



# Regulation Digest Weekly



October 31<sup>st</sup>, 2012

Vol. 1 No. 34

## Opinion

- RAHN: The coming regulatory tsunami
- Why Does the SEC Protect Banks' Dirty Secrets?
- The Ethanol Election Delay
- The Science of Government Regulation

## Marketplace of Ideas

### American Action Forum

- The Week in Regulation: October 22-26, *Sam Batkins*

### American Society for Public Administration

- Americans Exhibit Increasingly Partisan Views of Federal Workers, *Bill Adams & Donna Lind Infeld*

### Committee on Oversight & Government Reform

- Obama Administration Refuses to Release New Regulations Agenda, *Lamar Smith, Darrell Issa, Howard Coble, & Jim Jordan*

### Competitive Enterprise Institute

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

### Federal Regulations Advisor

- Monday Morning Regulatory Review – 10/29/12, *Leland Beck*

### Free State Foundation

- Vindicating A Voluntary Process For Protecting Digital Privacy, *Seth Cooper*

### The George Washington University Regulatory Studies Center

- Races, Rushes, and Runs: Taming the Turbulence in Financial Trading, *Brian Mannix*
- When Environmental Quality Isn't the Goal: New EPA Fuel Standards Foul the Air, *Sofie Miller*

## Feature Story

### CFPB Subjects Large Consumer Debt Market Participants to Supervision

The Consumer Financial Protection Bureau published a [final rule](#) defining the larger participants of a market for consumer debt collection to facilitate CFPB supervision of “nonbank covered persons” active in that market. The authority to supervise nonbank covered persons stems from the Dodd-Frank Act, which gives the Bureau “the authority to supervise nonbank “larger participant[s]” of markets for other consumer financial products or services,” as defined by the Bureau. “The Bureau is authorized to supervise nonbank entities subject to [12 U.S.C. 5514](#) of the Dodd-Frank Act by requiring the submission of reports and conducting examinations to: (1) Assess compliance with Federal consumer financial law; (2) obtain information about such persons' activities and compliance systems or procedures; and (3) detect and assess risks to consumers and consumer financial markets.” In this rule, the Bureau defines larger market participants in the consumer debt market as those with annual receipts averaging more than \$10 million resulting from consumer debt collection activities. Designation as a “larger participant” of the consumer debt market allows the Bureau to conduct on-site examinations, request records, and review compliance management systems, further described in the Bureau’s [supervision guidelines](#).

In accounting for the rule’s costs and benefits, the Bureau states that newly regulated entities will bear an increased compliance cost. Such entities “may try to recoup those costs by demanding increased revenue for collecting debt. Whether and to what extent this increase occurs will depend on competitive conditions in the consumer debt collection market. In addition, if increasing compliance leads to lower recovery rates, creditors may perceive the risk of loss on loans to be greater. *In either case, consumers' access to credit may decrease*, although whether and to what extent such a decrease might occur would also depend on competitive conditions in the consumer credit markets.”

## In the News

10/24/12

['Ghost Exchange' film questions runaway stock market technology](#), *Reuters*

[Government crusade against mortgage lenders](#), *Washington Post*

[Federal regulators to study cancer risks at 7 US nuclear sites; industry opposes the review](#), *Washington Post*

10/25/12

[Senators call for an end to Volcker rule delay](#), *Washington Post*

[Is high-frequency trading a threat to stock trading, or a boon?](#), *Washington Post*

[Cost of mining coal continues to climb](#), *Washington Post*

[CFTC Said to Allow More Swaps Trading Via Phone in Final Rule](#), *Bloomberg*

[SEC Approves Mortgage Trade Disclosure Rules for Finra's Trace](#), *Bloomberg*

[IBM Received Request From SEC Over Dealings With Iran, ZTE](#), *Bloomberg*



## Government Accountability Office

▪ FDA Can Better Oversee Food Imports by Assessing and Leveraging Other Countries' Oversight Resources, *Lisa Shames*

## The Mercatus Center

▪ EVENT: The Future of Regulations: Moving From Presumption to Proof, *Tuesday, November 13<sup>th</sup>*

## Penn Program on Regulation

▪ The Regulatory Week in Review: October 26, 2012

▪ When is a Federal Agency not a Federal Agency?, *Cary Coglianese*

**THE GEORGE  
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[State and Local Officials Launch Criminal Probe of Compounder as FDA Criticized](#), *Regulatory Focus*

**10/26/12**

[House Republicans blast OIRA over late regulations report](#), *Federal News Radio*  
[BlackRock, Fidelity Seeking Money Fund Deal With SEC](#), *Bloomberg*

[Hertz Bid For Dollar Thrifty Runs Into Headwinds at FTC](#), *Bloomberg*

[US Regulators Crack Down on Supplement Manufacturers](#), *Regulatory Focus*

[U.S. Insurance Regulators Tighten Capital Rule on Mortgage Bonds](#), *Bloomberg*

[U.S. Regulator Said Set to Appeal Court Ruling on Trading Limits](#), *Bloomberg*

[FDA says pharmacy tied to meningitis outbreak documented history of mold, bacteria problems](#), *Washington Post*

[Regulators seize small bank in Pennsylvania, makes total of 47 US failures so far this year](#), *Washington Post*

[US senators call for more regulatory action on energy drinks](#), *Washington Post*

[House Republicans demand to see regulatory agenda](#), *Government Executive*

**10/28/12**

[U.S. regulator needs new authority over compounding pharmacies: report](#), *Reuters*

[Top regulators warn on expanding president's powers](#), *Chicago Tribune*

**10/29/12**

[Banks' Reserve Cuts Drawing Close Scrutiny, OCC's Curry Says](#), *Bloomberg*

[Meningitis Outbreak May Spur U.S. Oversight of Pharmacies](#), *Bloomberg*

[US regulators say most parts of financial system functioning normally during hurricane](#), *Washington Post*

[FDA report describing deaths sheds light on high-caffeine beverages](#), *Washington Post*

[U.S. Comptroller Warns on Banks' Loan-Loss Reserves](#), *Wall Street Journal*

**10/30/12**

[U.S. Regulators Discuss Storm's Impact on Market Infrastructure](#), *Bloomberg*

**10/31/12**

[EXCLUSIVE: In HFT oversight, CFTC's O'Malia calls for pre-trade focus rather than algo inspection](#), *Automated Trader*

[Romney Seen Scuttling EPA Proposals, Letting Rules Stand](#), *Bloomberg*

## Rulemaking

### Environmental Protection Agency

#### EPA Final Rule Revises “Regulated Pollutant” Definition for New Source Review Particulate Matter Rules

The Environmental Protection Agency published a [final rule](#) revising the definition of “regulated new source review (NSR) pollutant” for implementation of the NSR program for particulate matter. “This revision removes a general requirement in the definition of “regulated NSR pollutant” to include condensable PM when measuring one of the emissions-related indicators for particulate matter (PM) known as “particulate matter emissions” in the context of the [Prevention of Significant Deterioration] and NSR regulations. However, the rule preserves the requirement in some particular cases to include condensable PM in measurements of “particulate matter emissions” as required by other regulations. In addition, measurement of condensable PM continues to be required in all cases for two other emissions-related indicators for emissions of PM—emissions of particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM<sub>10</sub> emissions) and PM<sub>2.5</sub> emissions.”

#### EPA Stays NESHAPs Rule for Chemical Manufacturing Area Sources through Christmas

The Environmental Protection Agency published a [stay](#) of the 2009 National Emission Standards for Hazardous Air Pollutants (NESHAPs) rule for Chemical Manufacturing Area Sources (CMAS) through December 24<sup>th</sup> as the Agency reconsiders certain portions of the rule in response to a petition by the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates. “On January 30, 2012, the EPA published a proposed rule reconsidering certain aspects of the final CMAS rule, including provisions that, if finalized, would revise the applicability of the final rule. The compliance date for the final CMAS rule is October 29, 2012, and it was EPA's



expectation that the reconsideration would be finalized in advance of that date. However, the EPA is still in the process of finalizing the reconsideration action. For this reason, a short stay of the final rule is appropriate to allow the EPA the time necessary to complete the reconsideration action.”

## Library of Congress

### Copyright Office Allows Copyright Access Control Circumvention for Cellphones, but not Kindles and iPads

The Copyright Office published a [final rule](#) establishing classes of copyrighted works that are exempted from copyright restrictions for people who circumvent technological access controls and engage in “noninfringing uses” of copyrighted works. Currently, many copyrighted works online are protected with access controls and technological measures to prevent infringing use; however, some users may be prevented by these technologies from accessing copyrighted works for noninfringing purposes, as well. “The primary responsibility of the Register and the Librarian in this rulemaking proceeding is to assess whether the implementation of access control measures is diminishing the ability of individuals to use copyrighted works in ways that are not infringing and to designate any classes of works with respect to which users have been adversely affected in their ability to make such noninfringing uses.” While the Copyright Office acted to make access of copyrighted works legal through assistive technologies, wireless telephone headsets, and cellphones, these works will still not be legally accessible to users of tablets such as the Kindle and the iPad.

## Federal Reserve System

### Fed Board Finalizes Rule Increasing Reserve Requirement Exemption Amounts

The Federal Reserve Board published a [final rule](#) amending Regulation D, *Reserve Requirements of Depository Institutions*. “The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2013 at 12.4 million (from \$11.5 million in 2012). This amount is known as the reserve requirement exemption amount. The Regulation D amendments also set the amount of net transaction accounts at each depository institution (over the reserve requirement exemption amount) that is subject to a three percent reserve requirement in 2013 at \$79.5 million (from \$71.0 million in 2012). This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports.”

## Agencies

### Administrative Conference of the United States

#### ACUS Announces Public Meeting to Discuss Policy, Legal Issues of Agency Social Media use in Rulemaking

The Administrative Conference of the United States announced a [public meeting](#) of the Committee on Rulemaking to discuss the legal and policy implications of the use of social media by agencies to support rulemaking. The Committee on Rulemaking is considering an outline for the Social Media project, prepared for ACUS by Professor Michael Herz, which identifies the scope of the project and the research methodology to be employed. ACUS is an independent federal agency that provides recommendations to the federal government for improving the administrative process. ACUS is accepting [comments](#) on this topic from the public.

### Department of Health and Human Services

#### HHS Solicits Nominations for Newly-Announced 2015 Dietary Guidelines Advisory Committee

The Department of Health and Human Services, in conjunction with the Department of Agriculture, [announced](#) the intent to establish the 2015 Dietary Guidelines Advisory Committee, and is soliciting nominations from the public of individuals to serve on the Committee. “The *Guidelines* contain nutrition and dietary information for the general public. Because of its focus on health promotion and risk reduction, the *Guidelines* form a basis for federal food and nutrition policy and education activities. The information and key recommendations of the *Guidelines* are based on the preponderance of scientific and medical knowledge which is current at the time.” [Nominations](#) are due on November 26<sup>th</sup>.



## Department of Commerce

### NOAA Seeks Members for Science Advisory Board

The National Oceanic and Atmospheric Administration is [seeking nominations](#) from the public for members of its Science Advisory Board (SAB). “The SAB is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. The SAB consists of 15 members reflecting the full breadth of NOAA's areas of responsibility and assists NOAA in maintaining a complete and accurate understanding of scientific issues critical to the agency's missions.” [Nominations](#) are due on November 29<sup>th</sup>.

### Export-Import Bank

#### Ex-Im Bank Announces Application for \$100 Million to Fund Semiconductor Equipment Export to Germany

The Export-Import Bank published a [notice](#) announcing the receipt of an application for a long-term loan or financial guarantee in excess of \$100 million to fund the export of semiconductor equipment to Germany for the manufacture of logic semiconductors. [Comments](#) are due on November 26<sup>th</sup>.

#### Ex-Im Bank Announces Application for \$14 Million to Fund Export of Gas Turbine Equipment to Russia

The Export-Import Bank published a [notice](#) announcing the receipt of an application for a \$14 million loan guarantee to fund “the export of approximately \$13 million worth of gas turbine generator set and services to Russia. The U.S. exports will enable the Russian company to produce approximately 475,000 cubic meters of medium density fiberboard per year. Available information indicates that the majority of this new medium density fiberboard production will be sold in Russia with the remainder sold in the Ukraine and other CIS countries.” [Comments](#) are due on November 13<sup>th</sup>.

