

Regulation Digest Weekly

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Opinion

- The SEC's Budget Blues Are Something to Celebrate
- The toothless watchdog FEC
- Happy New Year? Fiscal Cliff, Meet The Costberg
- The EPA's Tainted Fracking Tests
- EPA costs US economy \$353 billion per year

Marketplace of Ideas

American Action Forum

- The Week In Regulation: December 17-21, *Sam Batkins*
- Flight Hours Rule Fails to Address Safety, *Carlos Bonilla*
- The Week in Regulation: December 24-28, *Sam Batkins*

Coalition for Sensible Safeguards

- Sensible Safeguards: The Gift that Keeps on Giving

Competitive Enterprise Institute

- Regulatory Report Card: Environmental Protection Agency, *Ryan Young*
- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- EPA Lacks Transparency, Is Far Costlier Than Other Agencies, *CEI Staff*
- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 12/24/12, *Leland Beck*
- 4th Circuit Reinforces APA Requirements in Rejecting Alien Worker Wage Appeal, *Leland Beck*
- OMB Releases Fall 2012 Unified Agenda & Regulatory Plan: Meaning what?, *Leland Beck*

Government Accountability Office

- Agency Faces Challenges in Responding to New Product Risks, *Alicia Cackley*

Feature Story

Fed Board Proposes Enhanced Standards for Foreign Banks & Nonbank Financial Companies

The Federal Reserve Board published a [proposed rule](#) establishing certain prudential standards for foreign banks and foreign nonbank financial companies that operate within the United States. The Dodd-Frank Act addressed regulation of foreign banks and nonbank financial companies because of the perceived risk posed by these activities to the United States and to the global financial market: “While some foreign banking organizations were aided by their ability to move liquidity freely during the crisis, this model also created a degree of cross-currency funding risk and heavy reliance on swap markets that proved destabilizing. In many cases, foreign banking organizations that relied heavily on short-term U.S. dollar liabilities were forced to sell U.S. dollar assets and reduce lending rapidly when that funding source evaporated. This deleveraging imposed further stress on financial market participants, thereby compounding the risks to U.S. financial stability.”

Foreign banks and nonbank financial companies currently are supervised under standards comparable to those applied to domestic banks and nonbank financial companies, although some foreign financial holding companies are not required to meet the Board’s capital standards. The proposed rule would establish new standards intended to stabilize foreign banking operations in the U.S. “The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.” The Board estimates that the proposed rule would incur 58,660 hours of annual paperwork burden for affected entities. [Comments](#) are due on March 31st.

In the News

12/26/12

[New fees undermine consumers’ ability to compare air fares; government weighs regulations](#), *Washington Post*

[New US vehicle standards to help prevent tragic ‘backing accidents’ face years of delays](#), *Washington Post*

[SAC insider trading probe: Advisers had earlier knowledge of FDA drug rejection](#), *Washington Post*

[Rejection of InterMune’s Drug Told Early to FDA Advisers](#), *Bloomberg*

12/27/12

[Obama’s top environmental watchdog, EPA chief Lisa Jackson, resigns after nearly 4 years](#), *Washington Post*

[FINRA fines 5 big banks \\$4.5 million over fee reimbursement related to California lobby group](#), *Washington Post*



Harvard Law Review

▪ The Office of Information and Regulatory Affairs: Myths and Realities, *Cass Sunstein*

The Heritage Foundation

▪ The 10 Worst Regulations of 2012, *James Gattuso & Diane Katz*

The Mercatus Center

▪ A Process for Cleaning up Federal Regulations, *Joshua Hall*

OMB Watch

▪ Regulatory Delay in 2012
▪ Ghosts of Christmases Past, Present, and Yet-to-Come, *Katherine McFate*

Penn Program on Regulation

▪ The Regulatory Week in Review: December 21, 2012, *Mima Mohammed*
▪ The Regulatory Blame Game, *Cary Coglianese*
▪ Regulatory News: Year in Review, *RegBlog Staff*
▪ The Regulatory Week in Review: December 28, 2012, *Mima Mohammed*
▪ When It Comes to Regulation, Europe is the New United States, *Ted Oxholm*
▪ Regulatory Analysis: Year in Review, *RegBlog Staff*
▪ Regulatory Opinion: Year in Review, *RegBlog Staff*
▪ FTC Launches Investigation into Data Brokerage Companies, *Lauren-Kelly Devine*
▪ Three Thousand Whistleblowers Alert SEC to Wrongdoing, *Aaron Ellias*

[EPA head Lisa P. Jackson to resign post](#), *Washington Post*
[Factbox: EPA chief Lisa Jackson sought to tighten pollution rules](#), *Reuters*
[Trade groups appeal U.S. decision on CFTC mutual funds rule](#), *Reuters*
[EPA Chief Jackson to Leave U.S. Agency Early in 2013](#), *Bloomberg*
[CFTC Mutual Fund Rule Appeal Sought by Business Groups](#), *Bloomberg*
[High-Speed Traders Race to Fend Off Regulators](#), *Wall Street Journal*

12/28/12

[FDA approves previously rejected anticlotting drug Eliquis from Pfizer, Bristol-Myers Squibb](#), *Washington Post*
[After Jackson, EPA faces decisions on U.S. fracking boom](#), *Reuters*
[Pfizer, Bristol-Myers Blood Thinner Approved by U.S. FDA](#), *Bloomberg*
[FCC to Propose Cuts in Prisoners' Rates for Phone Calls](#), *Bloomberg*
[Exchange Regulation Needs Review, Credit Suisse Says](#), *Bloomberg*
[FCC Eases Licensing Rules for Airliner Internet Access](#), *Bloomberg*
[Muni-Bond Settlement, Empire State, CFTC Rule: Compliance](#), *Bloomberg*

12/29/12

[New rules on debit-card processing start to pinch small banks and credit unions](#), *Washington Post*

12/30/12

[New Power-Plant Air Rules Fall to Next Leader at EPA](#), *Wall Street Journal*

12/31/12

[EPA faces legal battles, might take easy confirmation road](#), *Reuters*
[Foot-Dragging USDA May Help Consumers as \\$7 Milk Looms](#), *Bloomberg*

1/1/13

[Supreme Court to hear Gabelli appeal of SEC civil fraud penalties](#), *Washington Post*
[Deal means agencies won't see immediate cuts, but future is unclear](#), *Washington Post*
[Drawing Up New Mortgage Rules Proves a Balancing Act](#), *Wall Street Journal*

1/2/13

[Flurry of Year-End Drug Approvals Makes 2012 Best Year for Approvals Since 1997](#), *Regulatory Focus*
[The Top 25 Regulatory News Stories of 2012 \(US Edition\): #25-11](#), *Regulatory Focus*
[FDA, HHS Release Regulatory Agenda for 2013](#), *Regulatory Focus*

Rulemaking

Commodity Futures Trading Commission

CFTC Rule Requires Recordkeeping for Texts, IM, Email, Oral Communications Leading up to Commodity Interest Transactions

The Commodity Futures Trading Commission published a [final rule](#) amending its existing rules to incorporate swaps-records of transactions. “This final rulemaking requires futures commission merchants (“FCMs”), certain introducing brokers (“IBs”), retail foreign exchange dealers (“RFEDs”) and certain other registrants that are members of designated contract markets (“DCMs”) or swap execution facilities (“SEFs”) to record all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest, whether communicated by telephone, voicemail, mobile device, or other digital or electronic media, and to keep those records for one year. This final rule also requires FCMs, IBs, RFEDs, and all members of a DCM or SEF to record and keep all written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a transaction in a commodity interest or related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media, and to keep those written records for five years.”



Department of Justice

DEA Proposes Flexibility for Disposal of Controlled Pharmaceutical Substances

The Drug Enforcement Administration published a [proposed rule](#) that would change the requirements for the disposal of controlled substances, allowing law enforcement agencies, pharmacies, retailers, and distributors to administer mail-back programs and maintain receptacles for the collection of unused controlled substances. Law enforcement agencies would additionally be permitted to voluntarily conduct take-back events. Currently, end users are permitted to dispose of unused, unwanted, or expired controlled substances by flushing or by surrendering substances to law enforcement or the DEA. These requirements increase the difficulty of disposal, leading to the buildup of unused, unwanted, or expired controlled substances in medicine cabinets, increasing availability for misuse, abuse, and accidental ingestion. “These proposed regulations expand the entities to which ultimate users may transfer unused, unwanted, or expired controlled substances for the purpose of disposal, as well as the methods by which such controlled substances may be collected.” [Comments](#) are due on February 19th.

Department of Energy

DOE Receives Petition to Reconsider Dishwasher Energy Efficiency Rule

The Department of Energy [published](#) its receipt of a petition filed by the Association of Home Appliance Manufacturers (AHAM) requesting a reconsideration of DOE’s standard test procedures for dishwashers, dehumidifiers, and conventional cooking products. “Specifically, AHAM requested that DOE stay the effectiveness of the test procedure final rule and final standards rule until DOE either: Revises the standards in the final standards rule to account for the impact on measured energy resulting from test procedure amendments to measure fan-only mode and standby and off mode energy use; or delays requirements regarding measurement of fan-only mode and standby and off mode energy use until promulgation of a revised standard for dishwashers. DOE seeks comment on whether to grant the petition and proceed with a rulemaking on this matter.” [Comments](#) are due on January 30th.

Consumer Financial Protection Bureau

CFPB Rule Exempts More Banks, Credit Unions from Regulation C Data Requirements

The Consumer Financial Protection Bureau published a [final rule](#) increasing the asset size exemption threshold allowing more banks, savings associations, and credit unions to withhold from collecting home mortgage disclosure (Regulation C) data. Regulation C requires metropolitan-area mortgage lenders to collect data on their housing-related lending activities and report this data annually to federal agencies, in addition to making this information publicly available. In keeping with increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), the Bureau is increasing the exemption threshold to \$42 million in assets, up from \$41 million last year. “The adjustment is based on the 2.23 percent increase in the average of the CPI-W for the 12-month period ending in November 2012. Therefore, banks, savings associations, and credit unions with assets of \$42 million or less as of December 31, 2012, are exempt from collecting data in 2013.”

CFPB Proposes Rule Amending Electronic Fund Transfer Requirements (Regulation E)

The Consumer Financial Protection Bureau published a [proposed rule](#) that would amend the Bureau’s Regulation E, which implements the Dodd-Frank Act regarding remittance transfers. “The proposal addresses three narrow issues. First, the proposal would provide additional flexibility regarding the disclosure of foreign taxes, as well as fees imposed by a designated recipient's institution for receiving a remittance transfer in an account. Second, the proposal would limit a remittance transfer provider's obligation to disclose foreign taxes to those imposed by a country's central government. Third, the proposal would revise the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information, and, in particular, when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. The Bureau is also proposing to temporarily delay and extend the effective date of the rule.” [Comments](#) are due on January 30th.

Environmental Protection Agency

EPA to Determine Whether Commercial Building Renovations Pose Lead-Based Paint Hazards

The Environmental Protection Agency published a [proposed rule](#) announcing the Agency’s intent to accept data and comments on whether the renovation and repair of public and commercial buildings pose lead-based paint hazards to the public. “In 2010, EPA issued an advance notice of proposed rulemaking (2010 ANPRM) concerning renovation, repair, and painting activities on and in public and commercial buildings. EPA is in the process of determining whether these activities create lead-based paint hazards, and, for those that do, developing



certification, training, and work practice requirements as directed by the Toxic Substances Control Act (TSCA). This document opens a comment period to allow for additional data and other information to be submitted by the public and interested stakeholders. This document also provides advance notice of EPA's plan to hold a public meeting on June 26, 2013.” [Comments](#) are due on March 1st.

EPA Amends NESHAPs Rule for Chemical Manufacturing Area Sources, Lifts Stay

The Environmental Protection Agency published a [final rule](#) amending the Agency’s existing National Emission Standards for Hazardous Air Pollutants (NESHAPs) for chemical manufacturing area sources, lifting a stay on the rule’s implementation. The Agency had stayed implementation of the 2009 rule through December 24th, 2012, in response to a petition from the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates. “In this action, the EPA is finalizing those amendments, lifting the stay of the title V permit requirement issued on March 14, 2011, and lifting the stay of the final rule issued on October 25, 2012. In addition, this final action includes revisions to the EPA's approach for addressing malfunctions and standards applicable during startup and shutdown periods. This final action also includes amendments and technical corrections to the final rule to clarify applicability and compliance issues raised by stakeholders subject to the 2009 final rule. The revisions to the final rule do not reduce the level of environmental protection or emissions control on sources regulated by this rule but provide flexibility and clarity to improve implementation. This action also extends the compliance date for existing sources and the EPA's final response to all issues raised in the petition for reconsideration.”

Agencies

Securities and Exchange Commission

SEC Announces February 5th Roundtable to Discuss Impacts of Tick Sizes on Small Businesses

The Securities and Exchange Commission [announced](#) a February 5th roundtable from 10:00am – 4:00pm to discuss the impact of tick sizes on small and mid-sized companies, market professionals, investors, and U.S. securities markets. A tick size is the smallest increment by which the price of an exchange-traded instrument, such as a stock or a futures contract, can move. “The roundtable will consist of three panels. The participants in the first panel will address the impact of tick sizes on small and middle capitalization companies, the economic consequences (including the costs and benefits) of increasing or decreasing minimum tick sizes, and whether other policy alternatives might better address the concerns animating Section 106(b) of the JOBS Act. The participants in the second panel will address the impact of tick sizes on the securities market in general, including what benefits may have been achieved, and what, if any, negative effects have resulted. The participants in the third panel will address potential methods for analysis of the issues, including whether and how to conduct a pilot for alternative minimum tick sizes.”

Department of Commerce

NOAA Seeks Comments on Draft NOAA Research and Development Portfolio Review Task Force Report

The National Oceanic and Atmospheric Administration’s Science Advisory Board (SAB) published a [notice](#) announcing that the Administration is now accepting comments from the public on the draft report of the SAB Research and Development Portfolio Review Task Force (PRTF). “The PRTF is charged with providing recommendations on NOAA's current and future scientific research; this draft report was prepared in response to a NOAA request in November 2011 for the SAB to conduct a needs-based review and prioritization of NOAA's research and development (R&D) portfolio. The PRTF's review was to include identification of gaps and areas appropriate for consolidation with on-going efforts strongly linked to NOAA's current Strategic Plan. NOAA, the SAB, and the PRTF recognize the high likelihood of constrained financial resources in the coming years and believe the PRTF's review will provide information that can be used to assist NOAA in timely planning.” [Comments](#) are due on January 23rd.

Export-Import Bank

Ex-Im Bank Receives Application for \$448 Million Loan Guarantee to Support Exports to Singapore

The Export-Import Bank published a [notice](#) announcing the receipt of an application for a \$448 million financial guarantee to “support the export of approximately \$542 million in U.S. semiconductor manufacturing equipment and services to a (non-DRAM) semiconductor manufacturing facility in Singapore. The U.S. exports will enable the foreign buyer to manufacture about 80,000 wafers of 300mm NAND Flash memory semiconductors per month. Available information indicates that this new foreign production will be consumed globally.” [Comments](#) are due on January 14th.

