

Regulation Digest Weekly

April 17th, 2013

Vol. 2 No. 16

Opinion

- Does Congress Have a Clue on Insider Trading?
- Go Simple
- Can Dodd-Frank fix mortgage servicing if we don't know what went wrong?
- The complex task of simplifying government
- It's Time To Repeal The Renewable Fuel Standard

Marketplace of Ideas

American Action Forum

- The Week in Regulation: April 8-12, *Sam Batkins*
- The Week Ahead in Regulations: April 15-19, *Dan Goldbeck*

American Enterprise Institute

- Regulating Risk, *Arnold Kling*

Center for Effective Government (Formerly OMB Watch)

- President Obama's Budget Proposal Assumes Flawed Poultry Inspection Rule Will Be Finalized, *Katie Greenhaw*

Center for Progressive Reform

- President's Proposed Budget Assumes Savings from Finalizing Proposed USDA Poultry Inspection Rule That Would Be Harmful to Food Safety, Workers, and the Environment, *Matt Shutz*
- Testimony before the Committee on Energy and Commerce Subcommittee on Energy and Power U.S. House of Representatives Legislative Hearing on The Energy Consumers Relief Act of 2013, *Rena Steinzor*

Competitive Enterprise Institute

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

Federal Regulations Advisor

- Monday Morning Regulatory Review – 4/15/13, *Leland Beck*

Feature Story

CFTC Finalizes Inter-Affiliate Swap Clearing Exemption

The Commodity Futures Trading Commission published a [final rule](#) exempting certain inter-affiliate swaps from clearing requirements under the Commodity Exchange Act (CEA) as amended by the Dodd-Frank Act. Prior to the Dodd-Frank Act, swaps were not required to be cleared; however, the Dodd-Frank Act preserved the Commission's authority to “promote responsible economic or financial innovation and fair competition” by exempting any transactions, including swaps, from certain CEA provisions (including clearing requirements). This rule specifically would exempt swaps between certain affiliated entities within a corporate group, and would require instead that “inter-affiliate swaps [be] subject to a centralized risk management program reasonably designed to monitor and manage the risks associated with the inter-affiliate swaps.”

According to Commissioners [Sommers and O'Malia](#): “Inter-affiliate swaps enable a corporate group to aggregate risk on a global basis in one entity through risk transfers between affiliates. Once aggregated, commercial risk of various affiliates is netted, thereby reducing overall commercial and financial risk. This practice allows for more comprehensive risk management within a single corporate structure.” In the notice of proposed rulemaking, the Commission stated that the rule likely “will be used for inter-affiliate swaps between two financial entities that do not qualify for the end-user exception or for swaps involving a non-financial entity that do not qualify for the end-user exception because the swaps do not hedge or mitigate commercial risk.”

In the News

4/10/13

- [Banks barreling into the prepaid debit card market](#), *Washington Post*
- [Fed officials at odds over when to cut bond buys](#), *Reuters*
- [Regulators Feeling 'Social' Pressure](#), *Wall Street Journal*
- [Budget proposal signals action on contentious poultry inspection rule](#), *The Hill*
- [FDA proposes increased fees to finance food safety](#), *The Hill*
- [Nominee To Head EPA Finds Muted Opposition](#), *Wall Street Journal*
- [Seeking Relief, Banks Shift Risk to Murkier Corners](#), *New York Times*
- [Twenty-nine senators sign onto bill expanding EPA authority](#), *The Hill*
- [Obama budget claims first-term regulations created \\$91B in benefits](#), *The Hill*
- [EPA Draft Stirs Fears of Radically Relaxed Radiation Guidelines](#), *Forbes*

4/11/13

- [Feds, SEC file criminal, civil insider trading charges against former KPMG partner](#), *Washington Post*
- [Gina McCarthy, nominee to head EPA, pledges common-sense approach to climate change](#), *Washington Post*
- [FDA finds widespread safety issues at compounding pharmacies](#), *Washington Post*



Federalist Society

- The Consumer Finance Protection Bureau: Regulatory Overreach?, *Peggy Little*
- Reducing Regulatory Burdens – One Step Forward & Two Steps Back?, *Susan E. Dudley*

The George Washington University Regulatory Studies Center

- The Unbearable Lightness of Being Regulated, *Susan E. Dudley*

Government Accountability Office

- Some Consumer Fees Have Increased, *Alicia Cackley*
- FAA Efforts Have Improved Safety, but Challenges Remain in Key Areas, *Gerald Dillingham*
- Federal Support for Renewable and Advanced Energy Technologies, *Franklin Rusco*
- Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders, *Lawrance Evans*

Heritage Foundation

- The Outrageous Statements of Obama's EPA Nominee, *Rachael Slobodien*
- Boxer–Sanders Carbon Tax Would Empower EPA to Crush Booming Energy Economy, *Derrick Morgan*
- EPA Administrator Nominee Gina McCarthy: In Her Own Words, *Nicolas Loris & Katie Tubb*

Penn Program on Regulation

- Which Federal Agency Can Police Futures Markets?, *Eric Lorber*
- The Regulatory Week in Review: April 12, 2013, *RegBlog*
- Substance or Politics: What Dictates Obama's Regulatory Agenda?, *Stuart Shapiro*
- CFPB Debuts an Expanded Consumer Complaint Database, *Lauren-Kelly Devine*
- SEC Guidance on Social Media and Business Disclosures Stirs Controversy, *Margot Campbell*

Victims of Government

- Does Dry Desert Land Fall under the Clean Water Act?

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[Proposal would create online higher ed common market, set baseline consumer protections](#), *Washington Post*

[The FCC faces questions and challenges as it awaits a new chairman](#), *Washington Post*

[Republicans accuse SEC of dragging its feet on JOBS Act](#), *Reuters*

[Konczal: Dodd-Frank Reforms Get Roughed Up in Court](#), *Bloomberg TV*

[JPMorgan Analysts Say Big Investment Banks Are 'Uninvestable'](#), *Bloomberg*

[Target-Date Fund Rule Revisions Urged by SEC Advisory Committee](#), *Bloomberg*

[OCC Asks for Enforcement Powers Against Banks' Consultants](#), *Bloomberg*

[EPA Nominee McCarthy Vows 'Common Sense' Actions on Climate](#), *Bloomberg*

[SEC Asks Judge to Allow Deloitte Subpoena Suit to Proceed](#), *Bloomberg*

[Fannie Mae Regulator Extends HARP Refinance Program Through 2015](#), *Bloomberg*

[SEC's Crowdfunding Delay Faulted for Stunting Businesses' Growth](#), *Bloomberg*

[Obama Trims Details on Health Law as Exchange Cost Rises](#), *Bloomberg*

[House panel advances bill giving Congress veto power over regulations](#), *The Hill*

[SEC accused of dawdling on JOBS Act enabling rules](#), *The Hill*

[Drug Enforcement Agency bans 'bath salts'](#), *The Hill*

[Tensions flare as lawmakers mark up regulation bill](#), *The Hill*

[EPA proposes loosening natural-gas storage standards](#), *The Hill*

[GOP bill would ease pinch of Dodd-Frank law on credit unions](#), *The Hill*

[FDA on hot seat over spinal meningitis outbreak](#), *The Hill*

[SEC names new economic analysis coordinator](#), *The Hill*

[Business groups push for regulatory transparency](#), *The Hill*

4/12/13

[JPMorgan profits soar, but revenue slips; CEO Dimon says there is 'work to do' on compliance](#), *Washington Post*

[Bank Risk Models to Face Further Basel Probe on Capital Concerns](#), *Bloomberg*

[High-Speed Trader Said to be Considered for SEC Post](#), *Bloomberg*

[Checks Find Unsafe Practices at Compounding Pharmacies](#), *New York Times*

[Foreclosure Review Program's Regulators Take Pounding From Elizabeth Warren, Sherrod Brown](#), *Huffington Post*

[High-speed trading exec in mix for SEC job](#), *The Hill*

[FDA will reevaluate heart risks of Avandia, former blockbuster diabetes drug from Glaxo](#), *Washington Post*

[Industry backs GOP bill to constrain EPA](#), *The Hill*

[GOP lawmaker targets 'sue and settle' regulations](#), *The Hill*

[Parents to Obama: Order rearview cameras on cars](#), *The Hill*

[E.P.A. Will Delay Rule Limiting Carbon Emissions at New Power Plants](#), *New York Times*

4/13/13

[Obama budget opens new battle over funding for financial regulators](#), *The Hill*

4/14/13

[Meat packers say Obama administration labeling rules will cripple industry](#), *The Hill*

4/15/13

[Report: Compounding pharmacies go untracked](#), *Washington Post*

[Wockhardt Falls After Report U.S. Regulator Seeks Clarifications](#), *Bloomberg*

[FCC Chairman Genachowski to join Aspen Institute as senior fellow](#), *Washington Post*

[Fed proposes bank fee to cover cost of regulation](#), *Reuters*

[Fed, FDIC Ask Banks for More Details on Living Wills](#), *Wall Street Journal*

[FAA orders no-fly zone over Boston Marathon explosion site](#), *Los Angeles Times*

[Group launches campaign to chronicle 'executive overreach'](#), *The Hill*



THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC
REGULATORY STUDIES CENTER

[Lawmakers: FDA received complaints about firms tied to meningitis outbreak](#), *The Hill*

[EPA reports decline in greenhouse gas emissions](#), *The Hill*

[FDA tries to quell public uproar over new milk labels](#), *The Hill*

[FDA proposes requiring mineral in infant formula](#), *The Hill*

4/16/13

[France drowning in rules and regulations, critics say](#), *Washington Post*

[Owner of potentially dangerous W.Va. coal slurry dam ignoring feds' lawsuit to shut it down](#), *Washington Post*

[As OxyContin patent expires, FDA says generic versions must contain changes to thwart abuse](#), *Washington Post*

[EPA: 2 Pa. natural gas companies agree to improve safety standards, training](#), *Washington Post*

[Lawmakers say FDA missed key opportunities to shut down pharmacy linked to meningitis outbreak](#), *Washington Post*

[House Republicans fault FDA on meningitis outbreak](#), *Washington Post*

[Republicans press Fed on when regulators can break up a bank](#), *Reuters*

[FDA acts quickly on blocking OxyContin generics](#), *The Hill*

[Produce trade group taps FDA advisor for food safety job](#), *The Hill*

[Bankers, lawmakers push back against community bank regs](#), *The Hill*

[Watchdogs press new SEC chairwoman to expose corporate cash in politics](#), *The Hill*

[FDA Bans Generics of Purdue's Older OxyContin Painkiller](#), *Bloomberg*

[FDA Can Be More Aggressive With Pharmacies, Hamburg Says](#), *Bloomberg*

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[W.Va. regulators working on plan to de-water dangerous coal slurry dam feds want shut down](#), *Washington Post*

[CFTC Is Looking at Gold, Silver Moves, Chilton Says](#), *Bloomberg TV*

[Fed's Stein Backs Using Surcharges to Reduce Risk From Banks](#), *Bloomberg*

[Cigars threatened with regulations](#), *The Hill*

[Ex-consumer bureau official to consult for banks](#), *The Hill*

Rulemaking

Commodity Futures Trading Commission

CFTC Finalizes Rule Delegating Authority to Disclose Confidential Information to Registered Entities

The Commodity Futures Trading Commission published a [final rule](#) delegating its authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization. The Commodity Exchange Act (CEA) gives CFTC the authority to communicate to any registered entity the “full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of [the CEA].” The definition of “registered entity” is being clarified and expanded in this rulemaking to allow CEA to disclose confidential information to more market participants. “In order to mitigate market disruptions, ensure the best interests of market participants, and to effectuate any purpose of the CEA as amended, the Commission is revising regulation 140.72 to permit the provision of critical information to all of these registered entities. Presently, the delegation of authority in regulation 140.72 provides certain employees of the Commission with the authority to disclose confidential information only to any contract market, registered futures association, or certain self-regulatory organizations. With this revision of regulation 140.72, the present delegation of authority will be expanded to include all registered entities as defined in the CEA and as permitted by section 8a(6) of the CEA.”



Environmental Protection Agency

EPA Proposes New NESHAPs for Mineral Wool, Wool Fiberglass Manufacturing

The Environmental Protection Agency published a [proposed rule](#) establishing new National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for the manufacture of mineral wool and wool fiberglass, which are used in insulation. According to the proposed rule, “exposure to the HAPs [hazardous air pollutants] emitted by wool fiberglass manufacturing can cause reversible or irreversible health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects... Chromium emissions are of particular concern. The effects of inhaling chromium depend on whether the oxidation state of the metal is trivalent or hexavalent. Trivalent chromium is substantially less toxic than hexavalent chromium. Both types of chromium irritate the respiratory tract. Hexavalent chromium inhalation is associated with lung cancer, and EPA has classified it as a Class A known human carcinogen, per EPA's classification system for the characterization of the overall weight of evidence for carcinogenicity.” The cost of the rule tallies to \$7,600 per pound of chromium pollution avoided. [Comments](#) are due on May 30th.

EPA Revisits New Source Performance Standards for Oil and Natural Gas Sector

The Environmental Protection Agency published a [proposed rule](#) revisiting portions of the Agency's final rule, *Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews*. In response to petitions for reconsideration, EPA is proposing a change to the definition of “storage vessels” and is revisiting the implementation date for the storage vessel provisions. “The impacts of today's proposed revisions on the costs and the benefits of the final rule are minor but cost-saving. We expect that affected facility owners and operators will install and operate the same or similar control technologies to meet the proposed revised standards in this notice as they would have chosen to comply with the standards in the August 2012 final rule, and revisions to the rule will not significantly increase emissions.” [Comments](#) are due on May 13th.

Food and Drug Administration

FDA Proposes Rule Requiring Infant Formula to Contain Selenium

The Food and Drug Administration published a [proposed rule](#) establishing the minimum and maximum amounts of the mineral selenium that infant formula is required to contain. “At the time FDA established nutrient specifications for infant formula, selenium was not recognized as an essential nutrient and was not one of the nutrients required by statute in infant formula. As explained in detail in this document, selenium has subsequently been recognized as an essential nutrient. Therefore, we are proposing to amend the nutrient specifications for infant formula...to include selenium as a required nutrient and to establish minimum and maximum values for selenium. We are also proposing to amend the labeling requirements for infant formula... to add selenium to the list of nutrients along with the requirement to list the amount of selenium per 100 kilocalories in the formula. Selenium is an essential trace element for humans that functions largely through an association with proteins known as selenoproteins. The known biological functions of selenium include defense against oxidative stress, regulation of thyroid hormone action, and regulation of the oxidation/reduction status of vitamin C and other molecules.” As FDA notes later in the proposal, despite the fact that selenium is currently not required in infant formulas by FDA regulations, all U.S. manufacturers already add selenium to their infant formulas. [Comments](#) are due on July 1st.

Department of Defense

DoD Publishes Interim Final Rule Implementing the Sexual Assault Prevention and Response Program

The Department of Defense published an [interim final rule](#) implementing portions of the Sexual Assault Prevention and Response (SAPR) program: “This rule implements policy, assigns responsibilities, and provides guidance and procedures for the SAPR Program; establishes the processes and procedures for the Sexual Assault Forensic Examination (SAFE) Kit; establishes the multidisciplinary Case Management Group (CMG) and provides guidance on how to handle sexual assault; establishes SAPR minimum program standards, SAPR training requirements, and SAPR requirements for the DoD Annual Report on Sexual Assault in the Military. The Department of Defense Sexual Assault Prevention and Response (SAPR) program continues to evolve, and the Department is committed to incorporating best practices and Congressional requirements to ensure that sexual assault victims receive the services they need. As part of this commitment and in addition to the Interim Final Rule, the Department is exploring the feasibility and advisability of extending the Restricted Reporting option to DoD civilians and contractors serving overseas.” A separate final rule issued [last week](#) expanded the scope of the SAPR program to include: National Guard and Reserve Component members who are sexually assaulted when performing active



service; military dependents 18 years of age and older who are eligible for treatment in the military healthcare system who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner; and service members who were victims of sexual assault prior to enlistment. [Comments](#) on the interim final rule are due on June 10th.

Drug Enforcement Administration

DEA Temporarily Classifies Synthetic Cannabinoids as Schedule I Drugs

The Drug Enforcement Administration published a [proposed rule](#) announcing the Agency's intent to temporarily schedule three synthetic cannabinoids into the Controlled Substances Act (CSA). Synthetic cannabinoids are currently dealt illicitly under the brand names 'K2' and 'Spice'. "This action is based on a finding by the Deputy Administrator that the placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Any final order will be published in the Federal Register and may not be issued prior to May 13, 2013. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, possession, importation, and exportation of these synthetic cannabinoids."

DEA Classifies "Bath Salts" as a Schedule I Drug

The Drug Enforcement Administration published a [final rule](#) that classifies methydone and its salts as Schedule I drugs pursuant to the Controlled Substances Act (CSA). In order to be classified as a Schedule I drug, DEA must find that: "(A) The drug or other substance has a high potential for abuse. (B) The drug or substance has no currently accepted medical use in treatment in the United States (U.S.) (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision." In October of 2011, DEA published a final order temporarily classifying methydone as a Schedule I drug, which this final rule makes permanent. "Methydone has no known medical use in the U.S. but evidence demonstrates that methydone is being abused by individuals for its psychoactive effects... Methydone has been reported to cause a number of adverse effects that are characteristic of stimulants like methamphetamine, amphetamine, and cocaine. Adverse effects associated with the consumption of methydone include those typical of a sympathomimetic agent such as hyperthermia, seizures, hyponatremia, bruxism, sweating, hypertension, tachycardia, headache, palpitations, thirst, and mydriasis. Other effects that have been reported from the use of methydone include psychological effects such as confusion, psychosis, paranoia, hallucinations, combativeness, and agitation. Finally, reports of death from individuals abusing methydone indicate that methydone is a serious public health threat."

Department of Health and Human Services

HHS Final Rule Extends World Trade Center Health Program to Some First-Responders with Breast Cancer

The Department of Health and Human Services published a [final rule](#) "adding certain types of cancer to the List of World Trade Center (WTC)-Related Health Conditions (List) established in the WTC Health Program regulation. Breast cancer was included on the List, although only individuals experiencing nighttime sleep disruption as a result of response and cleanup activities involving shiftwork are currently considered to have experienced exposure relevant for certification. A recent publication in *The Lancet Oncology* by the International Agency for Research on Cancer (IARC) concludes that there is *limited* evidence that polychlorinated biphenyls (PCBs) cause breast cancer in humans. As described below, the WTC Program Administrator (Administrator) has found that PCBs were present in WTC dust in the New York City disaster area and, accordingly, the Program will now certify breast cancer in eligible WTC responders and survivors who were exposed to either shiftwork/nighttime sleep disruption or PCBs as a result of the 9/11 attacks."

Department of Veterans Affairs

VA Proposes Rule Reducing Veteran Penalties for Missed Medical Appointments

The Department of Veterans Affairs published a [proposed rule](#) that would remove an existing regulation stating that any veteran who misses two medical appointments without giving 24 hours' notice is no longer eligible to receive VA medical care, except in emergencies. "We propose to remove this regulation because denying follow up medical treatment for even a short period can interfere with continuity and coordination of care, and the punitive nature of the regulation could have a negative impact on the therapeutic relationship. In addition, VA has taken steps to encourage certain veterans to use our health services, including homeless veterans and other veterans who may not have readily available support such as reliable telephone access or dependable transportation to and from scheduled appointments. VA believes that refusing to provide further medical services to those patients because of



broken appointments is counterproductive and may discourage them from attempting to access care in the future. Further, while the current regulation allows VA to provide treatment for an emergent condition, we do not believe this provides an adequate safety net for our patients, especially those with chronic or poorly controlled medical conditions.” [Comments](#) are due on June 14th.

Department of Commerce

EDA Seeks Public Comment on Design and Structure of Loan Guarantee Program for Manufacturers

The Economic Development Administration published a [proposed rule](#) seeking comment from the public on how to design and structure a \$5 million guaranteed loan program to support small- and medium-sized manufacturers. “Specifically, EDA is considering how to implement its statutory authority to establish a loan guarantee program for small- and medium-sized manufactures that encourages projects that re-equip, expand, or establish a manufacturing facility in the United States and that use innovative technology or processes in manufacturing. The loan guarantees should also be used to encourage the manufacture of innovative products, processes, or ideas developed by research funded in whole or in part by grants from the Federal government. EDA requests input from the public, through the specific questions listed below, on ways to structure this program, in order to assess the level of demand for such a program and the level of agency support necessary to institute a loan guarantee program consistent with the provisions of the Stevenson-Wydler Act.” [Comments](#) are due on May 15th.

Agencies

Environmental Protection Agency

EPA Seeks Member Nominations for Clean Air Scientific Advisory Committee, Science Advisory Board

The Environmental Protection Agency published a [notice](#) announcing that the Agency is soliciting nominations from the public for members of EPA’s Clean Air Scientific Advisory Committee (CASAC) and Science Advisory Board (SAB). “Established by statute, the CASAC (42 U.S.C. 7409) and SAB (42 U.S.C. 4365) are chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on the scientific bases for EPA's actions and programs. Members of the CASAC and the SAB constitute distinguished bodies of non-EPA scientists, engineers, economists, and behavioral and social scientists who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a three-year term.” Nominations are due on May 13th.

Department of Commerce

NOAA Announces Public Meeting of the National Climate Assessment and Development Advisory Committee

The National Oceanic and Atmospheric Administration published a [notice](#) announcing a May 13th public meeting of the National Climate Assessment and Development Advisory Committee (NCADAC) from 3:00 – 5:00pm. “The National Climate Assessment and Development Advisory Committee was established in December 2010. 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.”

Export-Import Bank

Ex-Im Bank Receives Application for \$100+ Million to Support Boeing Exports to Kazakhstan

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 support the export of commercial Boeing aircraft to Kazakhstan. These exports would be used for “long-haul passenger service between Kazakhstan and destinations in Russia, Europe, and Asia.” [Comments](#) are due on May 7th.

