

Regulation Digest Weekly

April 3rd, 2013

Vol. 2 No. 14

Opinion

- Obamacare fallout
- New EPA rules on tailpipe emissions will save lives
- The FDA should regulate cigars
- Regulations Are Very Expensive, But Their Economic Value Is Negative

Marketplace of Ideas

American Action Forum

- EPA's Gasoline Proposal Seeks Pollution Reductions, Higher Costs, *Sam Batkins*

American Enterprise Institute

- The lessons of financial history, reprise, *Alex Pollock*
- Protecting America's sick and chronically ill, *Thomas Miller*

Center for Effective Government (Formerly OMB Watch)

- Long-Term Chemical Hazards Pose Significant Challenges for Workplace Safety Agency, *Randy Rabinowitz*
- Informing All Financial Customers: Consumer Protection Agency Expands Complaint Database, *Gavin Baker*
- Tragic Grain Silo Deaths Highlight Need for Stronger Workplace Safety Enforcement, *Randy Rabinowitz*

Center for Media and Democracy

- Chemical Industry Clout Delays EPA Regulation of Hexavalent Chromium, *Rebekah Wilce*

Competitive Enterprise Institute

- TSA Still Isn't Complying With the Law on Body Scanners, *CEI Staff*
- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*

Consumer Financial Protection Bureau

- Consumer Financial Protection Bureau releases largest collection of federal consumer financial complaint data

Feature Story

CFPB Proposes Definition for Larger Participants of the Student Loan Servicing Market

The Consumer Financial Protection Bureau published a [proposed rule](#) amending the regulation defining 'larger participants' of certain consumer financial product and service markets to include a definition for larger participants in the student loan servicing market. Student loan servicing is defined by CFPB as "the collection and processing of loan payments on behalf of holders of promissory notes and, during periods when payments are deferred, maintaining of account records and communicating with borrowers on behalf of loan holders, as well as interactions with borrowers that facilitate such collection and processing of loan payments and maintaining of account records and communicating with borrowers." CFPB proposes a threshold of one million accounts on which an entity performs student loan servicing to determine which servicers are 'larger participants' of this market.

"The Bureau proposes this rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank "larger participant[s]" of markets for other consumer financial products or services, as the Bureau defines by rule. The proposal (Proposed Rule) would identify a market for student loan servicing and define "larger participants" of this market that would be subject to the Bureau's supervisory authority." [Comments](#) are due on May 28th.

In the News

3/27/13

[Merck: FDA reviewing what could be first tablet to gradually eliminate allergy to grass pollen](#), *Washington Post*

[MSHA shut down W.Va. mine during impact inspections, says ventilation plans threatened workers](#), *Washington Post*

[Consumer bureau eases limits on credit card fees](#), *The Hill*

[JPMorgan Tells SEC New VaR Model Didn't Require Prior Disclosure](#), *Bloomberg*

[Fannie Mae Regulator Sets No-Doc Modifications for Borrowers](#), *Bloomberg*

3/28/13

[Consumer bureau makes public over 90,000 consumer complaints](#), *The Hill*

[Regulators roll out streamlined mortgage modification program](#), *Los Angeles Times*

[Study: Two-thirds of pesticides got flawed EPA approval](#), *USA Today*

[SAC Seen Facing Smoother SEC Accord Approval Than Citi](#), *Bloomberg*

[Court says EPA can try to block power plant construction in some cases to prevent](#)



- Prepared remarks of Director Richard Cordray at the Consumer Response field hearing, *Richard Cordray*
- CFPB Contract Solicitation and Selection Processes Facilitate FAR Compliance, but Opportunities Exist to Strengthen Internal Controls, *Office of the Inspector General*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 4/1/13, *Leland Beck*
- EPA’s Tier 3 Vehicle Emission Reduction Proposed Rule: Good, Bad..., *Leland Beck*

Federalist Society

- EVENT: Improving the Use of Science for Policy, April 8th, 1:00 – 2:00pm

The George Washington University Regulatory Studies Center

- TSA Must Subject its Controversial Passenger Screening to Public Scrutiny, *Sofie Miller*

Government Accountability Office

- Better Coordination among Federal Programs Needed to Allocate Testing Resources, *Franklin Rusco*
- Recent Growth Underscores Need for Continued Improvements in Risk Management, *Matthew Scire*

Heritage Foundation

- New EPA Regulations Mean Higher Gas Prices, *Nicholas Loris*

Institute for Policy Integrity

- Comments on ACUS Committee on Regulation Recommendations on CBA, *Michael Livermore & Jason Schwartz*
- Statement on Senators' Letter to EPA Regarding Policy Integrity Position, *Michael Livermore*

The Mercatus Center

- Regulation University: Beware of Inflated Benefits and Hidden Costs, *Patrick McLaughlin*
- Evaluating the Centralized-Layers Approach to U.S. Federal Financial Regulation, *David VanHoose*

Penn Program on Regulation

- Fixing 15% of the Student Loan Debt Problem, *Christina Reichert*
- The Regulatory Week in Review: March 29, 2013, *RegBlog*
- Do Federal Regulations Impede Economic Growth?, *Eric Lorber*

[pollution](#), *Washington Post*

[Obama administration proposal will reduce sulfur in gas; refiners say it will raise pump price](#), *Washington Post*

[Cutting back on sulfur in gasoline and tightening emissions standards carry cost and benefit](#), *Washington Post*

[Obama administration moves ahead with sweeping rules requiring cleaner gasoline](#), *Washington Post*

[EPA investigating health risks from flame-retardant products](#), *The Hill*

[Long-delayed EPA gasoline pollution rules set for Friday debut](#), *The Hill*

[Regulators target use of prepaid cards for money laundering](#), *The Hill*

[Healthcare bracketology: US Chamber unveils ‘Regulatory Madness’](#), *The Hill*

[Banks push regulators for student loan flexibility](#), *The Hill*

[Washington law firm sues bank regulator over foreclosure reviews](#), *Reuters*

[JPMorgan Urged by CtW to Change Risk Committee After Whale Loss](#), *Bloomberg*

[Dreamliner Flaw Escaping FAA No Surprise in Crash Data](#), *Bloomberg*

3/29/13

[EPA requiring ships to better clean dumped ballast water that’s blamed for invasive species](#), *Washington Post*

[U.S. Clean-Gasoline Rule Opposed by Oil Group Said Near](#), *Bloomberg*

[FDA approves first-in-class diabetes pill from J&J that flushes blood sugar via urine](#), *Washington Post*

[Opponents attack EPA proposal requiring cleaner fuel, cars in the U.S.](#), *Washington Post*

[WonkTalk: Is the EPA ready to tackle climate change?](#), *Washington Post*

[Emissions rule to help Americans breathe easier, but gas prices would rise a penny or more](#), *Washington Post*

[SAC portfolio manager accused in insider trading case](#), *Washington Post*

[SAC Capital money manager hit with insider trading charges, freed on \\$3M bail](#), *Washington Post*

[U.S. Overdraft Fees Jump To \\$32 Billion As New Rules Prove Ineffective](#), *Huffington Post*

[Gift card industry 'shocked' by Federal Reserve guidance](#), *The Hill*

[Green groups want Supreme Court to revive power plant rule](#), *The Hill*

[Obama administration finalizes key Affordable Care Act rule](#), *The Hill*

[EPA's low-sulfur gasoline rules fuel fight with GOP over prices](#), *The Hill*

[U.S. Regulators to Investigate Mobile Phone Health Issues](#), *Bloomberg*

3/30/13

[As OSHA Emphasizes Safety, Long-Term Health Risks Fester](#), *New York Times*

4/1/13

[US safety regulators probe Hyundai Sonatas due to suspension rust problem](#), *Washington Post*

[EPA accused of using instant messages to avoid sunshine laws in lawsuit](#), *Washington Times*

[U.S. Supreme Court will not hear airline appeal over ad rule](#), *Reuters*

[U.S. justices reject challenge to EPA air pollution rule](#), *Reuters*

[Airlines Rejected by Top Court on Price Advertising Rules](#), *Bloomberg*

[Fannie Mae and Freddie Mac Face New Problem: Profitability](#), *Bloomberg*

[EPA's Push For More Ethanol Could Be Too Little, Too Late](#), *NPR*

[FDA relaxes rules on nicotine gum](#), *The Hill*

[Fannie Mae profits complicate housing-finance overhaul](#), *Washington Post*

[Federal judge: Forest Service must draft new rules to govern snowmobile travel on forest land](#), *Washington Post*

[Boeing 787 takes off on another test flight, not key battery-certification trip](#), *Washington Post*



U.S. Senate Committee on Environment and Public Works

▪ Letter to EPA Assistant Administrator Gina McCarthy, David Vitter, James Inhofe, Deb Fischer, & Roger Wicker

Yale Journal on Regulation

▪ Who Will Run the EPA?, Lisa Heinzerling

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Washington Post

[FCC mulls relaxing policy for TV indecency](#), *The Hill*

[Chamber crowns healthcare mandate most onerous reg](#), *The Hill*

[Swaps Among Bank Affiliates Exempt From Clearing Under CFTC Rule](#), *Bloomberg*

[Justices reject challenge to EPA air pollution rule](#), *Reuters*

[Watchdog Says U.S. Nuclear Regulator Needs Image Polishing](#), *Bloomberg*

4/2/13

[Emissions Rules Put Alternative-Fuel Vehicles in a Bind](#), *New York Times*

[Supreme Court denies airline lawsuit over DOT advertising rules](#), *The Hill*

[SEC Puts \\$16 Million Broadway 'Rebecca' Under Spotlight](#), *Bloomberg*

[Promontory Adds SEC's Schapiro to Roster of Ex-Regulators](#), *Bloomberg*

[EPA Proposes to Revise Industry Potentials for Global Warming Under Reporting Rule](#), *Bloomberg BNA*

[Mary Schapiro: the latest official through the regulatory revolving door](#), *The Guardian*

[SEC clears up 'confusion' over social media rules](#), *Washington Post*

[Former SEC head joins consulting firm](#), *Washington Post*

[SEC says companies may announce key data on social media](#), *Reuters*

[Caretaker industry pushes back as wage rules review nears end](#), *The Hill*

[Tobacco industry braces for expanded oversight of products](#), *The Hill*

[Financial regulator moves to law firm](#), *The Hill*

[Swaps Among Bank Affiliates Exempt Under CFTC Clearing Rule](#), *Bloomberg*

[SEC Approves Using Facebook, Twitter for Company Disclosures](#), *Bloomberg*

4/3/13

[Stranding at 17 Below Zero Uncovers Gap in U.S. Bus Rules](#), *Bloomberg*

[Fed approves financial company definition](#), *The Hill*

[HHS sets rules for ObamaCare 'navigators'](#), *The Hill*

Rulemaking

Consumer Financial Protection Bureau

CFPB Finalizes Rule Allowing Certain Credit Card Fees

The Consumer Financial Protection Bureau published a [final rule](#) amending Regulation Z, which implements the Truth in Lending Act (TILA). Regulation Z “generally limits the total amount of fees that a credit card issuer may require a consumer to pay with respect to an account, limiting fees to 25 percent of the credit limit in effect when the account is opened. Regulation Z previously stated that this limitation applies prior to account opening and during the first year after account opening. This final rule amends Regulation Z to apply the limitation only during the first year after account opening.” The final rule effectively excludes fees that consumers are required to pay prior to opening a credit card account from Regulation Z credit card fee limits.

Environmental Protection Agency

EPA Finalizes Rule Relieving Regulatory Ban on HCFC-22 and HCFC-142b by Creating New Allowances

The Environmental Protection Agency published a [final rule](#) modifying the allowance system for hydrochlorofluorocarbons (HCFCs), which cause damage to stratospheric ozone. Pursuant to a 2010 court decision, EPA is vacating a portion of its 2009 [rule](#) establishing company-by-company baselines and calendar year allowances for HCFC-22 and HCFC-142b. In the absence of regulatory allowances following the court's vacatur, HCFC-22 and HCFC-142b were effectively banned from production and consumption. This final rule establishes new allowances, permitting the continued production and consumption of these types of HCFCs. “EPA anticipates this adjustment will foster a smooth transition away from ozone-depleting HCFC-22. While EPA is reducing domestic consumption (i.e. production and import for U.S. use), under the recalculated baselines, the overall production allowances will increase. Because other countries have different approaches to phasing out HCFC-22, EPA considers that this increase in the number of production allowances will also ensure that U.S. companies can continue to meet demand for HCFCs in global markets. This supports the Montreal Protocol's overall goal of



limiting need for new production capacity for controlled chemicals by allowing existing producers scope to better meet the needs of global markets. Additionally, EPA has determined that in the narrow circumstance of the Court's vacatur of the baselines in the 2009 Final Rule, it must provide meaningful compensation for 2010 calendar-year HCFC-22 and HCFC-142b allowances that companies would have received under the adjusted baselines. EPA will issue recoupment allowances for that purpose in 2013 and 2014.”

EPA Proposes Amendments to Effluent Limitations Guidelines

The Environmental Protection Agency published a [proposed rule](#) making changes to the effluent limitations guidelines and standards for the Construction and Development point source category, pursuant to a settlement agreement with the Wisconsin Home Builders Association, the National Association of Home Builders, and the Utility Water Act Group. The effluent limitations guidelines included non-numeric requirements for the implementation of erosion and sediment controls, soil stabilization, dewatering activity management, pollution prevention, certain discharge prohibitions, and discharges from basins and impoundments. EPA is amending the standards “in order to meet the terms of the settlement agreement and to make the rules clearer and more transparent to the public. As written, stakeholders believe, and EPA agrees, that there is some ambiguity surrounding when and where these provisions should apply and what exceptions apply. EPA believes that these proposed changes will provide clarity to permitting authorities on how to implement or incorporate these provisions into permits.” [Comments](#) are due on May 31st.

EPA Proposes Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations

The Environmental Protection Agency published a [proposed rule](#) amending the Greenhouse Gas Reporting Rule. “Particularly, the EPA is proposing to amend a table in the General Provisions, to reflect revised global warming potentials of some greenhouse gases that have been published by the Intergovernmental Panel on Climate Change and to add global warming potentials for certain fluorinated greenhouse gases not currently listed in the table. This action also proposes confidentiality determinations for the reporting of new or substantially revised (i.e., requiring additional or different data to be reported) data elements contained in these proposed amendments to the Greenhouse Gas Reporting Rule.” Entities affected by the action include industrial waste landfills, petroleum refineries, natural gas distribution facilities, pulp mills, natural gas pipelines, and some food processing facilities. [Comments](#) are due on May 17th.

Agencies

Federal Housing Finance Agency

FHFA Raises Cap on Assets Defining Community Financial Institution to \$1.095 Billion

The Federal Housing Finance Agency published a [notice](#) announcing that it is adjusting the Community Financial Institution cap on assets from \$1.076 billion to \$1.095 billion. “The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a “Community Financial Institution” (CFI) certain advantages over non-CFI insured depository institutions in qualifying for Federal Home Loan Bank (Bank) membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.”

Commodity Futures Trading Commission

CFTC Exempts Government-Owned Utilities from Commodity Exchange Act Requirements

The Commodity Futures Trading Commission published a [notice](#) exempting some government- and cooperatively-owned electric utilities and certain other entities from some Commodity Exchange Act (CEA) requirements. “The Commodity Futures Trading Commission (“CFTC” or “Commission”) is exempting certain transactions between entities described in section 201(f) of the Federal Power Act (“FPA”), and/or other electric utility cooperatives, from the provisions of the Commodity Exchange Act (“CEA” or “Act”) and the Commission's regulations, subject to certain anti-fraud, anti-manipulation, and record inspection conditions.” In June of 2012, CFTC received a petition requesting relief for these entities from the requirements of the CEA. Pursuant to the Dodd-Frank Act, the Commission enjoys greater discretion to determine exemptions from its rules.



Food and Drug Administration

FDA Modifies Over-the-Counter Labeling Requirements for Nicotine Patches, Gum, and Lozenges

The Food and Drug Administration published a [notice](#) modifying the labeling requirements for over-the-counter (OTC) nicotine replacement therapies (NRTs), such as nicotine gums, patches, and lozenges. “Currently, the FDA-approved labeling for OTC NRT products instructs consumers that they should stop smoking when they begin using the product and that they should not use the product in combination with cigarettes or other nicotine-containing products (including other NRT products). The labeling also recommends a specific duration of use of up to 12 weeks, depending on the product, and instructs consumers to stop using the NRT product at the end of that period. Consumers are advised to consult a doctor if they feel they need to continue using the NRT product for longer than the recommended course of treatment...Over the nearly 30 years since NRT products were first approved, evidence has accumulated to suggest that the current labeling provisions on concomitant use and duration of use may no longer be necessary to ensure the safe use of OTC NRT products for smoking cessation. Based on this evidence, FDA has concluded that the current labeling statements for OTC NRT products concerning concomitant use and duration of use can be modified as described in this document. We invite the products' sponsors to submit supplemental NDAs (labeling supplements) to modify these statements in the labeling of their drug products. To facilitate the process, the Agency has identified revisions to the labeling of OTC NRT products that can be included in these labeling supplements.”

FDA Establishes Docket on Role of Third-Parties in Industry-Sponsored Tobacco Product Research

The Food and Drug Administration is [establishing](#) a public docket to allow interested members of the public to submit comments on the Institute of Medicine's recommendation “regarding third-party governance of industry-sponsored tobacco product research.” FDA's actions are in response to a report by the Institute of Medicine indicating that “[t]here is profound distrust of the tobacco industry and of research supported by the tobacco industry. This distrust is the direct result of the tobacco industry's history of improperly influencing or manipulating scientific findings and messaging about the health effects of tobacco. This history and the lack of trust may prevent independent experts from participating in research on tobacco products and therefore may impede the production of data on MRTPs necessary to assess public health impact.” The Institute of Medicine concluded that Modified Risk Tobacco Product (MRTP) sponsors should consider use of independent third parties to undertake one or more key functions, including the design and conduct of research, the oversight of specific studies, and the distribution of sponsor funds for research. Such independent third parties should be approved by the FDA in advance of the research.” With the establishment of a docket, the public now has the opportunity to comment on these recommendations and the Institute of Medicine's findings regarding third-party governance of industry-sponsored tobacco product research. [Comments](#) are due by September 30th.

Department of the Interior

FWS Releases National Fish, Wildlife, and Plants Climate Adaptation Strategy

The Fish and Wildlife Service published a [notice](#) announcing the release and availability of the final [National Fish, Wildlife, and Plants Climate Adaptation Strategy](#). “The purpose of the Strategy is to inspire and enable natural resource professionals and other decision makers to take action to conserve the nation's fish, wildlife, plants, and ecosystem functions, as well as the human uses and values these natural systems provide, in a changing climate... This *Strategy* presents a unified approach—reflecting shared principles and science-based practices—for reducing the negative impacts of climate change on fish, wildlife, plants, our natural resource heritage, and the communities and economies that depend on them. The *Strategy* provides a basis for sensible actions that can be taken now, in spite of the uncertainties that exist about the precise impacts of climate change. It also provides guidance about what further actions are most likely to promote natural resource adaptation to climate change, and describes mechanisms that will foster collaboration for effective action among all levels of government, conservation organizations, and private landowners.”

National Aeronautics and Space Administration

NASA Announces \$1.5 Million Contest for High Energy Storage Density Technologies for Space Exploration

The National Aeronautics and Space Administration published a [notice](#) announcing the 2014 Night Rover Challenge, a Centennial Challenges contest to encourage the development of new technologies for use on the moon. “Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The 2014 Night Rover Challenge is a prize competition designed to encourage



development of new energy storage technologies or application of existing storage technologies in unique ways for application in extreme space environments. Competitors will need to demonstrate high energy density storage systems (>330w-hr/kg) that would enable a rover to operate throughout lunar darkness cycles. Cleantech Open of Palo Alto, California administers the Challenge for NASA. NASA is providing the \$1,500,000 prize purse.”

Department of State

State Dept. Announces Information Session on Marine Biodiversity in Areas beyond National Jurisdiction

The State Department published a [notice](#) announcing an April 23rd information session open to the public related to issues surrounding marine biodiversity in areas that are beyond national jurisdiction. “In May 2013, the United States will participate in two workshops of the United Nations General Assembly Working Group on conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The first workshop will focus on marine genetic resources; the second will focus on conservation and management tools. These workshops are intended to inform the discussion of delegates at the August meeting of the Working Group, in which the United States will also participate... We would like to invite interested stakeholders to share comments, concerns, and questions about these issues. We, in turn, will provide an overview of past discussions in the Working Group and our approach to the May workshops.”

Department of Health and Human Services

CDC Opens Public Docket on Walking as a Way for Americans to Get Recommended Physical Activity

The Center for Disease Control and Prevention published a [notice](#) announcing that the CDC is opening a public docket “to obtain information from the public on walking as an effective way to be sufficiently active for health. The information obtained will be used to frame an anticipated [*sic*] Surgeon General's call to action on this issue... The intent of the Surgeon General's call to action is to identify opportunities and actions that can be taken by all levels of government, civic organizations, health care providers, educational institutions, worksites, industry, service providers, individuals and others to increase walking and walkability throughout the nation by providing access to safe, attractive and convenient places to walk (and wheelchair roll) and creating a culture that supports walking for Americans of all ages and abilities.” [Comments](#) are due on May 1st.

