

Regulation Digest Weekly

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Opinion

- Dodd-Frank disclosure requirements will hurt energy sector
- Tackling money market funds' hidden risks
- Rules Delayed, Governing Denied
- Can the White House Trim U.S. Paperwork?
- Consumer product safety worth celebrating
- Laws Gone Wild? Drowning in Regulation
- Too Big To Fail Has Become a Permanent Bailout Program

Marketplace of Ideas

American Action Forum

- The Week in Regulation: August 6-10, *Sam Batkins*
- Can the White House Trim U.S. Paperwork?, *Sam Batkins*

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- As Corn Production Shrivels, EPA Stalls on Ethanol/Hunger Issue, *Christine Hall*

Consumer Financial Protection Bureau

- Your chance to weigh in on mortgage servicing, *CFPB Web Team*

Federal Register

- Regulatory Lookback Process is Ongoing, *Michael White*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 8/13/12, *Leland Beck*
- Testing Paperwork Reduction Act Burdens: A Request for Public Information, *Leland Beck*

The George Washington University Regulatory Studies Center

- Regulation: A Primer 2nd Ed., *Susan E. Dudley & Jerry Brito*

Feature Story

OMB Memo: Federal Forms Should be Simplified, Tested for Complexity

Cass Sunstein, outgoing administrator of the Office of Information and Regulatory Affairs in the OMB, issued a [memorandum](#) on Thursday to the heads of executive branch agencies and to the independent regulatory commissions asking that federal forms be simple and understandable to the public. Sunstein instructs agencies to test information collections (including forms) in advance in order “to ensure that they are not unnecessarily complex, burdensome, or confusing...to obtain the best available information about the likely burdens on members of the public (including small businesses), and...to identify ways to reduce burdens and to increase simplification and ease of comprehension. Such advance testing should occur either before proposing information collections to the public or during the public comment period required by the [Paperwork Reduction Act].” The advance testing can take the form of focus groups, online experiments, randomized controlled experiments, and cognitive tests. The annual burden of current paperwork requirements exceeds 10 billion hours, according to OIRA data.

In the News

8/8/12

[American law: How non-US companies are affected](#), *BBC News*
[SEC roundtable on technology glitches set for September](#), *Reuters*
[FDIC settles with firms over student debit card charges](#), *Reuters*
[US FDA narrows use of Stryker Wingspan brain stent](#), *Reuters*
[U.S. court eases SEC burden to show defendant aided fraud](#), *Reuters*
[Obama's regulations save lives and money, Cass Sunstein says](#), *Government Executive*

8/9/12

[Futures commissioner to unveil insurance fund proposal](#), *Reuters*
[Goldman says SEC drops probe into its role in MBS deal](#), *Reuters*
[Google, FTC settle for \\$22.5 million](#), *Washington Post*
[Regulators tell Goldman Sachs it's cleared in investigation of subprime mortgage portfolio](#), *Washington Post*
[Some of Google's interactions with federal regulators](#), *Washington Post*
[Google settles FTC privacy case for \\$22.5 million, agency's largest penalty](#), *Washington Post*
[Mikulski, Cardin among senators urging EPA waiver on corn-to-fuel rule](#), *Washington Post*
[Obama administration seeks to simplify federal forms](#), *USA Today*
[FDA May Regulate Premium Cigars](#), *ABC News*
[When Regulators Go Rogue](#), *Wall Street Journal*
[Foreign banks push CFTC to extend deadline for new swaps rules](#), *Reuters*
[Goldman says SEC drops probe into its role in MBS deal](#), *Reuters*

- Perpetuating Puffery: An Analysis of the Composition of OMB's Reported Benefits of Regulation, *Susan E. Dudley*

The Heritage Foundation

- Chemical Security in the U.S.: CFATS Regulations Too Complex, Overly Burdensome, *Jessica Zuckerman*
- Ignore the Spin: GAO Says to Ease Cell Phone Rules, *James Gattuso*
- Agriculture Department Paid \$2 Million for a Single Intern, *Lachlan Markay*

The Mercatus Center

- Mercatus Policy Guide Part II: Why Regulation Matters
- Mercatus Policy Guide Part III: Rethinking Financial Markets Reform
- Regulation: A Primer 2nd Ed., *Susan Dudley & Jerry Brito*

National Bureau of Economic Research

- Airports and Urban Growth: Evidence from a Quasi-Natural Policy Experiment, *Bruce Blonigen & Anca Cristea*

National Center for Policy Analysis

- Energy Regulations: Protecting Irrational Consumers from Themselves

Office of Management and Budget

- MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, AND OF THE INDEPENDENT REGULATORY COMMISSIONS: Testing and Simplifying Federal Forms, *Cass Sunstein*
- Making Forms Simpler, *Cass Sunstein*

OMB Watch

- Sunstein's Legacy: Retrospective Reviews = An Unjustified Burden on Regulatory Agencies, *Randy Rabinowitz*

Penn Program on Regulation

- The Regulatory Week in Review: August 10, 2012, *Mima Mohammed*

The Phoenix Center for Advanced Legal & Economic Public Policy Studies

- Justifying the Ends: Section 706 and the Regulation of Broadband, *George Ford & Lawrence Spiwak*

[Ag Dept unveils new steps to stop food stamp fraud](#), *Washington Post*
[FTC: \\$22.5 million penalty sends message to Google](#), *Washington Post*
[FTC fines Google a record \\$22.5 million to settle allegations of broken privacy promises](#), *Washington Post*

[Consumer Group Files Suit Against Sweetener For Claiming It's 'Essential'](#), *NPR*
[Google's Interactions With Federal Regulators](#), *NPR*
[Google Fined \\$22.5M For Latest Privacy Breakdown](#), *NPR*

8/10/12

[FTC Names Agency's New Inspector General](#), *Federal Trade Commission*
[Consumer Bureau Moves To Make Mortgages Clearer, Foreclosures Fewer](#), *NPR*
[Consumer bureau proposes mortgage servicer overhaul](#), *NPR*

[U.S. Unveils Mortgage Protections For Homeowners](#), *Associated Press*
[Why Evading U.S. Rules May 'Tempt' Foreign Banks](#), *NPR*

[OMB to agencies: Ask users if your forms make sense](#), *Government Executive*
[SEC Waves Caution Flag in Wake of Nascar-Themed Fund Crash](#), *Wall Street Journal*

[SEC Asked Herbalife Same Questions Einhorn Raised](#), *Wall Street Journal*
[Decision not to prosecute Goldman Sachs shows weakness: senator](#), *Reuters*

[Ex-Fannie Mae execs lose bid to end SEC fraud lawsuit](#), *Reuters*

[Miami offers finance staff shakeup to SEC](#), *Reuters*

[SEC charges NASCAR stock fund adviser over withholding records](#), *Reuters*

[U.S. consumer agency proposes rules for mortgage servicers](#), *Reuters*

[Consumer cop takes on 'robo-signing'](#), *Politico*

[FTC OKs Facebook's privacy settlement](#), *Politico*

[CFPB proposes new rules for mortgage servicers](#), *Washington Post*

8/12/12

[Small banks to benefit from Dodd-Frank exemption on foreign transfers](#), *Washington Post*

[Fishermen say hideous, coveted monkfish is too long on regulations, too short on data](#), *Washington Post*

8/13/12

[Agencies to simplify forms, ease burden on businesses](#), *Washington Business Journal*

[NYT to White House: Move Forward on Food Safety Rules](#), *Food Safety News*

[SEC issues investor bulletin on ETFs](#), *Reuters*

[Top lawyer at U.S. bank regulator OCC to retire after 19 years](#), *Reuters*

[Verizon Deal Nears Regulatory Approval](#), *Wall Street Journal*

[Trans-Atlantic Tensions Increase](#), *Wall Street Journal*

[Consumer Advocates Cheer Exit of OCC's Top Counsel](#), *Wall Street Journal*

8/14/12

[Expanding Child Protection Online](#), *RegBlog*

[Federal appeals court sides with Texas against EPA](#), *CNBC*

[Memo Orders Agencies to Simplify Language, Strip Jargon from Forms](#), *ExecutiveGov*

[FDA Calls for Evaluation of Suicidal Ideas and Behavior in all CNS Drug Trials](#), *Regulatory Focus*

[Clearing for OTC derivatives market finally in sight](#), *Reuters*

[Wells Fargo to pay more than \\$6.5 million to settle SEC charges](#), *Reuters*

[Standard Chartered, New York regulator reach \\$340 mln settlement](#), *Reuters*

[FDA warns Hershey over chocolate syrup labeling](#), *Reuters*

8/15/12

[Regulators propose appraisals for high risk home loans](#), *Reuters*

[Johnson & Johnson removing harsh chemicals from adult toiletries and cosmetic](#)

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[products by 2015](#), *Washington Post*

[Federal regulators tighten standards for home appraisals used for high-risk mortgage lending](#), *Washington Post*

[Standard Chartered Shares Rise On Settlement](#), *NPR*

[Barack Obama, Mitt Romney stuck in coal conundrum](#), *Politico*

[Oil lobby: Drilling safety rule might increase risk](#), *The Hill*

[Fed's Dudley urges reform for money market funds](#), *Reuters*

Rulemaking

Commodity Futures Trading Commission

CFTC and SEC Final Rule Further Defines “Swap”

The Commodity Futures Trading Commission, in conjunction with the Securities and Exchange Commission, published a [final rule](#) defining the terms “swap,” “security-based swap,” “mixed swaps,” and “security-based swap agreements.” In examining the potential costs and benefits of this rulemaking, the CFTC claims that a more concrete definition of these terms will reduce costs by increasing certainty for regulated entities: “The CFTC believes that the rulemaking to further define the terms “swap,” “security-based swap,” “security-based swap agreement,” and “mixed swap” is consistent with how market participants understand these products. The further definitions increase legal certainty and thereby reduce assessment costs by clarifying that certain products that meet the requirements of the applicable rules and interpretations, such as traditional insurance products, are not swaps.”

Department of Homeland Security

DHS Proposes Extension of New Mexico Border Zone

The Department of Homeland Security published a [proposed rule](#) that would extend the border zone in New Mexico by 30 miles. Currently, Mexican nationals with a Border Crossing Card must remain within 25 miles of the border; in order to travel beyond 25 miles, a Mexican national must obtain a U.S. Customs and Border Protection I-94 Form, otherwise known as an arrival/departure record. The DHS proposed an extension of the zone to 55 miles “to promote commerce and tourism in southern New Mexico while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.” [Comments](#) on the proposed rule are due on October 9.

United States Department of Agriculture

USDA Final Rule Implements Program to Identify Disqualified, Deceased Food Stamp Recipients

The Department of Agriculture issued a [final rule](#) implementing deceased matching and prisoner verification systems for the Supplemental Nutrition Assistance Program. The rule requires food stamp agencies to screen applicants prior to certification by verifying against disqualified recipient data. Food stamp agencies must examine applications using a computer matching system to ensure that deceased or incarcerated individuals are not counted as eligible to receive food stamps. Agencies must verify that a recipient is disqualified with the agency that submitted the disqualification, and the disqualified recipient must be notified of his or her status.

Environmental Protection Agency

EPA Establishes New Emissions Standards for Nitric Acid Plants

The Environmental Protection Agency issued a [final rule](#) implementing new emissions standards for nitric acid plants that begin or modifies construction after October 14, 2011. Nitric acid is used to make nitrogen fertilizer, which is used heavily by in agriculture. This rule reduces the nitrogen oxides (NO_x) emissions limit from 3.0 pounds of NO_x per ton of nitric acid to 0.5 pounds of NO_x per ton of nitric acid, but does not change the nitrous oxide greenhouse gas emission standards.

EPA Approves Substitutes for Ozone-Depleting Substances

The Environmental Protection Agency released a [determination of acceptability](#) listing additional substitutes for ozone-depleting substances to the list of acceptable substances. The EPA allowed four new substitutes in the refrigeration and air condition industry, including carbon dioxide. It also added new substitutes in the foam blowing, solvent cleaner, aerosol, and fire suppression sectors.

Agencies

Securities And Exchange Commission

SEC Announces Roundtable Discussion on Stabilizing High-Frequency Trading

The Securities and Exchange Commission [announced](#) that it is hosting a roundtable on September 14th, *Technology and Trading: Promoting Stability in Today's Markets*, to “discuss ways to promote stability in markets that rely on highly automated systems.” The highly-automated systems referenced by the Commission are computerized systems for high-frequency trading (HFT), which recently led to a \$440 million loss by Knight Capital Group due to a software glitch. This incident brought the topic of HFT back to the attention of regulators, who are seeking ways to reduce the risks that HFTs pose to both individual companies and the U.S. financial market at large. “Recent events have highlighted some of the risks of increasingly complex and interconnected trading systems, setting aside the larger public debate regarding high frequency trading. The roundtable discussions will be focused on the design and control of all types of automated market systems. When these systems do not work as intended, the failures can directly harm not only the operator of the system but in some cases a range of other innocent parties.”

Administrative Conference of the United States

ACUS Publishes Recommendations in Federal Register

The Administrative Conference of the United States, an independent federal agency that provides recommendations on improving the administrative process, [published](#) in the Federal Register five recommendations adopted during its fifty-sixth plenary session including requirements for regulatory analysis, midnight rules, the Paperwork Reduction Act, and the improved coordination of agency responsibilities. The ACUS recommendations are available both on the ACUS website and in the August 10th Federal Register notice.

Consumer Product Safety Commission

CPSC Publishes Administrative Complaint Against Zen Magnets

The Consumer Product Safety Commission [published](#) in the Federal Register an administrative complaint “to protect the public from the substantial risks of injury presented by aggregated masses of high-powered, small rare earth magnets known as Zen Magnets TM Rare Earth Magnetic Balls, imported and distributed by Zen Magnets, LLC.” The Commission holds that these products pose a threat of injury to the public because, when more than one magnet is ingested, the magnets can become attracted through the walls of intestines, leading to perforation and damage requiring medical intervention and surgery. Certain package labeling could be interpreted at marketing the product to children under the age of 14, which would require a different level of product safety regulation than for products intended solely for adults. The Commission states that Zen Magnets, as designed, are defective, and pose “a substantial risk of injury.” The relief sought by the CPSC is for Zen Magnets to discontinue manufacture and sale, as well as to refund consumers the purchase price of any Zen Magnets. The Commission voted 3-1 to authorize this complaint, with Commissioner Nancy A. Nord voting the only dissent.

CPSC Announces Safety Academy on Product Safety Testing and Compliance

The Consumer Product Safety Commission [announced](#) its intent to host a daylong Safety Academy on September 20th in Bethesda, MD, to discuss current CPSC testing and certification requirements for children's products and compliance with CPSC standards. “The CPSC Safety Academy intends to bring together CPSC staff and stakeholders, including manufacturers, consumer advocates, academic researchers, and others to disseminate and share information on areas of particular interest to stakeholders, including testing and certification of children's products, as well as navigating compliance issues and the Fast-Track process.” Interested attendees and participants must [RSVP](#) by September 14th.

Department of Energy

DOE Announces Public Meeting on Clothes Washer Regulations

The Department of Energy issued notice of a [public meeting](#) on September 24th in Washington, DC, to “consider whether to amend the energy and water conservation standards for commercial clothes washers. DOE also announces a public meeting to discuss and receive comments on issues that it will address in this rulemaking proceeding. DOE is initiating data collection for considering amended energy and water conservation standards for commercial clothes washers. DOE also encourages written comments on potential amended standards, including comments on the issues identified in the framework document.” Technical support documents and information

about this rulemaking can be found [here](#). Anyone wishing to participate in the public meeting or to receive relevant meeting materials should contact Ms. Brenda Edwards at (202) 586-2945. [Comments](#) are due on October 10th.

International Trade Commission

ITC Solicits Comment on Retrospective Review of Existing Rules

The International Trade Commission published a [proposed rule](#) inviting comments from the public on the Commission's first biannual retrospective review plan. "In response to Executive Order 13579 of July 11, 2011, the Commission recently adopted its Plan for Retrospective Analysis of Existing Rules... This Plan provides that the Commission will, every two years, review its significant regulations to determine whether any should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The Commission is now conducting such a periodic review, and invites comments from the public as to Commission rules that might be suitable for modification or elimination." The Commission has not made the rulemaking [docket](#) open to the public; comments are due on October 9th.

Food and Drug Administration

FDA Releases Draft Guidance Document on Addressing Suicidal Ideation During Clinical Trials

The Food and Drug Administration [released](#) a draft [guidance document](#) for industry, *Suicidal Ideation and Behavior: Prospective Assessment of Occurrence in Clinical Trials*. "The purpose of this guidance is to assist sponsors in prospectively assessing the occurrence of treatment-emergent suicidal ideation and behavior in clinical trials of drug and biological products. Specifically, this guidance addresses FDA's current thinking regarding the importance of suicidal ideation and behavior assessment in psychiatric and nonpsychiatric drug trials and the general principles for how best to accomplish this assessment during drug development. Prospective assessment of suicidal ideation and behavior involves actively querying patients about the occurrence of suicidal thinking and behavior, rather than relying on patients to report such occurrences spontaneously, followed by retrospective classification of events into appropriate categories. This guidance recommends a specific suicidal ideation and behavior assessment instrument that can be used to conduct such prospective assessments and offers guidance on the use of alternative instruments." [Comments](#) on the draft guidance are due on October 15th.

Export-Import Bank

Ex-Im Bank Receives Request for \$1.03 Billion Long-term Loan Guarantee

The Export-Import Bank has received a [request](#) for a long-term loan guarantee for \$1.03 billion "to support the export of approximately \$910 million in U.S. semiconductor manufacturing equipment and services to a dedicated foundry in Germany. The U.S. exports will enable the dedicated foundry to increase existing 300mm (non-DRAM) production capacity of logic semiconductors by approximately 34,000 wafers per month. Available information indicates that this new production will be consumed globally." [Comments](#) on this long-term loan guarantee are due August 24th.