

## Feature Story



## EPA Gives Public 23 Days to Comment on \$35 Billion Tier 3 Proposal

On Tuesday, the Environmental Protection Agency published a long-awaited “Tier 3” [proposed rule](#) which would both establish new automobile tailpipe emission standards and reduce allowable sulfur content in gasoline. Despite the size and scope of this rulemaking, EPA gave the public only 23 days from publication in the Federal Register to submit comments on this proposal. “The proposed gasoline sulfur standard would make emission control systems more effective for both existing and new vehicles, and would enable more stringent vehicle emissions standards. The proposed vehicle standards would reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. This would result in significant reductions in pollutants such as ozone, particulate matter, and air toxics across the country and help state and local agencies in their efforts to attain and maintain health-based National Ambient Air Quality Standards.” According to EPA’s analysis, the vehicle portion of the standards alone will cost car buyers between \$17.3 billion and \$35.1 billion through 2050. Under one of the proposed standards, reducing sulfur content in gasoline will cost refiners \$2.5 billion upfront

in capital investments and \$580 million annually thereafter, which translates to an increased consumer cost of between 1 and 6.5 cents per gallon of gasoline. EPA projects the combined cost of the proposed vehicle and gasoline standards at \$3.4 billion per year in 2025. [Comments](#) are due on June 13<sup>th</sup>.

## Opinion

- Kathleen Sebelius dances on an ethical line
- Red Tape Record Breakers
- Obama’s EPA Makes A Rad Decision
- Swaps Vote Is Another Big Win for the Big Banks
- Sue and Settle: Regulating Behind Closed Doors

## Marketplace of Ideas

## American Action Forum

- The Week Ahead in Regulation: May 20 – 24, *Dan Goldbeck*
- Regulation Review: Interior Fracking Rule, Part II, *Sam Batkins*
- The Week in Regulation: May 13-17, *Sam Batkins*

Center for Effective Government  
(Formerly OMB Watch)

- BLM Fracking Rule Violates New Executive Order on Open Data, *Sofia Plagakis*
- BLM Fracking Rule Bows to Industry, Ignores Public Concerns

## In the News

5/15/13

[New SEC chief Mary Jo White begins job with pressure to tackle rules](#), *Washington Post*

[SEC taps Boston lawyer to run unit overseeing company disclosures](#), *Reuters*

[Corporate lawyer joins federal regulator team](#), *The Hill*

[Nuclear watchdog seeks to change rules on transporting radioactive material](#), *The Hill*

[White House pans bill that would limit the SEC’s regulatory power](#), *The Hill*

[Banks Set to Win Rollback in Dodd-Frank Swap-Trade Rules](#), *Bloomberg*

[Bank Regulators See Progress on Cross-Border Resolution Accords](#), *Bloomberg*

[Car Hacking Threat Prompts New Effort by Auto Regulator](#), *Bloomberg*

[Blankfein Says Bank Valuations to Climb as Rules Become Clear](#), *Bloomberg*

5/16/13

[Analysis: Obama climate agenda faces Supreme Court reckoning](#), *Reuters*

[Two-Decade-Old Harvard Data Confounds U.S. EPA Nomination](#), *Bloomberg*



- Former EPA Official Sheds Light on Problems with White House Review of Rules and Standards

### Center for Progressive Reform

- What's holding up the Clean Water Act jurisdictional guidance?, *Holly Doremus*

### Chamber of Commerce

- A Report on Sue and Settle: Regulating Behind Closed Doors, *William Kovacs, Keith Holman, Jonathan Jackson*

### Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week in Regulation, *Ryan Young*
- 2013 Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, *Clyde Wayne Crews Jr.*

### Federal Regulations Advisor

- EPA Tier 3 Vehicle Emissions Standards: Too Little Time to Comment, *Leland Beck*
- Monday Morning Regulatory Review – 5/20/13, *Leland Beck*
- ACUS 58th Plenary Session: Authoritative Recommendations & Studies Worth Reading, *Leland Beck*

### Federalist Society

- Agencies Have the Authority to Determine the Extent of Their Authority, *Eileen J. O'Connor*
- Third Circuit Strikes Down Obama NLRB Recess Appointments, *Tuan Samahon*
- Developments at the Consumer Financial Protection Bureau: April 9 – May 14, *Julius Loeser*

### The George Washington University Regulatory Studies Center

- EPA's Retrospective Review of Regulations: Will it Reduce Manufacturing Burdens?, *Sofie Miller*
- Will EPA's Retrospective Review Reduce Burdens for the Regulated Public?, *Sofie Miller*

### Government Accountability Office

- Funding for 10 States' Programs Supported by Four Environmental Protection Agency Categorical Grants, *Jose Gomez*

### Harvard Law Review

- The Office of Information and Regulatory Affairs: Myths and Realities, *Cass R. Sunstein*

### The Mercatus Center

- Public Interest Comment: Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food, *Michael Marlow*
- Public Interest Comment: Standards for the

[Bills Without Prayer Fill U.S. House Republican Agenda](#), *Bloomberg SEC* pressed to abandon corporate political spending disclosures petition, *Washington Post*

[HHS announces first nationwide safety standards for child care](#), *Washington Post*

[New Interior Department drilling rule relies on industry-sponsored database](#), *Washington Post*

[US regulators adopt weakened rule on derivatives trading; critics say large banks to benefit](#), *Washington Post*

[Obama administration issues draft fracking regulations](#), *Washington Post*  
[Senate unanimously confirms Energy nominee Ernest Moniz](#), *Washington Post*

[FDA tobacco chief says health community grappling with idea that some products are less risky](#), *Washington Post*

[Senate panel endorses nomination of Perez for Labor post despite GOP opposition](#), *Washington Post*

[Obama administration unveils fracking rules](#), *The Hill*

[Potential New Fracking Rules Worry Green Groups](#), *U.S. News*

[Regulators Overhaul Derivatives Market, but With a Caveat](#), *New York Times*

[Regulators issue more than 2,000 pages of Dodd-Frank rules](#), *The Hill*

[Obama dealt second court defeat over NLRB recess appointments](#), *The Hill*

[Feds propose stronger child care standards](#), *The Hill*

[NLRB head: 'We owe it to the public to continue to work'](#), *The Hill*  
[SEC's White Rebuffs Call to Forswear Political Spending Rule](#),

*Bloomberg*

**5/17/13**

[Rules Favoring Proxy Advisers Need Review, SEC's Gallagher Says](#), *Bloomberg*

[FCC Nominee to Divest AT&T, Verizon to Avoid Conflict](#), *Bloomberg*  
[Scaled-Back U.S. Fracking Rule Draws Qualified Praise](#), *Bloomberg*

[Bill clears House to put stricter requirements on SEC for cost vs benefit analyses of rules](#), *Washington Post*

[House votes for more scrutiny of economic impact of SEC rules](#), *Reuters*  
[Swap execution facilities reach the starting line](#), *Reuters*

[FCC scraps 126 telecom regulations](#), *The Hill*

[House votes to rein in SEC regulations](#), *The Hill*

[Safety commission wants stroller protections](#), *The Hill*

[House closer to requiring more oversight of SEC regulations](#), *The Hill*

[Wells Fargo Leads Bank Foreclosure Halt After OCC Guidance](#), *Bloomberg*

**5/19/13**

[Consumer watchdog: most sunscreens meet FDA standards, but questionable SPF ratings persist](#), *Washington Post*

[Analysis: High speed trading a stiff challenge for U.S. regulators](#), *Reuters*

**5/20/13**

[Regulators to Vote on Nonbanks](#), *Wall Street Journal*

[Federal agency indefinitely delays decision on restart of troubled nuclear plant in California](#), *Washington Post*

[Supreme Court reinforces FCC authority in disputes over cell tower placements](#), *Washington Post*



Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, *Michael Marlow*

### **Penn Program on Regulation**

- Could Kosher Certification Improve Food Safety and Nutritional Labeling?, *Vaclav Graf*
- The Regulatory Week in Review: May 17, 2013, *Christina Reichert*
- Republican Bills Would Obstruct Enforcement of Environmental Laws, *John Walke*
- Draft Bill Would Limit EPA Rulemaking Power, *Alix McKenna*

### **Small Business Administration Office of Advocacy**

- Research on State Regulatory Flexibility Acts

[Chamber: Greens using ‘sue and settle’ to coerce EPA](#), *The Hill*  
[Study: New FDA regs not leading to better sunscreen](#), *The Hill*  
[Healthcare regs move forward](#), *The Hill*  
[EPA to publish draft low-sulfur gas rule](#), *The Hill*

**5/21/13**

[U.S. Treasury's Lew says foreign officials too critical on swaps rules](#), *Reuters*

[Industry accuses EPA of skirting rules for public review of draft fuel regs](#), *The Hill*

[Smaller lenders express concern about final ability-to-pay rule](#), *The Hill*

[Tardy formaldehyde rules pass through White House](#), *The Hill*

[Wall Street reform rule said to increase violence in Congo](#), *The Hill*

[Court shuts investment firms out of FDIC lawsuit](#), *The Hill*

[Lawmakers press Interior to slow down on fracking rules](#), *The Hill*

**5/22/13**

[Senate Dems push for stronger international swaps rules](#), *The Hill*

[U.S. Federal Reserve Meeting Minutes for May 1 \(Text\)](#), *Bloomberg*

## **Rulemaking**

### **Department of Health and Human Services**

#### **HHS Economically Significant Interim Final Rule Sets Pre-Existing Condition Insurance Plan Payment Rates**

The Department of Health and Human Services published an economically significant [interim final rule](#) setting the payment rates for covered services for individuals enrolled in the Pre-Existing Condition Insurance Plan (PCIP) program. “This interim final rule specifies that we are using our authority under section 1101(g)(2) of the Affordable Care Act to set the payment rates for covered services in the federally-administered PCIP for dates of service beginning on June 15, 2013. As explained below, with the exception of covered services furnished under the prescription drug, organ/tissue transplant, dialysis and durable medical equipment benefits, covered services furnished to enrollees in the federally-administered PCIP program will be paid at—(1) 100 percent of Medicare payment rates, or (2) where Medicare payment rates cannot be implemented by the federally-administered PCIP, 50 percent of billed charges or a rate generated pricing methodology using a relative value scale which is generally based on the difficulty, time, work, risk and resources of the service...These rates will become the new plan allowances for the covered services, with the Plan being responsible for reimbursing the facility or a provider for a portion and the enrollee being responsible for reimbursing the facility or provider for the remainder, as calculated by the Plan using the current cost sharing rules described in the Plan brochure.” [Comments](#) are due on July 22<sup>nd</sup>.

#### **HHS Proposes Rule Setting Standards for Childcare Facilities Receiving Federal Funds**

The Department of Health and Human Services published a [proposed rule](#) amending the Child Care and Development Fund (CCDF) regulations to strengthen health and safety requirements for child care providers, reflect current State and local practices to improve the quality of child care, infuse new accountability for Federal tax dollars, and leverage the latest knowledge and research in the field of early care and education to better serve low-income children and families. “This proposed rule includes a set of provisions designed to provide greater transparency to parents so they can make more informed choices for their families and to facilitate quality improvement efforts by child care providers. It makes available, for both CCDF parents and the general public, clear, easy-to-understand information about the quality of child care providers in their communities. In addition, it facilitates replication of best practices across the country by directing States, Territories, and Tribes toward making more purposeful investments in child care quality improvement and tracking the progress and success of those investments. Secondly, this proposed rule includes provisions to make the CCDF program more “family friendly” by reducing unnecessary administrative burdens on families (as well as State, Territory, and Tribal agencies administering the program), and by improving coordination with other programs serving low-income families.” [Comments](#) are due on August 5<sup>th</sup>.



## Federal Communications Commission

### FCC Finalizes Rule Implementing Accessibility Requirements for Internet Browsers Built Into Mobile Phones

The Federal Communications Commission published a [final rule](#) requiring Internet browsers built into mobile phones to be accessible to individuals who are blind or visually impaired. Section 718 of the Communications Act, as amended by the Communications and Video Accessibility Act of 2010 (CVAA), “requires mobile phone manufacturers and mobile service providers that include or arrange for the inclusion of an Internet browser on mobile phones to ensure that the functions of the included browser are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. In addition, in document FCC 13-57, the Commission affirms its previous conclusions regarding the coverage of Internet browsers used for ACS under section 716 of the Act, and retains the recordkeeping requirements and deadlines for entities covered under section 718 of the Act.”

## Consumer Product Safety Commission

### CPSC Proposes Rule Setting Safety Standards for Carriage and Stroller Hinges

The Consumer Product Safety Commission published a [proposed rule](#) promulgating a consumer product safety standard for carriages and strollers. Under the authority of the Danny Keysar Child Product Safety Notification Act, the CPSC is required to promulgate standards for durable infant or toddler products that are “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The proposed rule addresses issues with the hinges of carriages and strollers, which have the higher injury rate of any stroller hazard category. “The proposed rule would add a performance requirement and test method similar to the provisions for 3D fold strollers to address scissoring, shearing, and pinching hazards associated with 2D fold strollers. The proposed new requirement would provide that the frame folding action of a stroller shall not create a scissoring, shearing, or pinching hazard when tested. The proposed new test is dynamic, like the saddle hinge test, and the test also determines if the hazard exists with the same two probes while the stroller is moved from a partially to the fully erect and locked position. Scissoring, shearing, or pinching that may cause injury exists when the edges of the rigid parts admit a 0.210-in diameter probe but do not admit a 0.375-in diameter probe when tested. Based on the incident data and anthropometric dimensions of the child occupant, the proposal defines an “access zone” that is easily accessible by a child. All hinges that are within the access zone must be checked for a scissoring, shearing, or pinching hazard while the stroller is moved from a partially to a fully erect and locked position. Adding this new performance requirement and test procedure would significantly reduce the risk of injury associated with the frame folding action.” [Comments](#) are due on August 5<sup>th</sup>.

## Consumer Financial Protection Bureau

### CFPB Final Rule Amends Regulation E, Makes Some Fee Disclosures Optional

The Consumer Financial Protection Bureau published a [final rule](#) amending the Bureau’s Regulation E, which governs electronic fund transfers. “The amendments address three specific issues. First, the 2013 Final Rule modifies the 2012 Final Rule to make optional, in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution. Second and relatedly, the 2013 Final Rule also makes optional the requirement to disclose taxes collected by a person other than the remittance transfer provider. In place of these two former requirements, the 2013 Final Rule requires disclaimers to be added to the rule's disclosures indicating that the recipient may receive less than the disclosed total due to the fees and taxes for which disclosure is now optional. Finally, the 2013 Final Rule revises 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 or recipient institution identifier that results in the transferred funds being deposited in the wrong account.”

## Nuclear Regulatory Commission

### NRC Proposes Rule and Draft Guidance for Packaging Used in Transport of Radioactive Material

The Nuclear Regulatory Commission published a [proposed rule](#) amending its regulations for the packaging and transportation of radioactive material. The NRC simultaneously published a draft regulatory guide, [Establishing Quality Assurance Programs for Packaging Used in Transport of Radioactive Material](#), for public comment elsewhere in the Federal Register. “These amendments would make NRC regulations conform to revisions to the International Atomic Energy Agency (IAEA) regulations for the international transportation of radioactive material



and maintain consistency with DOT regulations. These changes are necessary to maintain a consistent regulatory framework for the transportation and packaging of radioactive material. These changes would make the regulation of quality assurance programs more efficient by allowing changes that do not change quality assurance approval holder commitments to be made without prior NRC approval, and extending the duration of quality assurance program approvals. These changes would clarify the responsibilities of general licensees and further limit the shipping of fissile material under a general license.” [Comments](#) on the draft regulatory guide are due on July 30<sup>th</sup>; [comments](#) on the proposed rule are due on July 30<sup>th</sup>.

## Department of Transportation

### PHMSA Proposes Rule Enhancing Inspection, Investigation, Enforcement Authority for Hazardous Materials

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published a [proposed rule](#) that would enhance the Department of Transportation’s inspection, investigation, and enforcement authority related to the transportation of hazardous materials. “Specifically, we are proposing to amend the opening of packages provision to include requirements for perishable hazardous material; add a new notification section; and add a new equipment section to the Department’s procedural regulations. For the mandates to address certain matters related to the Department’s enhanced inspection, investigation, and enforcement authority, we are proposing no additional regulatory changes. We believe that the Department’s current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the hazmat transportation matters identified by Congress. These inspection and enforcement procedures will not change the current inspection procedures for DOT, but will augment DOT’s existing enforcement procedures and allow the Department to respond immediately and effectively to conditions or practices that pose serious threats to life, property, or the environment. As this rule affects only agency enforcement procedures, it therefore results in no additional burden of compliance costs to industry.” [Comments](#) are due July 21<sup>st</sup>.

## Environmental Protection Agency

### EPA Final Rule Expands List of Acceptable Substitutes for Ozone-Depleting Substances

The Environmental Protection Agency published a [final rule](#) expanding the list of acceptable-substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency’s (EPA) Significant New Alternatives Policy (SNAP) program. This rule addresses new substitutes for use in the refrigeration and air conditioning, foam blowing, solvent cleaning, adhesives, coatings and inks, and fire suppression sectors. “The SNAP program compares new substitutes both to the ozone-depleting substances being phased out under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the CAA and to other available or potentially available alternatives for the same end uses. The environmental and health risk factors that the SNAP program considers include ozone depletion potential, flammability, toxicity, occupational and consumer health and safety, as well as contributions to global warming and other environmental factors. Environmental and human health exposures can vary significantly depending on the particular application of a substitute—and over time, information applicable to a substitute can change. This approach does not imply fundamental tradeoffs with respect to different types of risk, either to the environment or to human health. EPA recognizes that during the nearly two- decade long history of the SNAP program, new alternatives and new information about alternatives have emerged. To the extent possible, EPA considers new information and improved understanding of the risk factors for the environment and human health in the context of the available or potentially available alternatives for a given use.”

## Agencies

### Office of Management and Budget

#### OMB Seeks Comment on 2013 Draft Report to Congress on Benefits and Costs of Federal Regulation

The Office of Management and Budget published a [notice](#) announcing the availability of the [2013 Draft Report to Congress on the Benefits and Costs of Federal Regulations](#) and seeking comments on the draft report from the public. “The Draft Report is divided into three chapters. Chapter I examines the benefits and costs of major Federal regulations issued in fiscal year 2012 and summarizes the benefits and costs of major regulations issued between October 2002 and September 2012. It also discusses regulatory impacts on State, local, and tribal governments, small business, wages, and economic growth. Chapter II offers recommendations for regulatory reform. Chapter III summarizes agency compliance with the Unfunded Mandates Reform Act.” [Comments](#) are due on July 31<sup>st</sup>.



## Administrative Conference of the United States

### ACUS Announces June 13<sup>th</sup>, 14<sup>th</sup> Public Meetings to Discuss Four Proposed Recommendations

The Administrative Conference of the United States [announced](#) a series of [public meetings](#) on June 13<sup>th</sup> and 14<sup>th</sup> to discuss four proposed recommendations and to discuss other business. The proposed recommendations to be discussed are on the use of [benefit-cost analysis by independent regulatory agencies](#); the [role of science](#) in the administrative process; and the [administrative record](#) in informal rulemaking. ACUS is an independent federal agency that provides recommendations to the federal government for improving the administrative process.

*Did you find this information helpful? Consider [giving a gift](#) to the George Washington University Regulatory Studies Center so we can continue to provide you with cutting edge information regarding federal regulations.*

