom copyright ownership has passed. These orphan works include period film footage and photographs, which are not accessible to libraries, archives, writers, and broadcasters because of their copyright status. “The Office has long shared the concern with many in the copyright community that the uncertainty surrounding the ownership status of orphan works does not serve the objectives of the copyright system. For good faith users, orphan works are a frustration, a liability risk, and a major cause of gridlock in the digital marketplace. The issue is not contained to the United States. Indeed, in recent months, the European Commission has adopted measures that would begin to resolve the issue in certain contexts and a number of foreign governments are reviewing or proposing solutions. The Copyright Office seeks comments regarding the current state of play for orphan works. It is interested in what has changed in the legal and business environments during the past few years that might be relevant to a resolution of the problem and what additional legislative, regulatory, or voluntary solutions deserve deliberation.” [Comments](#) are due on January 4<sup>th</sup>.

## In the News

10/17/12

- [Lapses at Big Drug Factories Add to Shortages and Danger](#), *New York Times*
- [Consumer agency eases credit rule for stay-at-home spouses](#), *Reuters*
- [Ex-Fed chief Volcker calls for bank leverage ratio](#), *Reuters*
- [SEC approves industry proposal to align rules with JOBS Act](#), *Reuters*
- [SEC proposes setting minimum capital levels, other requirements for traders of derivatives](#), *Washington Post*
- [FCC clears way for AT&T to use slice of airwaves for mobile broadband](#), *Washington Post*
- [SEC Probes Bankrupt San Bernardino, California's Finances](#), *Bloomberg*
- [U.S. Senators Ask Regulators to Rely on Simple Leverage](#), *Bloomberg*
- [CMBS Faces Risk of 'Disruptive Shocks' Regulators Told](#), *Bloomberg*
- [Knight Capital Reports Net Loss After Software Error](#), *Bloomberg*
- [MDUFA Guidelines on FDA Review Time and Goals Released](#), *Regulatory Focus*
- [EPA to Speed up Regulation after U.S. Election](#), *RotorNews*
- [SEC Proposes Swaps Rules for Brokerages](#), *Wall Street Journal*

10/18/12

- [Romney Rules Attack Shows Impact Varies on Who's Counting](#), *Bloomberg*
- [Why the big banks are a mess](#), *Washington Post*
- [House Seeks FDA Reports on Pharmacy Tied to Meningitis](#), *Bloomberg*
- [Swaps Collateral Costs May Increase Under SEC Proposal](#), *Bloomberg*



## The Mercatus Center

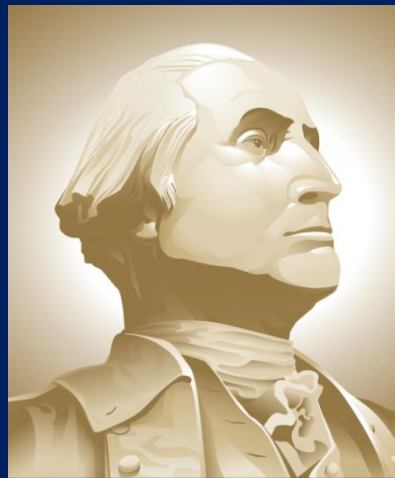
- The Alternative of Private Regulation: The London Stock Exchange's Alternative Investment Market as a Model, *Edward Peter Stringham & Ivan Chen*
- Economic Analysis by Federal Financial Regulators, *Hester Peirce*

## Penn Program on Regulation

- FTC Issues New Green Marketing Guidelines, *Damini Ghosh*
- The Regulatory Week in Review: October 19, 2012
- Toxics Release Inventory: A Case Study in Information Disclosure Regulation, *Michael Toffel & Glen Dowell*

## United States Senate Committee on Environment and Public Works

- A Look Ahead to EPA Regulations for 2013: Numerous Obama-EPA Rules Placed On Hold until after the Election Spell Doom for Jobs and Economic Growth



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[Congressional Investigators Ramp up Pressure on FDA over Meningitis Outbreak](#), *Regulatory Focus*  
[Chronic Regulatory Compliance Issues Causing Shortages, Safety Problems](#), *Regulatory Focus*

[Warner calls for Dodd-Frank corrections in new Congress](#), *The Hill*

[Oil-and-gas group questions EPA fracking study](#), *The Hill*

[DEA Classifies Bath Salt Chemical as Schedule I Drug After Oversight](#), *Regulatory Focus*

[Exclusive: FDA to Continue Regulatory Exception for Doxil Substitute](#), *Regulatory Focus*

[World's Top Regulators Tackle Ethics of Pharmaceutical Innovation](#), *Regulatory Focus*

[Critics charge that drug-compounding pharmacies require government oversight](#),

*Washington Post*

[Create the best technology to stop robocalls and the government will give you \\$50,000](#),

*Washington Post*

**10/19/12**

[Schapiro SEC Reign Nears End With Rescue Mission Not Done](#), *Bloomberg*

[Prudential Said to Near Systemic-Risk Tag in U.S. Review](#), *Bloomberg*

[Swaps Rule Sends Wall Street Into Clearing Limbo: Credit Markets](#), *Bloomberg*

[Black Monday Echoes as Computers Fail to Restore Confidence](#), *Bloomberg*

[As deadly airline crashes decline, new government safety rules get tougher to justify](#),

*Washington Post*

[Feds investigate complaints that Jeep Patriot engines stall without warning at highway](#)

[speeds](#), *Washington Post*

[WHY IT MATTERS: Clean air and water, but at what price?](#), *Washington Post*

[Bank seizures in Florida, Missouri makes total of 46 US failures so far this year](#),

*Washington Post*

[Regulators Close Banks in Florida, Missouri](#), *Wall Street Journal*

**10/20/12**

[U.S. jobs or more outsourcing? Future is unclear for one mortgage-servicing firm](#),

*Washington Post*

['War on coal' a neat but incomplete label for troubles facing nation's mining industry](#),

*Washington Post*

[SEC Facebook IPO Probe Said to Find No Wrongdoing So Far](#), *Bloomberg*

**10/21/12**

[Obama's record: Environmental agenda pushes sweeping attack on air pollution](#),

*Washington Post*

[Counting All the U.S. Government's Regulations](#), *Townhall*

**10/22/12**

[Rules for U.S. Bus Investigations Tightened After Fatal Crash](#), *Bloomberg*

[Asset-Backed Securities May Face Tougher Basel Bank Rules](#), *Bloomberg*

[FTC settles charges with Web analytics company Compete](#), *The Hill*

[Consumer bureau opens credit report complaint line](#), *The Hill*

[FDA: 1,279 facilities received other products from pharmacy linked to meningitis](#),

*Washington Post*

[Hearth Makers Get Hot Over Regulations](#), *Wall Street Journal*

**10/23/12**

[Monster Fall Extended After FDA Energy Drink Death Reports](#), *Bloomberg*

[SEC at 'Good Pace' on Dodd Frank, Schapiro Says](#), *Bloomberg TV*

[Schapiro: Excellent Coordination With the CFTC](#), *Bloomberg TV*

[Volcker Profit Shave, ABS-Basel Rules, Finra: Compliance](#), *Bloomberg*

[Banks Say Regulators Should Rewrite Basel III Capital Rules](#), *Bloomberg*

[U.S. Derivatives Regulator Proposes Rules for Customer Funds](#), *Bloomberg*

[CFTC's Gensler on Derivatives Regulation](#), *Bloomberg TV*

[Wall Street Welcomes Regulators' 'Volcker Wars'](#), *Bloomberg TV*

[CME energy swap traders swing decisively to futures-data](#), *Reuters*



## Contact Us

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[WHY IT MATTERS: New rules aim to head off another economic cataclysm but come with costs](#), *Washington Post*

[WHY IT MATTERS: Clean air and water, but at what price?](#), *Washington Post*

[Obama to Rolling Stone: Wall Street should change incentives for high-risk financial schemes](#), *Washington Post*

[Gov't consumer finance watchdog to oversee biggest debt-collection companies](#), *Washington Post*

[CFPB issues rules for governing debt collectors](#), *Washington Post*

[Wall Street Is Rethinking Commodity-Trading Role](#), *Wall Street Journal*

[What ETFs' Next Act Will Look Like](#), *Wall Street Journal*

**10/24/12**

[Mortgage Lenders See Tighter Credit Under New U.S. Rules](#), *Bloomberg*

[Romney Mining for Votes in Coal Country](#), *Bloomberg*

[United Therapeutics Falls as FDA Rejects Oral Remodulin](#), *Bloomberg*

## Rulemaking

### Consumer Product Safety Commission

#### CPSC Proposes Rule Tightening Voluntary Standards for Bassinet and Cradle Safety

The Consumer Product Safety Commission published a [proposed rule](#) that would tighten existing voluntary standards for bassinet and cradle safety, last updated in June, 2012, and make these standards mandatory for all bassinet and cradle manufacturers. CPSC is proposing this rule in response to data indicating that there are 84 cradle and bassinet incidents annually, both fatal and nonfatal, 52 of which are caused by product design flaws. Overall, 5% of the reported fatalities associated with cradles and bassinets are caused by product design flaws, while the remaining product fatalities are primarily (87%) caused by infant positioning and consumer-added bedding materials. The Commission proposes to enhance the voluntary standard for use of labels warning consumers about the potential suffocation dangers of added bedding: “The Commission supports the strengthening of the suffocation warning label as included in the latest revision of the ASTM voluntary standard and *does not believe that there are additional requirements that can be put in place in the standard to address unsafe sleep environments and unsafe sleep practices*. The Commission will continue information and education efforts, such as the Safe Sleep campaign, to address suffocation and other serious sleep hazards.”

However, the Commission goes on to mandate more stringent standards for cradles and bassinets than prescribed in the 2012 ASTM voluntary standards to address the 5% of fatalities caused by product design flaws: “These proposed changes include a revision to an existing test method (the bassinet stability test method), two additional new requirements and associated test methods (for mattress flatness and removable bassinet bed attachments), and a revised scope and associated definitions or references to support these additions.” [Comments](#) are due on January 2<sup>nd</sup>.

## Agencies

### Environmental Protection Agency

#### EPA Seeks Nominations for National Drinking Water Advisory Council Members

The Environmental Protection Agency is [soliciting nominations](#) for experts to staff the 15-member National Drinking Water Advisory Council, which “was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA. This notice solicits nominations to fill four new vacancies through December 15, 2015. To maintain the representation required by statute, nominees will be selected to represent: State and local agencies (two vacancies) and the general public (two vacancies).” [Nominations](#) are due on November 19<sup>th</sup>.

#### SAB Announces November 5<sup>th</sup> Ozone Review Panel Public Teleconference

The Environmental Protection Agency Science Advisory Board (SAB) [announced](#) a public teleconference on November 5<sup>th</sup> to discuss the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel’s draft reviews of four EPA reports: Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Third



External Review Draft—June 2012), Health Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August 2012), Welfare Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August 2012), and Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (First External Review Draft—August 2012). CASAC is a federal advisory committee that provides “advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality.”

## **Federal Deposit Insurance Corporation**

### **FDIC Solicits Public Comment on Paperwork Requirements for National Survey of Unbanked and Underbanked Households**

The Federal Deposit Insurance Corporation is [inviting](#) public comment on a proposed information collection required to conduct a national survey of unbanked and underbanked households. FDIC is proposing this information collection to comply with a statutory mandate that the Corporation conduct surveys “on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the ‘unbanked’) into the conventional finance system.” The surveys are meant to identify which transaction costs most prevent unbanked individuals from setting up an account and to determine the size of the domestic unbanked/underbanked community. “To satisfy the Congressional mandate, the FDIC designed two complementary surveys: a survey of FDIC-insured depository institutions and a survey of households... The results of these ongoing surveys will help policymakers and bankers understand the issues and challenges underserved households perceive when deciding how and where to conduct financial transactions.” [Comments](#) are due on December 18<sup>th</sup>.

## **Department of Commerce**

### **NOAA Announces Open Meeting of the National Climate Assessment and Development Advisory Committee**

The National Oceanic and Atmospheric Administration [announced](#) an open meeting of the National Climate Assessment and Development Advisory Committee (NCADAC) on November 14<sup>th</sup> from 9:00am – 5:30pm and November 15<sup>th</sup> from 8:30am – 2:30pm. “The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a National Climate Assessment.” Interested attendees must RSVP by contacting [Cynthia Decker](#) and [Kandis Wyatt](#) before November 9<sup>th</sup>.

## **Federal Trade Commission**

### **FTC Announces Competition, \$50,000 Prize for Innovations to Block Robocalls**

The Federal Trade Commission [announced](#) the *FTC Robocall Challenge*, “a prize competition that challenges the public to create innovative solutions to block illegal robocalls.” The Commission explains that the “vast majority” of robocalls are illegal, and are regulated by the Commission. However, there are not existing technologies that block illegal robocalls while simultaneously allowing legal robocalls from political parties, charities, and healthcare providers. This contest was mentioned by the satirical publication [The Onion](#). [Submissions](#) are due before January 17<sup>th</sup> at 5:00pm Eastern Time.

## **Department of Labor**

### **BLS Renews Technical Advisory Committee**

The Bureau of Labor Statistics [announced](#) the renewal of the Bureau’s Technical Advisory Committee, which “presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of the collection and formulation of economic measures.” Included in the responsibilities of the Committee are: advising BLS on the technical soundness of the Bureau’s presentations and papers, conducting research on areas identified by BLS, and recommending internal research projects to address technical problems with BLS statistics identified in the academic literature.





## Department of Homeland Security

### DHS Announces Availability of Guidance for Responders' Health Following an Anthrax Attack

The Department of Homeland Security [announced](#) the availability of a [guidance document](#) entitled *Guidance for Protecting Responders' Health During the First Week Following A Wide-Area Aerosol Anthrax Attack*. This document “provides recommendations for responders risking high, moderate, and limited exposure [to anthrax] based on their expected activities and their potential to travel through the affected area in the immediate aftermath of an attack. Pre- and post-event vaccination, the use of personal protective equipment, and personal decontamination (which may include disposal of protective clothing, laundering of all other garments and showering with soap after a work shift) are among the recommendations. The guidance is expected to evolve based on changes to understanding of risks, the availability of personal protections, stakeholder feedback, scientific developments, and new environmental monitoring techniques. The federal interagency working group consisted of subject matter experts in biodefense, infectious diseases, and occupational health and safety including subject matter experts from the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention.”

