

Regulation Digest Weekly

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Marketplace of Ideas

American Action Forum

- Regulatory Freeze Could Save At Least \$22.1 Billion, 2.6 Million Hours, and Thousands of Jobs, *Noelle Clemente*
- FCC Continues to Send Mixed Signals, *Dan Goldbeck*
- The Week in Regulation: July 9-13, *Sam Batkins*

Competitive Enterprise Institute

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

The George Washington University Regulatory Studies Center

- Public Interest Comment on Notice of Data Availability Related to EPA's Stated Preference Survey, *Dan Sutter*

Government Accountability Office

Feature Story

CFTC Guidance Applies Dodd-Frank Rules to Cross-Border Swaps

The Commodity Futures Trading Commission proposed an [interpretive guidance](#) on the cross-border application of the swaps provisions of the Dodd-Frank Act's Title VII provisions relating to the Commodity Exchange Act (CEA). "Specifically, this proposed interpretive guidance and policy statement describes the following: The general manner in which the Commission will consider whether a person's swap dealing activities or swap positions may require registration as a swap dealer or major swap participant, respectively, and the application of the related requirements under the CEA to swaps involving such persons; and the application of the clearing, trade execution, and certain reporting and recordkeeping provisions under the CEA, to cross-border swaps involving one or more counterparties that are not swap dealers or major swap participants." In the interpretive guidance, regulators cite AIG, Lehmen Brothers, and Bear Stearns as examples of how "the stability of a large financial institution could be undermined by its activities abroad and how the entire U.S. financial system could be threatened as a result," necessitating regulation of foreign swap deals with the potential to influence the U.S. financial system.

To this effect, the Commission's proposed guidance interprets the term "U.S. person" to include the foreign branch or agency of a U.S. person; "By contrast, a foreign affiliate or subsidiary of a U.S. person would be considered a non-U.S. person, even where such an affiliate or subsidiary has certain or all of its swap-related obligations guaranteed by the U.S. person." Additionally, the Commission proposes extending swap dealer registration requirements to non-U.S. persons who engage in more than a *de minimis* level of swap dealing with U.S. persons. Concurrent with this release, CFTC issued a [proposed rule](#) delaying implementation of Dodd-Frank rules that now apply to foreign entities. [Comments](#) on this draft interpretive guidance are due on August 27th.

In the News

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[Will regulators get it right on the Volcker Rule?](#), *Washington Post*

[Clock Starts Ticking on Issuance of FDA's Social Media Guidance](#), *Regulatory Focus*

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[President Obama's administration slow-walks new rules](#), *Politico*

[Fake Pot Is A Real Problem For Regulators](#), *NPR*

[Changes Coming to Medical Device Pre-submission Meeting Program](#), *Regulatory Focus*

[More Capital's Answer to Too Much Bank Regulation](#), *Wall Street Journal*

[FDA: Bausch & Lomb Marketed Product Using Rejected Claims for Years](#), *Regulatory Focus*

[More Capital's Answer to Too Much Bank Regulation](#), *Wall Street Journal*

[Dodd-Frank and Data Management: Got Compliance?](#), *CIO Journal*

- Agencies Continue Rulemakings for Clarifying Specific Provisions of Orderly Liquidation Authority, *Alicia P. Cackley*
- HHS and EPA Can Improve Practices Under Special Hiring Authorities, *Robert N. Goldenkoff*

- SEC's Actions and Stakeholder-Developed Initiatives, *Michael Courts*
- Regulatory Oversight of Compliance with Servicemembers Civil Relief Act Has Been Limited, *Matthew Scire*

The Mercatus Center

- Clearing the Way for Jobs and Growth: Retrospective Review to Reduce Red Tape and Regulations, *Randall Lutter*
- How businesses and regulators work together, *Emily Washington*
- Beware the Surge of Midnight Regulations, *Sherzod Abdukadirov*

Natural Resources Defense Council

- Public outpouring calling on FDA to stop the misuse of antibiotics in livestock for real, *Avinash Kar*

OMB Watch

- National Transportation Safety Board: Pipeline Regulations Need Teeth, *Jessica Randall*

Penn Program on Regulation

- Bureaucratic Breakdown, *Donald F. Kettl*
- The Regulatory Week in Review: July 13, 2012, *Mima Mohammed*

Resources for the Future

- The National Environmental Policy Act: Enhancing Collaboration and Partnerships, *Lynn Scarlett*

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[Republicans push through mining deregulation bill that could avoid US environmental reviews](#), *Washington Post*

[FDA, academia, industry collaborate on genetic database of foodborne diseases](#), *Washington Post*

[Federal regulatory spending budget to decrease next year](#), *ScienceBlog*

[Demand for nearly half a million new airline pilots over next 20 years raises safety concerns](#), *Washington Post*

[DOJ holds up Verizon-cable deal on competition concerns](#), *Washington Post*

7/13/12

[Reports: J&J Reaches Agreement to Settle Lawsuit Over 'Tsunami of Regulatory' Problems](#), *Regulatory Focus*

[Sen. Lamar Alexander attacks local newspaper for criticizing his vote for EPA rules](#), *Daily Caller*

[Feds foist chicken ID on frustrated farmers](#), *Washington Times*

7/14/12

[Vast F.D.A. Effort Tracked E-Mails of Its Scientists](#), *New York Times*

7/16/12

[Investigation in FDA Reveals 'Enemies List,' Extensive Monitoring Practices](#), *Regulatory Focus*

[Grassley Introduces Senate Legislation Targeting Environmental Consent Decrees](#), *Bloomberg BNA*

[FDA Approves First Drug To Prevent HIV Infection](#), *NPR*

[FDA approves first pill to help prevent HIV](#), *Associated Press*

[Daily Environment Report: The Week of July 16](#), *Bloomberg BNA*

[Cellphone carriers warn FCC not to regulate privacy protections](#), *The Hill*

[FDA approves first drug to lower HIV risk](#), *The Hill*

[FDA lawyers authorized spying on agency's employees, senator says](#), *Washington Post*

[JPMorgan losses clip banks' efforts to fight derivatives reform](#), *Chicago Tribune*

[New government consumer watchdog to assume oversight of credit reporting agencies in September](#), *Washington Post*

[SEC commissioner: Dodd-Frank 'goes too far'](#), *Daily Caller*

[New Agency Is Targeting Errors in Credit Files](#), *Wall Street Journal*

[U.S. consumer agency to supervise credit reporting companies](#), *Chicago Tribune*

[JPMorgan losses clip banks' efforts to fight derivatives reform](#), *Chicago Tribune*

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[EPA Positioned To Stay Under Radar Through 2012 Election Season](#), *Inside EPA*

[FDA Bans Chemical BPA From Sippy Cups And Baby Bottles](#), *NPR*

[White House under fire for delays on food safety rules](#), *Chicago Tribune*

[Court: 'Pay-for-Delay' Practice Anticompetitive, Illegal](#), *Regulatory Focus*

[Pressure Mounts on FDA Over Surveillance Scandal](#), *Regulatory Focus*

[FDA Looks to Establish Patient Registry to Assess Risks of Imaging Contrast Agents](#), *Regulatory Focus*

[White House weakened EPA soot proposal, documents show](#), *Washington Post*

[CFTC chief admits failure in oversight of Peregrine](#), *Chicago Tribune*

[CFTC chief admits failure; Iowa broker says money gone](#), *Chicago Tribune*

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[FDA approves Vivus' anti-obesity pill associated with significant weight loss in patients](#), *Washington Post*

[Trading Firm CEO: I Spent It](#), *Wall Street Journal*

[White House Asks: Got an Idea to Simplify Regulations?](#), *Wall Street Journal*

[Consumer bureau dishes first penalties, hits Capital One for 'deceptive' practices](#), *The Hill*

Rulemaking

Environmental Protection Agency

EPA Proposes Relaxed Particulate Matter Emissions Standards for Portland Cement New Source Rule

The Environmental Protection Agency is [proposing amendments](#) to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the Portland cement industry, specifically the new source standards for particulate matter (PM). The amendment would reduce stringency of current PM emission standards, allowing an additional 135 tons of emitted PM annually from the Portland cement industry. Accordingly, the Agency estimates this change will save the Portland cement industry almost \$19 million in upfront capital costs, in addition to \$12 million in annual compliance costs. “These proposed amendments would promote flexibility, reduce costs, and ease compliance burdens. EPA is also addressing the remand of the emission standards in the NESHAP by the D.C. Circuit on December 9, 2011. Finally, the EPA is proposing to extend the date for compliance with the existing source national emission standards for hazardous air pollutants to September 9, 2015.” [Comments](#) are due on August 17th.

EPA Rule Postpones Permit Requirements for Smaller Greenhouse Gas Emission Sources

The Environmental Protection Agency issued a [final rule](#) concerning the third phase in the Greenhouse Gas (GHG) Tailoring Rule. Under the Clean Air Act, GHGs are addressed under major source permitting requirements. Tailoring of this rule was necessary in order to avoid the significant burden of requiring states and local permitting authorities to address GHGs immediately and simultaneously after the rule became effective. The original Tailoring [Rule](#) proposed a step-by-step plan to implement federally enforceable permits for the most environmentally-significant sources of GHGs. In this final rule addressing the third phase of tailoring, the EPA examined the feasibility of lowering the emissions threshold to include smaller sources based on whether permitting authorities had the administrative capacity and infrastructure to manage the increased count and could streamline these measures. In this final rule of phase three, the EPA has determined these criteria were not met and has decided not to lower the applicability thresholds. This will not increase the number of GHG sources required to obtain a permit at this time. This action is effective August 13, 2012.

EPA Rule Delays Visibility Pollution Controls in New Mexico

The Environmental Protection Agency released a [final rule](#) this week that delays the effectiveness of the Federal Implementation Plan (FIP) for pollution reduction in New Mexico. The FIP, which creates emission limits on nitrogen oxides and sulfur dioxide, was developed after EPA issued a disapproval of New Mexico’s plan to meet the National Ambient Air Quality Standards set forth in the Clean Air Act. EPA found that the San Juan Generating Station released too many toxins that interfered with the visibility programs in other states. The Agency is granting a 90-day delay to discuss alternative plans with New Mexico that would be consistent with the regional haze programs developed in the Clean Air Act.

Department of Commerce

NOAA Retrospectively Reviews Rules that Significantly Impact Small Entities

The National Oceanic and Atmospheric Administration issued a [proposed rule](#) this week to satisfy requirements in the Regulatory Flexibility Act. The rule outlines the Administration’s plan to review existing regulations that have a significant impact on small entities, such as local governments and small businesses. The National Marine Fisheries Service plans to review all rules within ten years of being issued. Regulations will be examined based on multiple criteria, including whether the rule is redundant and the economic and technological conditions of the area affected by the rule. [Comments](#) on this proposed rule are due on August 15, 2012.

Department of Agriculture

APHIS Extends Comment Period for Rule Targeting Online Pet Stores

The Animal and Plant Health Inspection Service [announced](#) an extension of the public comment period for its [proposed rule](#), *Animal Welfare; Retail Pet Stores and Licensing Exemptions*. The Department’s proposal would revise the definition of “retail pet store” for official licensing purposes, effectively excluding most online pet dealers from the market. The proposed definition of “retail pet store” would be limited to “a place of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and where only certain animals are sold or offered for sale, at retail, for use as pets.” Places officially labeled “retail pet stores” are not required to be licensed or

inspected under the Animal Welfare Act; excluding online pet retailers from this definition subjects those entities to AWA inspection and licensing. APHIS argues that this regulation is necessary “to ensure that animals sold at retail are monitored for their health and humane treatment and to concentrate our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations.” [Comments](#) on this proposed rule are now due on August 15th.

Securities and Exchange Commission

SEC Extends Interim Rule on Foreign Exchange Market Transactions

The Securities and Exchange Commission (SEC) released an [extension](#) of the interim temporary Rule 15b12-1T, which allows brokers and dealers to temporarily engage in retail foreign exchange market transactions. The Dodd-Frank Act amended the Commodity Exchange Act (CEA) to prohibit brokers and dealers from entering into a foreign exchange transaction with an individual who is not an “eligible contract participant” unless a federal regulatory agency allows the transaction under their rules. The SEC adopted Rule 15b12-1T on July 13, 2011 to temporarily preserve beneficial foreign transactions. This amendment extends the date on which the rule will expire from July 16, 2012 to July 16, 2013.

Commodity Futures Trading Commission

CFTC Extends Comment Deadline for Uncleared Swaps Margin Requirements

The Commodity Futures Trading Commission [extended](#) the public comment period for its proposed rule, *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*. The Commission’s proposed rule would establish initial and variation margin requirements on uncleared swaps for swap dealers and major swap participants. [Comments](#) on this proposed rule are now due on September 14th.

Agencies

Food and Drug Administration

FDA Disallows Use of BPA in Baby Bottles, Sippy Cups

The Food and Drug Administration issued a [final rule](#) banning the use of Bisphenol A (BPA) in baby bottles and sippy cups, in response to a [petition](#) filed by the American Chemistry Council claiming that baby bottles and sippy cups containing BPA are no longer being introduced to the U.S. market. This final rule amends existing food additive regulations to no longer provide for the use of polycarbonate resins, such as BPA, in baby bottles or sippy cups, because FDA considers their use “abandoned” in the U.S. market.

This action does not require FDA to make a determination about the safety of BPA. “As indicated in the filing notice, because the petition was based on an assertion of abandonment, the Agency did not request comments on the safety of the use of PC resins in baby bottles and sippy cups. *Such safety information is not relevant to abandonment* and, therefore, any comments addressing the safety of PC resins were not considered in the Agency's evaluation of this petition. Separate from FDA's consideration of this petition, FDA is actively assessing the safety of BPA” [Comments](#) on this final rule are due to on August 16th.

Department of Energy

DOE Awards \$30 Million to Fund Research Projects using Natural Gas as Vehicle Fuel

The Department of Energy [announced](#) it was awarding \$30 million to 13 separate research projects studying the application of natural gas as a vehicle fuel for cars and trucks. “Today’s natural gas vehicle technologies require tanks that can withstand high pressures, are often cumbersome, and are either too large or too expensive to be suitable for smaller passenger vehicles. ARPA-E’s new projects are focused on removing these barriers, which will help encourage the widespread use of natural gas cars and trucks...The projects will also focus on developing natural gas compressors that make it easier for consumers to re-fuel at home.”