

# Regulation Digest Weekly

July 25<sup>th</sup>, 2012

Vol 1. No 20

## Opinion

- Are Pollution Controls Worth Their Costs?
- GOP right wing is serious about disabling government
- Libor fraud exposes Wall Street's rotten core
- The FCC should conform to rule of law norms
- Economically Significant Regulations On the Rise Under Obama
- The SEC's Mild-Mannered, but Tough CAT
- Season for relief from big government
- Dodd-Frank: Two Years Later, Countless Questions Remain
- Obama Tells Tall Tales About The Bush Years
- Dodd-Frank needs to be amended to stop another meltdown
- Bankers Gone Wild
- Tales of the Red Tape #35: Reams of Simplicity from CFPB

## Marketplace of Ideas

### American Action Forum

- The Week in Regulation: July 16-20, *Sam Batkins*

### Committee on Oversight and Government Reform

- STAFF REPORT | Continuing Oversight of Regulatory Impediments to Job Creation: Job Creators Still Buried by Red Tape

### Competitive Enterprise Institute

- On Dodd-Frank's Unhappy Anniversary, Main Street Suffers Most, *John Berlau*
- Cut Down On Unfunded Mandates, Part II, *David Deerson*
- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- New Regulations Threaten To Wipe Out Community Banks, *Iain Murray*

## Feature Story

### CFPB Defines Its Supervisory Authority over Nonbank Large Market Participants

The Consumer Financial Protection Bureau issued the first in a series of [final rules](#) defining its statutory authority to supervise and regulate nonbank "larger participant[s]" of consumer financial product and service markets. The Dodd-Frank Act gave the CFPB regulatory authority over these larger market participants, and left the exact scope of this authority and the definition of "larger participants" subject to the CFPB's discretion; this final rule, which focuses on participants of the consumer reporting market, is intended by the Bureau to be "the first in a series of rules to define larger participants of other markets" which will be subject to Bureau supervision.

In this final rule, the CFPB establishes a test to determine whether a consumer financial product market participant falls under the purview of the Bureau: "Under this test, a nonbank covered person with more than \$7 million in annual receipts resulting from consumer reporting activities described in the Proposed Rule would be a larger participant of the consumer reporting market." The consumer reporting market includes "consumer reporting agencies selling consumer reports, consumer report resellers, analyzers of consumer reports and other account information (analyzers), and specialty consumer reporting agencies." Once determined to be a larger market participant, the entity in question is subject to CFPB rules for a minimum of two years before its regulated status can be reevaluated.

## In the News

7/18/12

[Regulators say 8 exchanges, clearinghouses potential threats to system, need strict oversight](#), *Washington Post*

[Capital One to pay \\$210 million for deceptive credit card practices](#), *Washington Post*

[CFPB: Capital One Bank must pay \\$210 million](#), *Politico*

[DOT Investigates After United Says it Will Kill Award Tickets It Sold For 4 Miles](#), *Wall Street Journal*

[Most Americans Big Fans Of Wall Street Regulation: Report](#), *Huffington Post*

[U.S. bank regulator promises better enforcement following scathing congressional report into HSBC AML failures](#), *Reuters*

[OIRA Seeks Ways to Simplify Regulations](#), *Regulatory Focus*

[Little Regulation Poses Problems Tracking Tissue](#), *NPR*

[Republican Lawmakers Seek To Block Funding On Black Lung Regulation](#), *NPR*

7/19/12

[SEC in Talks with Chinese Regulators on Document Sharing](#), *Wall Street Journal*

[Major Regulatory Changes Proposed in House Bill](#), *Regulatory Focus*

[Anemia drugs made billions, but at what cost?](#), *Washington Post*

## Congressional Budget Office

- Congressional Budget Office Cost Estimate: H.R. 4078 Regulatory Freeze for Jobs Act of 2012

## Federal Regulations Advisor

- Monday Morning Regulatory Review – 7/23/12, *Leland Beck*

## Government Accountability Office

- EPA Needs Better Information on New Source Review Permits, *David Trimble & Franklin Rusco*
- PODCAST: Air Pollution from Electricity-Generating Power Plants, *Jeremy Cluchey & David Trimble*
- FCC Has Reformed the High-Cost Program, but Oversight and Management Could be Improved, *Mark Goldstein*

## The Heritage Foundation

- Reforming Regulation: Some Sensible Steps, *James Gattuso*
- The Assault on Coal and American Consumers, *Nick Loris*

## Louisiana Law Review

- Just Do It! Specific Rulemaking on Materiality Guidance in Insider Trading, *Joan MacLeod Heminway*

## Manhattan Institute

- Dodd-Frank's Protection Racket, *Nicole Gelinas*

## The Mercatus Center

- More Regulations and More Regulators May Not Be the Answer, *Hester Peirce*

## Penn Program on Regulation

- A Simple Solution to Ineffective Regulations, *Nancy Nord & Anne Northup*
- The Regulatory Week in Review: July 20, 2012, *Mima Mohammed*

## Public Citizen

- FDA Approval of Diet Drug Qnexa Is Reckless, *Sidney Wolfe*

## Sunlight Foundation

- Big banks dominate Dodd-Frank meetings with regulators, *Lee Drutman*

[How Fake Cancer Drugs Entered U.S.](#), *Wall Street Journal*

[SEC May Toughen Proposal on Minerals Tied to Violence](#), *Wall Street Journal*

[The Seamy Side Of The Human Tissue Business](#), *NPR*

[Clock ticking for SEC to pursue fraud charges in financial crisis cases](#), *Washington Post*

[Feeding Frenzy Seen If Wall Street Sues Itself Over Libor](#), *Bloomberg*

[Libor Scandal Shows Many Flaws in Rate-Setting](#), *DealBook*

[SEC extends review period on JPM's copper ETF plan](#), *Reuters*

[High-Tech Shortcut To Greek Yogurt Leaves Purists Fuming](#), *NPR*

**7/20/12**

[Exclusive: Banks in Libor probe consider group settlement-sources](#), *Reuters*

[Regulators close 5 small banks in Ga., Fla., Kansas, Ill. for total of 38 US failures in 2012](#), *Washington Post*

[EPA reviewing rule on toxic air pollution; standards for future plants targeted](#), *Washington Post*

[Libor-type manipulation needs regulatory focus: Treasury](#), *Reuters*

[Regulators Close Five Banks](#), *Wall Street Journal*

**7/22/12**

[Experts: Some fracking critics use bad science](#), *Associated Press*

[Futures Overseer Plots Revamp](#), *Wall Street Journal*

**7/23/12**

[Capping Busy Week, FDA Approves Breast Cancer, Multiple Myeloma Drugs](#), *Regulatory Focus*

[FDA Backs HIV Prevention Drug In Letter Denying Citizen Petition](#), *Regulatory Focus*

[FTC: Consumers should have power to block third-party charges on cellphone bills](#), *The Hill*

[House to give auto dealers a break from federal rules](#), *The Hill*

[Senators: Let SEC hit Wall Street harder](#), *Politico*

[Report: Claims drilling led to health problems based on inaccurate science](#), *The Hill*

[Senators seek bigger firepower for U.S. securities regulator](#), *Reuters*

[Former Stanford executive stays in limbo as SEC case drags](#), *Reuters*

[Wood-Fired Plants Generate Violations](#), *Wall Street Journal*

[Fed Official Wants Tougher Volcker Rule](#), *Wall Street Journal*

[FAA official: Radar center will be in New York](#), *Wall Street Journal*

**7/24/12**

[Appeals Court Decision Favors EPA's Climate Change Rules](#), *RegBlog*

[SEC Issues Final Report on Incorporation of IFRSs](#), *CFO Journal*

[Republican Jobs Bills Won't Actually Create Jobs, Say Economists](#), *Huffington Post*

[Administration delays final cooling water rule](#), *The Hill*

[NIH Program Partners With FDA to Develop Regulatory Tools](#), *Regulatory Focus*

[Court Orders FDA to Release Thousands of Documents on Surveillance Program](#), *Regulatory Focus*

[Fed Under Pressure Over Libor](#), *Wall Street Journal*

[Appeals Court Upholds Federal Rules on Airline Ads, Cancellations](#), *Wall Street Journal*

[Airlines' Free-Speech Suit Doesn't Fly](#), *WSJ Law Blog*

[Court denies bid by Spirit, Southwest airlines to block consumer protection regulations](#), *Washington Post*

[House acts to block Labor Department from proposing new safety rules for child labor on farms](#), *Washington Post*

[Google, Facebook, Amazon, eBay form new Washington lobbying group](#), *Post Tech*

## Contact Us

www.regulatorystudies.gwu.edu

Twitter: @RegStudies

Email: regulatorystudies@gwu.edu

[Cordray stands by CFPB reform efforts](#), *Politico*

7/25/12

[OSHA Warns Fracking Employees of Silica Inhalation Risk](#), *RegBlog*  
[Regulators, Contractor in Spat Over Accidental Release of Documents](#), *Regulatory Focus*

[FDA Fires Back at Legislative Critics, Blames Manufacturers for Drug Shortages](#), *Regulatory Focus*

[AIG Lacks Rigorous Regulation, Watchdog Report Says](#), *Wall Street Journal*

[Interactive Brokers to pay \\$700,000 to settle CFTC charges](#), *Reuters*

[Judge faults SEC oversight in Wall Street research accord](#), *Reuters*

## Rulemaking

### Commodity Futures Trading Commission

#### CFTC Rule Establishes Swap-Clearing Exemption Criteria

The Commodity Futures Trading Commission published a [final rule](#) establishing criteria for exemptions from the swap-clearing requirements of the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Act. Swaps that are now eligible for exemption (called an “end-user exception”) are swaps in which one of the counterparties to the swap is not a financial entity, swaps which are used to hedge or mitigate commercial risk, or swaps where the counterparty informs the Commission how it meets the financial obligations of entering into non-cleared swaps. “Congress promulgated the end-user exception in Section 2h(7) of the CEA to permit non-financial companies to continue using non-cleared swaps to hedge risks associated with their underlying business, such as manufacturing, energy exploration, farming, transportation, or other commercial activities.”

CTFC’s final rule establishes the criteria for a swap that hedges or mitigates commercial risk and the type of information which must be submitted to the Commission to be cleared for an end-user exception. However, the application of this rule still remains somewhat unclear: “the Commission is *declining to determine at this time whether certain specific entities, or types of entities, are exempt from the clearing requirement* or would qualify for the end-user exception based on their specific circumstances. This release addresses comments and questions that are generally applicable to the rule. Any exemptive or interpretive determinations based on the specific nature or circumstances of a particular entity can better be addressed *on a case-by-case basis*, with the benefit of all relevant facts and circumstances, through the interpretive or exemptive relief processes available for such purposes under the CEA and the Commission's regulations.”

### Securities and Exchange Commission

#### SEC Releases Interpretive Guidance Providing Transitional Definition of Creditworthiness

The Securities and Exchange Commission is seeking comments on an [interpretive guidance](#) setting temporary standards of creditworthiness in order to clarify the meaning of “mortgage related security” and “small business related security.” The Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Commission to establish standards of creditworthiness for “mortgage related security” and “small business related security” instead of relying on credit ratings issued by nationally recognized statistical rating organizations. The standards established in this guidance are effective as of July 20<sup>th</sup>, and will be in effect until the Commission finalizes a new rulemaking with the definitive regulatory standard of creditworthiness. [Comments](#) on this guidance document are due August 22, 2012.

### Environmental Protection Agency

#### EPA Stays Utility MACT Rule for Reconsideration

The Environmental Protection Agency [announced](#) on Friday that it is reconsidering its controversial Utility MACT rule, which limits mercury and toxics emissions from power plants, based on information received from industry stakeholders after finalization of the rule. “EPA will review monitoring issues related to the mercury standards for new power plants and will address other technical issues on the acid gas and particle pollution standards for these plants. The agency’s review will not change the types of state-of-the-art pollution controls new power plants are expected to use to reduce this harmful pollution. This type of review, known as a “reconsideration,” is a routine tool that EPA often uses to ensure that its standards incorporate all relevant information, in cases where information only becomes available after a rule is promulgated. The agency’s decision to reconsider the standards

for new sources reflects its ongoing commitment to work with industry and other stakeholders to ensure that all of EPA's standards protect public health while being achievable and cost-effective. The agency will follow an expedited, open and transparent process that includes public comment on any proposed changes. The agency will complete the rulemaking by March 2013 and will also use its Clean Air Act authority to stay the final standards for new power plants for three months during this review." The final Utility MACT rule was [published](#) in February; a history of EPA's regulatory actions surrounding the final mercury and air toxics standards for power plants can be found [here](#).

### **EPA Withdraws Proposed CAFO Rule**

The Environmental Protection Agency [withdrew](#) a proposed rule, initially published in the Federal Register on October 21<sup>st</sup>, 2011, which would have required reporting of certain information by concentrated animal feeding operations (CAFOs) to improve water quality. CAFOs are considered "point sources" of water pollution by EPA, which is regulated by the National Pollutant Discharge Elimination System (NPDES) rules of the Clean Water Act (CWA). The proposed rule would have applied to concentrated swine, cattle, turkey, horse, sheep, chicken, and duck feeding operations ranging in size from 150 animals to upwards of 125,000 animals, requiring these operations to submit certain information to EPA. In lieu of the withdrawn proposed rule, EPA will rely on states, which already collect on a state-level the information that EPA sought to collect on the federal level.

### **EPA Releases Approvals and Partial Disapprovals of Air Quality Implementation Plans**

The Environmental Protection Agency issued a [proposed rule](#) approving sections of revisions to the Florida, Mississippi, and South Carolina State Implementation Plans (SIPs) for pollution reduction. EPA determined that the implementation plans currently meet the standards set forth in the Clean Air Act (CAA) relating to interstate transport. The CAA "prohibit[s] a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the national ambient air quality standard (NAAQS) in any other state." EPA also released a [proposed rule](#) approving most sections of the Connecticut, Maine, Massachusetts, and New Hampshire infrastructure SIPs. Each implementation plan meets the infrastructure requirements for the 1997 and 2006 particulate matter standards. However, the EPA proposed a disapproval of sections of the Massachusetts implementation plan that relate to interstate pollution reduction.

## **Department of Commerce**

### **BIS Rule Ends Arms Embargo Against Rwanda**

The Industry and Security Bureau (BIS) released a [final rule](#) this week ending the United States arms embargo on Rwanda. In order to keep United States law consistent with the United Nations Resolution 1823, which removes the "arms and related material" sanctions against Rwanda, the BIS changed the Export Administration Regulations sections preventing weapon exports and re-exports to Rwanda. Additionally, the amended Export Administration Regulations now require a license for exports to any countries that face a United Nations arms embargo.

## **Agencies**

### **Environmental Protection Agency**

#### **EPA Releases Health Risk and Exposure Assessments for Ozone NAAQS, Seeks Comment**

The Environmental Protection Agency [announced](#) the release of two draft assessments related to the Agency's review of the National Ambient Air Quality Standards (NAAQS) for ozone. One draft assessment focuses on [ozone exposure and health risk](#), while the other assessment is focused on [ozone exposure and welfare risk](#). "These two draft assessment documents describe the quantitative analyses the EPA is conducting as part of the review of the national ambient air quality standards (NAAQS) for ozone (O<sub>3</sub>). In addition, on or about August 13, 2012, [the Office of Air Quality Planning and Standards] will make available for public comment the first draft document titled, *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, First External Review Draft*, as well as appendices and additional technical materials that support the first draft Policy Assessment and first draft Risk and Exposure Assessments." The Agency's current review of the NAAQS for ozone was initiated in 2008, and will be undertaken in four stages: 1) planning; 2) science assessment; 3) risk/exposure assessment; 4) rulemaking and policy assessment. Based on the Agency's announcement, stage four of the ozone NAAQS review will begin in mid-August of this year. EPA encourages comment from the public on these draft documents, and will be accepting [comments](#) until September 11<sup>th</sup>.