

## Feature Story

**BLM Rule Segregates Renewable Energy Applications from Public Land Laws**

The Bureau of Land Management published a [final rule](#) segregating public lands involved in a pending wind or solar energy generation right-of-way (ROW) application (and public lands that BLM identifies for potential future wind or solar energy generation ROW applications) from the operation of public land laws. Segregating these lands from the operation of public land laws allows BLM to protect a renewable energy applicant from “the assertion by others of rights to the lands while the applicant is prevented from taking any steps to protect” its interests because it has to wait for the BLM to act on its application. “This rule is necessitated by the Administration’s priority efforts to facilitate and promote the development of renewable energy on public lands and the potential for the location of mining claims to impede the BLM’s ability to carry out its congressional and Executive mandates.”

The Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands for multiple uses, “which means giving consideration to a combination of balanced and diverse resource uses that account for long-term needs of future generations for renewable and non-renewable resources, such as recreation, range, timber, minerals, watershed, wildlife, fish, and natural, scenic, scientific, and historic values. In some instances, various uses may present conflicts. For example, a mining claim located within a proposed ROW for a utility-scale solar energy generation facility could impede the BLM’s ability to process the ROW application because under the Surface Resources Act (30 U.S.C. 601 et seq.), the Federal Government’s (or its grantee’s) use of the surface cannot endanger or materially interfere with a mining claim. However, FLPMA provides the BLM with broad authority and discretion to allow some uses to the exclusion of others. This final rule is consistent with FLPMA’s multiple use mandate because it helps reduce the potential for resource use conflicts.”



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## Opinion

- Air traffic control shouldn’t be a government responsibility
- Bank Regulators Never ‘Encourage,’ They Require
- Should the SEC Care About Corporate Politics?
- Obama’s Nominee for OIRA Director
- What if “green” becomes the default setting?
- White House Admits 2012 Was Costliest for Regulation
- Obama’s new regulatory czar clerked for Scalia but taught at Berkeley
- Regulation will only harm the lesser prairie chicken
- Brown-Vitter Rearranges Financial-Reform Battlefield
- The Fed Broadens Its Reach
- Federal streamlining a well-kept secret
- USDA: No choice between food and safety

## In the News

4/24/13

[US regulators reporting 11 mining deaths in first quarter of 2013; nearly half in W.Va.](#), *Washington Post*

[FDA lends counterfeit detection device to Ghana in effort to combat fake malaria pills](#), *Washington Post*

[Many coal sludge impoundments have weak walls, federal study says](#), *Washington Post*

[Senator urges tough cross-border bank rules for swaps trading](#), *Reuters*

[Food safety rules get comment extension, come under legal scrutiny](#), *The Hill*

[Deadline, delays loom over ObamaCare rule](#), *The Hill*

[Too-Big-to-Fail Bill Pitched as Fix for Dodd-Frank Act’s Flaws](#), *Bloomberg*

4/25/13

[At chicken plants, chemicals blamed for health ailments are poised to proliferate](#), *Washington Post*

[High-cost loans seeing tremendous growth](#), *Washington Post*

[Administration drops redundant driver’s license rule](#), *The Hill*

[LaHood pushes automakers to limit in-car social media, entertainment](#), *The Hill*

[Obama nominates antitrust expert Shelanski as new regulatory czar](#), *Reuters*

[Obama taps FTC official as new regulatory czar](#), *The Hill*



- Big Banks Still Aren't Safe Enough

## Marketplace of Ideas

### American Action Forum

- 2012: Costliest Year for Regulation, White House Says, *Sam Batkins*
- The Week in Regulation: April 22-26, *Sam Batkins*
- Technology Regulations Stuck in 20th Century, *Sam Batkins*

### Center for Effective Government (Formerly OMB Watch)

- Court Says FDA Failed to Comply with Food Safety Rule Deadlines, *Katie Greenhaw*
- Obama Nominates Howard Shelanski to Lead Office of Information and Regulatory Affairs, *Katie Weatherford*
- Honoring Workers with Stronger Standards and Safeguards

### Center for Progressive Reform

- Obama's Next Regulatory Czar, *Rena Steinzor*
- Who Is Running OIRA?, *Lisa Heinzerling*
- OIRA Nominee's Disappearing Affiliation with Industry Think Tank, *Rena Steinzor*

### Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- Regulation Roundup, *Ryan Young*
- CEI Podcast For April 25, 2013: Regulations Are Less Than Transparent, *Ryan Young*

### Federal Regulations Advisor

- Monday Morning Regulatory Review – 4/29/13, *Leland Beck*
- FDA's Food Safety Regulations – Court Requires Timing Negotiation, *Leland Beck*

### Federalist Society

- Suing, Settling, and the Separation of Powers, *Will Haun*
- Privacy, Data Collection, and the CFPB, *Julius Loeser*
- President Obama Nominates New OIRA Administrator, *Susan E. Dudley*

### Free State Foundation

- "Low-Ranking" Counterproductive Video Regulations Offer Valuable Lessons, *Donna Coleman Gregg*

### The George Washington University Regulatory Studies Center

- President Nominates Howard Shelanski to be OIRA Administrator, *Sofie Miller*

[US regulator group sees Libor rate manipulation as risk, urges officials to find alternative](#), *Washington Post*

[Lawmakers investigate whether gaps in fertilizer plant regulations are placing lives at risk](#), *Washington Post*

[Financial regulators cite lingering threats to economic recovery](#), *The Hill*

[Regulators propose guidelines for short-term loans](#), *The Hill*

[Senator: Texas explosion has exposed 'toothless' chemical regulations](#), *The Hill*

[Legislators want national egg standards](#), *The Hill*

[Senators push to end 'too big to fail'](#), *The Hill*

[State Department Will Make Keystone Comments Public After All](#), *Bloomberg*

[U.S. Risk Council Says Big Broker Failure Still Stability Threat](#), *Bloomberg*

[U.S. Regulators Say Libor Needs Shift to Market-Pricing System](#), *Bloomberg*

4/26/13

[Obama Chooses Economist for Chief Regulatory Post](#), *New York Times*

[Senate proposal would subject large compounding pharmacies to stricter federal standards](#), *Washington Post*

[Regulators shutter banks in North Carolina, Georgia; brings this year's US bank failures to 10](#), *Washington Post*

[Interior Department draft rule ends protections for gray wolves across Lower 48 states](#), *Washington Post*

[SEC to propose cross-border rules for security-based swaps](#), *Reuters*

[Senators push expanded oversight of compound pharmacies](#), *The Hill*

[Senate bill on US-Mexico drilling lacks Dodd-Frank exemption](#), *The Hill*

[SEC's White Said to Push for Lifting Ban on Hedge-Fund Ads](#), *Bloomberg*

[SEC Foreign Payment Rule Challenge Declined by Court](#), *Bloomberg*

[FDA Gains Authority Over Drug Compounders in Senate Plan](#), *Bloomberg*

[SEC's Canellos Says Enforcers Shifting to Dodd-Frank](#), *Bloomberg*

4/28/13

[Banking group says new regs could push consumers into risky payday loans](#), *The Hill*

[Regulatory czar pick is an unknown in the battle over new rules](#), *The Hill*

4/29/13

[German Bank Regulators Oppose Fed Rule on Foreign Bank Oversight](#), *Bloomberg*

[Widow's Bill Would Add Second Barrier to Airline Cockpits](#), *Bloomberg*

[CFTC struggles to keep pace with technology issues](#), *Washington Post*

['Crowdfunding' trend poised to make mark on U.S. investing landscape](#), *Washington Post*

[Obama nominates Foxx - mayor of Charlotte, NC -to run Transportation Department](#), *Washington Post*

[Medicare releases a 1,424-page rule that's actually really interesting!](#), *Washington Post*

[FDA cites quality control issues in rejection of 2 Gilead Sciences HIV pills](#), *Washington Post*

[German banks reject US plan seeking higher capital buffers, fear disadvantage for EU lenders](#), *Washington Post*

[U.S. consumer bureau tweaks credit card rule for at-home parents](#), *Reuters*

[Federal regulators make it easier for stay-at-home spouses to get credit cards](#), *Dallas Morning News*

[Printers to Obama: Please regulate our cleaning rags](#), *The Hill*

[GAO: EPA's toxic chemical program needs guidance](#), *The Hill*

[LaHood: Car fuel efficiency standards part of Obama 'legacy'](#), *The Hill*

[Consumer bureau changes credit card rules to help stay-at-home spouses](#), *The Hill*



## Great Lakes Legal Foundation

- EPA Proposes Water Pollution Rules for New and Existing Power Plants

## Government Accountability Office

- EPA Has Increased Efforts to Assess and Control Chemicals but Could Strengthen Its Approach, *David Trimble*

## Heritage Foundation

- Too Big to Fail: Brown–Vitter Swings and Misses, *James Gattuso*

## The Mercatus Center

- How Government Regulations Distort the Television Airwaves, *Jerry Brito*
- TESTIMONY: Building a Sustainable Housing Finance System: Examining Regulatory Impediments to Private Investment Capital, *Arnold Kling*

## Penn Program on Regulation

- The Regulatory Week in Review: April 26, 2013, *RegBlog*
- Who Is Running OIRA?, *Lisa Heinzerling*
- Federal Appeals Court Says EPA Cannot Make Rules by Correspondence, *Maxwell Blum*

4/30/13

[Regulatory clouds over Google have largely cleared](#), *Washington Post*  
[FDA investigating foods with added caffeine after caffeinated gum introduced](#), *Washington Post*

[EPA Gets Additional 30 Days to Propose Revisions to Animal Feedlot Regulations](#), *Bloomberg BNA*

[US regulators looking for ways to deal with social media after Twitter hack roiled markets](#), *Washington Post*

[Obama expected to nominate telecom executive Tom Wheeler to chair FCC](#), *Washington Post*

[FDA will investigate added caffeine in foods after new caffeinated gum introduced](#), *Washington Post*

[Judge refuses to dismiss lawsuit by W.Va. chicken grower challenging EPA's permit authority](#), *Washington Post*

[Obama to nominate Tom Wheeler as FCC chairman: official](#), *Reuters*

[Obama regs czar pick mistakenly listed as expert for anti-reg group](#), *The Hill*  
[Consumer watchdog backs off money transfer rule](#), *The Hill*

[FDA approves 'morning-after pill' for women 15 and up](#), *The Hill*

[Fracking rules coming 'in weeks,' says Interior chief Jewell](#), *The Hill*

[EPA finalizes Roundup residue limit](#), *The Hill*

[Twitter Attack Prompts U.S. CFTC to Speed Trading Rule](#), *Bloomberg*

5/1/13

[Obama to nominate Rep. Watt to head housing regulator](#), *The Hill*

[Obama Said to Choose Watt to Lead Fannie Mae Regulator](#), *Bloomberg*

[SEC Weighs Cross-Border Swap Rules Amid Calls to Restrict Reach](#), *Bloomberg*

[White House to Name Wheeler to Be Chairman of U.S. FCC](#), *Bloomberg*

## Rulemaking

### Department of Health and Human Services

#### CMS Proposes Medicare Incentive Reward Program Revisions

The Centers for Medicare and Medicaid Services (CMS) published a [proposed rule](#) revising the Medicare Incentive Reward Program to prevent fraud and improve fraud detection. Among other things, the proposed rule would: expand the number of instances in which a felony conviction would serve as the basis for denial or revocation of Medicare enrollment; enable the denial of partner enrollment in cases where the enrollee had a previous relationship with a previously enrolled provider or supplier that had a Medicare debt; and limit the ability of ambulance suppliers to “backbill” for services performed prior to Medicare enrollment. “As we explain in more detail later in this section, we encountered several uncertainties in estimating the economic impact of many of our proposed provisions. We could not estimate the number of denials and revocations that might stem from the proposed enrollment changes. We were also unable to estimate the potential monetary savings to the federal government or the costs to providers and suppliers resulting from the remaining proposed revisions. However, we estimate that our proposed changes to § 424.520(d) and § 420.405(e) would result in an annual transfer of more than \$100 million from providers and suppliers to the federal government.” [Comments](#) are due on June 28<sup>th</sup>.

### Food and Drug Administration

#### FDA Extends Comment Period for Proposed Rule Governing Human Food Manufacturing Good Practices

The Food and Drug Administration [announced](#) it is extending the comment deadline for its [proposed rule](#) *Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food*. The good manufacturing practices, last updated in 1986, are being changed to implement hazard analysis and risk-based preventive controls for international and domestic producers. “These preventive controls would include requirements for covered facilities to maintain a food safety plan, perform a hazard analysis, and institute preventive controls for the mitigation of those hazards. Facilities would also be required to monitor their controls, verify that they were effective, take any appropriate corrective actions, and maintain records documenting these



actions.” FDA estimates that these requirements will cost between \$319 million – \$475 million annually for covered entities. However, the Agency was unable to estimate any benefits, and instead relies on a breakeven percentage point at which the benefits of the rule will justify the costs. By this measure, the rule must prevent between 16 and 24 percent of covered food product illnesses annually. [Comments](#) are now due on September 16<sup>th</sup>.

### **FDA Extends Comment Period for Proposed Rule Setting Farm Standards to Prevent Food Contamination**

The Food and Drug Administration [announced](#) it is extending the comment deadline for its [proposed rule](#) *Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption*. The rule would establish minimum standards for growing, harvesting, and packaging of fruits and vegetables in order to minimize the risk of death or illness from the consumption of contaminated produce. Among other things, the rule would require standards for worker health and hygiene, water intended for agricultural uses, domesticated animals on produce plots, equipment, tools, buildings, and the documentation of the treatment of beans and seeds for sprouting. FDA estimates that these requirements will incur \$630 million in costs annually for covered producers, both domestically and abroad. Additionally, FDA estimates that the benefits resulting from reducing illness and death associated with contaminated food will be \$1.04 billion, representing 65 percent of all U.S. illnesses and deaths caused by the consumption of covered produce. In clarifying the scope of the rule, FDA specifies that the requirements “would not apply to produce that is rarely consumed raw, produce for personal or on-farm consumption, or produce that is not a raw agricultural commodity.” The rule, if finalized, will be effective 60 days after publication; however, small businesses are granted an additional three years for compliance. [Comments](#) are now due on September 16<sup>th</sup>.

## **Environmental Protection Agency**

### **EPA Finalizes Rule Listing New Substitute for Ozone-Depleting Substances in Fire Extinguishers**

The Environmental Protection Agency published a [final rule](#) listing C7 Fluoroketone as an acceptable substitute for some ozone-depleting substances used for fire suppression and explosion protection. EPA is listing C7 Fluoroketone as an acceptable substitute because it poses comparable or lower overall risk to human health and the environment than other available substitutes for the ozone-depleting substance. “This final rule finds C7 Fluoroketone acceptable subject to narrowed use limits as a substitute for halon 1211 for use as a streaming agent in portable fire extinguishers in nonresidential applications. Halons are chemicals that were once widely used in the fire protection sector but have been banned from production in the U.S. since 1994 because their emissions into the atmosphere are highly destructive to the stratospheric ozone layer. This action will provide users that need specialized fire protection applications with more alternatives to the use of halons... This action does not place any significant burden on the regulated community but lists as acceptable, subject to narrowed use limits, a new halon substitute. The restrictions will ensure that this substitute will not pose a greater risk to human health or the environment than other available or potentially available substitutes in the fire suppression end use.”

## **Department of Commerce**

### **NMFS Temporary Rule Increases Annual Catch Limit for Yellowtail Snapper**

The National Marine Fisheries Service published a temporary [final rule](#) extending the effectiveness of the increase of the commercial annual catch limit (ACL) for south Atlantic yellowtail snapper. “At its September 2012 meeting, the Council requested that NMFS promulgate emergency regulations to increase the commercial ACL for yellowtail snapper based on the results of the May 2012 stock assessment conducted by the Florida Fish and Wildlife Conservation Commission's Fish and Wildlife Research Institute (FWRI) which indicated yellowtail snapper are not overfished or experiencing overfishing. Results of the stock assessment suggested that the acceptable biological catch (ABC) could increase, which could allow an increase in the commercial ACL resulting in positive social and economic benefits to commercial fishermen and dealers.” The increased ACL was originally intended to expire on May 6<sup>th</sup>; this rule extends the increase until November 28, 2013.

## **Agencies**

### **Environmental Protection Agency**

#### **EPA Seeks Comment on Revised Assessment of Bristol Bay Mining Impacts on Salmon Ecosystems**

The Environmental Protection Agency published a [notice](#) seeking public comment on EPA’s revised draft document, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*. “The U.S. Environmental Protection Agency (EPA) conducted this assessment to provide a characterization of the biological



and mineral resources of the Bristol Bay watershed, increase understanding of the potential impacts of large-scale mining on the region's fish resources, and inform future governmental decisions... EPA is seeking comments from the public on all aspects of the report, including the scientific and technical information presented in the report, the realistic mining scenario used, the data and information used to inform assumptions about mining activities and the evaluations of risk to the fishery, and the potential mitigation measures considered (and effectiveness of those measures). EPA is also specifically seeking any additional data or scientific or technical information about Bristol Bay resources or large-scale mining that should be considered in our evaluation. EPA will consider any public comments submitted in accordance with this notice when revising the document.” [Comments](#) are due on May 31<sup>st</sup>.

### **EPA Extends Deadline on Request for Information to Inform Hydraulic Fracturing Research**

The Environmental Protection Agency published a [notice](#) extending the deadline “for the public to submit data and scientific literature to inform EPA's research on the potential impacts of hydraulic fracturing on drinking water resources from April 30, 2013 until November 15, 2013. EPA is extending the deadline in order to provide the public with more of an opportunity to provide feedback to the Agency... To ensure that the EPA is up-to-date on evolving hydraulic fracturing practices and technologies, the EPA is soliciting relevant data and scientific literature specific to potential impacts of hydraulic fracturing on drinking water resources. While the EPA conducts a thorough literature search, there may be studies or other primary technical sources that are not available through the open literature. The EPA would appreciate receiving information from the public to help inform current and future research. Consistent with our commitment to using the highest quality information, The EPA prefers information which has been peer reviewed. Interested persons may provide scientific analyses, studies, and other pertinent scientific information, preferably information which has undergone scientific peer review. The EPA will consider all submissions but will give preference to all peer reviewed data and literature sources.” [Comments](#) are now due on November 15<sup>th</sup>.

### **EPA Announces 2013 Annual Meeting of the Ozone Transport Commission**

The Environmental Protection Agency published a [notice](#) announcing the 2013 annual meeting of the Ozone Transport Commission (OTC) on June 13<sup>th</sup> from 9:30am – 4:00pm in New Haven, Connecticut. “This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. The Commission will be evaluating potential measures and considering actions in areas such as performance standards for electric generating units (EGUs) on high electric demand days, oil and gas boilers serving EGUs, small natural gas boilers, stationary generators, energy security/energy efficiency, architectural industrial and maintenance coatings, consumer products, institution commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, lightering, and non-road idling.”

### **Federal Deposit Insurance Corporation**

#### **FDIC Announces May 16<sup>th</sup> Public Meeting of FDIC Advisory Committee on Economic Inclusion**

The Federal Deposit Insurance Corporation published a [notice](#) announcing the May 16<sup>th</sup> public meeting of the FDIC Advisory Committee on Economic Inclusion from 9:00am – 3:15pm. “The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations... The agenda will be focused on savings initiatives, safe accounts and bank prepaid cards, and an update on mobile financial services and economic inclusion.”

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