

Regulation Digest Weekly

October 3rd, 2012

Vol. 1 No. 30

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- Small Business Regulation: A Case Study and Options for Reform, *Sam Batkins*
- Consumer Financial Protection Bureau's Alphabet Soup of Regulation, *Sam Batkins*
- Regulation Review: Dodd-Frank's \$7 Billion August, *Sam Batkins*
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- Cozying Up: How the Manufacturers of Toxic Chemicals Seek to Co-opt Their Regulators, *Rena Steinzor & Wayland Radin*

Competitive Enterprise Institute

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

EPA Biomass Diesel Fuel Rule Could Incur up to \$52 Million in Air Quality Disbenefits

The Environmental Protection Agency published a [final rule](#) setting volume requirements for biomass diesel fuels applicable to petroleum refineries, ethyl alcohol manufacturers, petroleum bulk stations and terminals, and wholesalers in calendar year 2013. "Under the Clean Air Act Section 211(o), the Environmental Protection Agency is required to determine the applicable volume of biomass-based diesel to be used in setting annual percentage standards under the renewable fuel standard program for years after 2012... In this action we are finalizing an applicable volume of 1.28 billion gallons of biomass-based diesel for calendar year 2013."

The primary benefit of this rule is increased energy security by reducing U.S. petroleum imports and increasing the diversity of U.S. liquid fuel supplies, which the Agency values at \$41.2 million. Interestingly enough, the Agency estimates that this standard will cause up to \$52 million in environmental *disbenefits* by reducing air quality, despite the fact that the enabling statute is the Clean Air Act: "Quantified estimates of benefits include \$41 million in energy security benefits and \$19-52 million in air quality disbenefits. Other benefits include GHG emissions reduction benefits and both direct and indirect employment benefits in rural areas due to increased biodiesel production. Impacts on water quality, water use, wetlands, ecosystems and wildlife habitats are expected to be directionally negative but modest due to both the small impact on crop acres planted necessary to supply sufficient soy oil feedstock and due to the relatively small impact on these measures of soybean production compared to other potential crops...we estimate that soybean prices could increase up to 3 cents per pound in 2013 if all of the 280 million gallon increment above the 2012 standard is met through increased demand for soy oil. Using these assumptions, we estimate the cost of producing this increment in biomass-based diesel would range from \$253 to \$381 million in 2013. Adding the estimate of 2013 costs to the total 2013 fuel pool would suggest a diesel fuel cost increase of less than 1 cent per gallon."

In the News

9/26/12

[Bristol-Myers and Pfizer say the FDA will rule on anti-clotting drug Eliquis by March 17](#), *Washington Post*

[Regulatory policy puts the US at disadvantage, says report](#), *Daily Caller*

[CFTC orders Chinese firm to pay \\$1.5 million over position rules](#), *Reuters*

[Regulators seek more comment on swap margin rules](#), *Reuters*

[Hill, CFTC focus on derivatives deadline](#), *Politico*

[Providers May Be Abusing Electronic Billing Procedures, HHS, DOJ Say in Letter](#), *Bloomberg*

Economic Policy Institute

- Nearly four years in, what do cost-benefit data show for the major Obama EPA rules, and what do they imply for the economy?, *Isaac Shapiro*

Executive Office of the President

- Report to the President on Propelling Innovation In Drug Discovery, Development, *President's Council of Advisors on Science and Technology*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 10/1/12, *Leland Beck*
- CFTC Position Limit Rule Struck Down for Violating Dodd-Frank Act, *Leland Beck*

Government Accountability Office

- FDA Should Expand Its Consideration of Information Security for Certain Types of Devices, *Marcia Crosse & Gregory Wilshusen*
- DOD Needs Complete Assessments to Improve Future Civilian Strategic Workforce Plans, *Brenda Farrell*

The Mercatus Center

- THE CONSUMER FINANCIAL PROTECTION BUREAU: Designed to Fail?, *Chad Reese & Todd Zywicki*
- THE CONSUMER FINANCIAL PROTECTION BUREAU: Savior or Menace?, *Todd Zywicki*

OMB Watch

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- Regulations.gov Releases New Features, *Katie Greenhaw*

Penn Program on Regulation

- Report Highlights Difficulties with Regulating Federal Grants, *Elisa Solomon*
- The Regulatory Week in Review: September 28, 2012, *Mima Mohammed*
- Has the U.S. Regulatory System Broken Down?, *Cary Coglianese*

Washington Legal Foundation

- Mandated Biotech Food Labeling Proposal: Regulate to Eliminate?, *Glenn Lammi*

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[New Report Calls for Overhaul of Regulatory Processes with Goal of Doubling Drug Approvals by 2027](#), *Regulatory Focus*

[Christine Todd Whitman: Anti-EPA message scares off independents](#), *Politico*
[Cupertino: Air district approves new regulatory rules for Lehigh Cement](#), *San Jose Mercury News*

[Geithner Wants Regulatory Council to Push SEC on Money-Market Funds](#), *Wall Street Journal*

[Will that pet turtle make you sick?](#), *Washington Post*

[Geithner plan seeks stricter oversight of money-market funds](#), *Washington Post*
[SEC: brokers need better controls on confidential material](#), *Reuters*

[Wall Street regulator questions sales of complex securities](#), *Reuters*

[FINRA looking at brokerage conflicts involving complex products](#), *Reuters*

[U.S. SEC, in tactical shift, casts suspicious eye on peers](#), *Reuters*

[CFTC charges iFinix Futures with making false statements](#), *Reuters*

[U.S. senators ask regulators to study Basel impact on small banks](#), *Reuters*

[Wall Street regulator questions sales of complex securities](#), *Reuters*

[Christine Todd Whitman: Anti-EPA message scares off independents](#), *Politico*

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[Wonkbook: Governments are pushing hard on financial regulation](#), *Washington Post*
[The hidden cost of bailouts: The money market mutual funds and moral hazard](#), *Washington Post*

[Fed's George slams Dodd-Frank reform, says too complex](#), *Reuters*

[FDA Releases Draft Guidance on Abdominal Infection Products](#), *Regulatory Focus*
[Study: Regulatory Noncompliance Plays Big Role in Record-Setting Fines](#), *Regulatory Focus*

[US Postal Service regulator questions cost-saving plan](#), *Reuters*

[Libor reform may add volatility, increase some funding costs](#), *Reuters*

[Republican SEC official open to money fund rules](#), *Reuters*

[Regulators seize small bank in Illinois, makes total of 43 US failures so far this year](#), *Washington Post*

[Libor Probe Urges Regulators to Look at Other Benchmarks](#), *Wall Street Journal*

[Regulators Close Bank in Illinois](#), *Wall Street Journal*

[Money Funds' \\$1 Share Price At Risk](#), *Wall Street Journal*

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[Ocean acidification emerges as new climate threat](#), *Washington Post*

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[Insight: Chicago Fed warned on high-frequency trading, SEC slow to respond](#), *Reuters*

[FDA Guidance Establishes Specific Recommendations for Ear Infection Therapies](#), *Regulatory Focus*

[CFTC chief expects margin rules by early 2013](#), *Reuters*

[Congress may revisit ambiguous position limits law: Kemp](#), *Reuters*

[Amex to pay \\$112.5 million for violating consumer protection laws](#), *Washington Post*

[How Joseph Stiglitz Misread the Risks at Fannie Mae](#), *WSJ Blogs*

[FDA Guidance Establishes Specific Recommendations for Ear Infection Therapies](#), *Regulatory Focus*

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[DHS to Offer Deportation Guidance on Same-Sex Couples](#), *RegBlog*

[AIG may come under much more U.S. regulatory oversight](#), *Reuters*

[Analysis: After five-year push, is it RIP for commodity limits?](#), *Reuters*

[CFTC's Gensler to push on with position limits](#), *Reuters*

[AIG says government may designate company as large institution requiring greater](#)

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[oversight](#), *Washington Post*

[AIG Advances in 'Systemically Important' Review Process](#), *Wall Street Journal*
[Department of Justice Seeks Dismissal of Whistleblowers' Case Against FDA](#),
Regulatory Focus

[FDA Cracks Down on Spurious Marketing Claims for Cosmetic Products](#), *Regulatory Focus*

[Federal court in Va. approved \\$1.5B Abbott Laboratories settlement over Depakote](#),
Washington Post

[Internet companies oppose update of child privacy law](#), *Washington Post*

[Market Complexity Cited in Snafus](#), *Wall Street Journal*

[Obama-era regulations less plentiful than portrayed, report says](#), *Government Executive*

[FDA Found Food Safety Problems At Chamberlain Farms Before Recall](#), *Food Safety News*

[Regulator Urges Appeal of Dodd-Frank Court Ruling](#), *NYT Dealbook*

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[FOIA Requests Go Online](#), *RegBlog*

[Abbott Hit with \\$1.5 Billion Fine for Off-Label Marketing](#), *Regulatory Focus*

[The Entire Oil And Gas Industry Is Watching A Tiny Town In Wyoming](#), *Business Insider*

[FTC charges 14 firms with tricking consumers into paying for fixes to computer problems](#), *Washington Post*

[Dish Network slams FCC on slow wireless approval](#), *Washington Post*

Rulemaking

Department of Energy

DOE Finalizes \$881 Million Direct Final Dishwasher Efficiency Rule Despite Receipt of Adverse Comment

The Department of Energy finalized a [direct final rule](#) requiring all standard residential dishwashers manufactured in (or imported into) the United States after May, 2013 to use fewer than 307 kilowatt hours of energy per year and limiting the amount of water used per cycle to five gallons from the current limit of 6.5 gallons. These standards are intended to reduce American energy consumption, decrease global greenhouse gas emissions, and lower American consumers' energy bills long-term. The direct final rule is expected to raise the price of standard residential dishwashers by about \$44 per unit, taking consumers nearly 12 years of use to recover the higher upfront product cost through lower energy bills. However, separate estimates put the average lifespan of a dishwasher at between 9 and 16 years, with a mean of 12 years, making this energy efficiency standard uneconomical for many Americans who will purchase appliances after the effective date of the rule. Further, the payback period for the elderly and lower-income Americans is even higher, 13.3 years and 13.6 years respectively, reducing the likelihood that individuals within these subgroups will reap energy savings from this rule.

The Department estimates that manufacturers of these appliances will lose up to 13.3 percent of industry net present value, or \$84.6 million, in complying with this rule. Benefits of the rule listed by DOE include reduced operating costs over time, and the global value of reduced carbon emissions as calculated using the social cost of carbon. The Department puts the total cost of the standards at between \$522 million and \$881 million dollars at discount rates of 7 and 3, respectively. More information and analyses can be found in the rule's technical support document.

DOE is promulgating this rule under the statutory authority granted by the Energy Independence and Security Act (EISA). EISA allows some agencies to issue direct final rules, which do not undergo the traditional rulemaking process, in certain circumstances to set energy efficiency standards. Prior to this, direct final rules were traditionally used only to alter definitions or make technical corrections to previous rulemakings. The Regulatory Studies Center submitted a [public comment](#) on this direct final rule examining of the Department's economic analyses.

DOE Finalizes \$859 Million Direct Final Clothes Washer Rule Despite Receipt of Adverse Comment

The Department of Energy finalized a [direct final rule](#) setting energy efficiency standards for residential clothes washers, despite the receipt of some adverse comment. According to Department estimates, these standards will cause manufacturers of clothes washers to lose 33 percent of their industry net present value, approximately \$859 million. Based on interviews conducted with clothes washer manufacturers, the Department does not anticipate any plant closures or job losses to result from these standards. DOE uses consumer energy savings over time and global greenhouse gas reductions as monetized benefits to justify the costs incurred by this rule.

DOE is promulgating this rule under the statutory authority granted by the Energy Independence and Security Act (EISA). EISA allows some agencies to issue direct final rules, which do not undergo the traditional rulemaking process, in certain circumstances to set energy efficiency standards. Prior to this, direct final rules were traditionally used only to alter definitions or make technical corrections to previous rulemakings.

National Credit Union Administration

NCUA Proposes Rule Increasing Payday Alternative Loans by Credit Unions

The National Credit Union Administration published a [proposed rule](#) amending its previous rules on payday alternative loans (PALs), loans that are intended to offer an alternative to “predatory” payday loans. “Historically, payday loans have been made by lenders who charge high fees and often engage in predatory lending practices. While some payday loan borrowers use these loans sparingly, many find themselves in a cycle of having their loans “rollover” repeatedly, and they incur more high fees as a result. These borrowers are often unable to break free of this unhealthy dependence on payday loans.” It is NCUA’s intention that this proposed rule will make PALs a viable alternative to payday loans, and will make it more likely that federal credit unions offer PALs.

“The Board intends to improve the regulation to encourage more federal credit unions (FCUs) to offer PAL loans and believes it may be necessary to amend the regulation... To help FCUs afford to make PAL loans, which tend to have higher rates of default than mainstream loan products, the PAL rule permits FCUs to charge a higher rate of interest for PAL loans if certain conditions are met.” Currently FCUs are permitted to charge interest rates 1,000 basis points above the interest rate set by NCUA for non-PAL loans (28% interest), so long as certain conditions are met. NCUA is considering a rule that would increase the application fees for customers applying for a PAL, such that FCUs could recoup their costs on defaulted PALs. [Comments](#) are due on November 26th.

Federal Deposit Insurance Corporation

FDIC, Fed, OCC Reopen Comment Period for Proposed Margin and Capital Requirements Rule

The Federal Deposit Insurance Corporation—in conjunction with the Federal Reserve Board, the Office of the Comptroller of the Currency, the Farm Credit Administration, and the Federal Housing Finance Agency—[announced](#) a reopening of the public comment period for a [proposed margin rule](#) that was first proposed in May of 2011. The original proposed rule would “establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator, as required under sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Sections 731 and 764 of the Dodd-Frank Act add a new section 4s to the Commodity Exchange Act and a new section 15F to the Securities Exchange Act of 1934, respectively, which require the registration and regulation of swap dealers and major swap participants and security-based swap dealers and major security-based swap participants (collectively, swap entities). For certain types of swap entities that are prudentially regulated by one of the Agencies, sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing: (i) Capital requirements and (ii) initial and variation margin requirements on all non-cleared swaps and non-cleared security-based swaps.” [Comments](#) are now due on November 26th.

Agencies

Office of the U.S. Trade Representative

USTR Seeks Comment on Promoting EU – U.S. Regulatory Compatibility

The Office of the U.S. Trade Representative published a [notice](#) promoting regulatory compatibility between the United States and the European Union (EU) and soliciting comments from the public on how to further this goal. “The U.S. Government and European Commission (EC) share the goal of reducing excessive regulatory costs, unjustified regulatory differences, and unnecessary red tape while respecting each other’s right to protect public

health, safety, welfare, and the environment. Promoting this goal will help businesses to grow, create jobs, and compete globally. Enhanced cooperation will also help the United States to achieve its regulatory objectives in a more effective and efficient manner. The United States and EC have agreed to solicit comments from the public on how to promote greater transatlantic regulatory compatibility generally. Concrete ideas on how greater compatibility could be achieved in a particular economic sector are also requested.”

This request for comment follows the President’s May 1st Executive Order 13609 “Promoting International Regulatory Cooperation,” which calls for domestic regulatory agendas to be responsive to the international regulatory climate, including by streamlining regulatory requirements and adapting standards already required by foreign regulatory agencies where multiple standards cause unnecessary burdens. [Comments](#) are due on October 31st.

Export-Import Bank

Ex-Im Bank is Reviewing Draft Economic Impact Procedures

The Export-Import Bank published an [announcement](#) that it is reviewing its economic impact procedures, and is making a [draft](#) of the proposed economic impact procedures available to the public. The Ex-Im Bank’s Economic Impact Charter requires that the Bank “(a) identify applications requesting Ex-Im Bank support that may be associated with subsequent “second-stage” trade flows that might adversely affect some component of U.S. industry; and (b) develop technical mechanisms and procedures which can provide an empirical framework for making extremely sensitive and highly arguable decisions¹ as to whether the Bank should (i) support the export effort of one sector that may have subsequent “second-stage” adverse impact on another sector or (ii) simply withdraw from the export opportunity.” In response, the Ex-Im Bank develops explicit procedures for determining whether accompanying second-stage repercussions are so adverse to a segment of U.S. industry “that any degree of government association with new foreign production would likely be perceived as threatening the livelihood of the affected company, plant or group of employees.” Following such a determination, Ex-Im would decide to reject the application for financial support or pure cover. [Comments](#) are due by email on 5:00pm Eastern Time October 11th.

Ex-Im Bank Announces Application for \$100 Million to Fund Export of Boeing Aircraft to Indonesia

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 Boeing aircraft being leased in Indonesia. According to the notice published in the Federal Register, the exported aircraft is intended to provide airline service between Indonesia and other countries. [Comments](#) are due on October 22nd.

Commodity Futures Trading Commission

CFTC, SEC Reopen Comment Period for Stable Value Contract Study

The Commodity Futures Trading Commission and the Securities Exchange Commission [published notice](#) that they are reopening the comment period for a study required by the Dodd-Frank Act to determine whether stable value contracts (“SVCs”) should be included in the definition of a swap. “The study is required by Section 719(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The original comment period for the study closed on September 26, 2011. The Commissions did not complete the study pending adoption of final rules further defining the terms “swap” and “security-based swap”... Given the regulatory developments since the initial request for comment was issued, specifically the adoption of final rules further defining the terms “swap” and “security-based swap,” the Commissions believe that it would be appropriate to solicit additional public comments on the study of SVCs required by Section 719(d) of the Dodd-Frank Act.” [Comments](#) are due on November 1st.

Department of Transportation

FTA Announces 27 Clean Fuels Grant Program Projects for \$51.5 Million

The Federal Transit Administration [announced](#) the award of \$51.5 million in Clean Fuels Grant Program funds to 27 projects with funding levels ranging from \$34,000 to almost \$5 million. “As outlined in the [FTA’s Notice of Funding Availability], the Section 5308 funds would be awarded to fund projects in non-attainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide and supports emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies. Projects in attainment areas were also eligible to apply and if funding was available, would be funded with Section 5309 Bus and Bus Facilities funds.” [Comments](#) on this notice are being accepted.