

Regulation Digest Weekly

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- The FCC's Over-Reliance on Obsolete Law
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- Public Shaming as Regulation: Google's Safari Bypass and the FTC

Marketplace of Ideas

American Action Forum

- The Week in Regulation: July 23-27, *Sam Batkins*

American Enterprise Institute

- Financial markets and "system effects": Complexity, recursiveness, uncertainty and mistakes in finance, *Alex Pollock*

Cato Institute

- Regulation, Market Structure, and Role of the Credit Rating Agencies, *Emily McClintock Ekins and Mark A. Calabria*

Competitive Enterprise Institute

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

Federal Regulations Advisor

- Monday Morning Regulatory Review – 7/30/12, *Leland Beck*

Government Accountability Office

- States' Implementation of the Patient Protection and Affordable Care Act, *Stanley J. Czerwinski & Carolyn L. Yocom*
- Survey on States' Implementation of

Feature Story

CPSC Fines Burlington Coat Factory \$1.5 Million over Neck Drawstrings

The Consumer Product Safety Commission published a provisionally accepted [settlement agreement](#) with the Burlington Coat Factory, charging Burlington with a \$1.5 million civil penalty for stocking children's outerwear with a drawstring at the neck. CPSC guidelines have recommended to retailers and distributors that no children's clothing with a drawstring at the neck be manufactured or sold to consumers; by knowingly carrying these items as a retailer, Burlington is subject to the Commission's civil penalty. As outlined in the Federal Register notice, Burlington is provisionally entering into this agreement and paying the \$1.5 million penalty in order to forego litigation expenses with the CPSC. In its own defense, Burlington [writes](#) that "Burlington did not manufacture the Garments. It purchased them from vendors and other suppliers. Consistent with practice in the retail industry, Burlington contractually required the Garment vendors to supply products that complied with all federal, state, and local laws, regulations, and standards, and relied on its suppliers to provide compliant products, as the suppliers were in the best position to know and understand the many legal requirements that were or potentially were applicable to their products." As a part of the agreement, Burlington is [not permitted](#) to seek reimbursement or compensation from any vendor or supplier from which Burlington acquired the banned clothing in order to offset the costs of the Commission's civil penalty.

In the News

7/25/12

[CPSC bans sale of Buckyballs magnetic toys, cites hazard](#), *Reuters*
[Buckyballs Magnets Have Been Banned by the Feds \(Updated\)](#), *Gizmodo*

7/26/12

[ABA urges U.S. consumer bureau to exercise caution in regulating prepaid debit cards](#), *Reuters*
[Regulatory Moratorium Bill Passes House](#), *Regulatory Focus*
[Wells Fargo Architect Kovacevich Says Big Banks Are Safer](#), *Wall Street Journal*
[House Passes Bill to Block Regulations Until Unemployment Drops](#), *Bloomberg*
[Buckyballs CEO on CPSC complaint: "How can this happen in America?"](#), *CBS News*
[Feds file suit against Buckyballs, retailers ban product](#), *USA Today*
[Mitt Romney: Banking Regulation Is Essential To The Functioning Of Markets](#), *Huffington Post*
[House approves measure to block new business regulations until unemployment recedes](#), *Washington Post*
[S&P says SEC, Department of Justice, are investigating its ratings on some products](#), *Washington Post*
[Geithner says regulators took 4 years to act on LIBOR because investigation was complex](#), *Washington Post*
[CPSC says Burlington Coat Factory to pay \\$1.5M fine in children's clothing drawstring case](#), *Washington Post*

the Patient Protection and Affordable Care Act (GAO-12-944SP, August 2012), an E-supplement to GAO-12-821, *Stanley J. Czerwinski & Carolyn L. Yocom*

The Mercatus Center

- The Options Market Maker Exception to SEC Regulation SHO, *Thomas Stratmann & John W. Welborn*

- ENERGY REGULATIONS: Protecting 'Irrational' Consumers From Themselves?, *Ted Gayer & Kip Viscusi*

Penn Program on Regulation

- The Regulatory Week in Review: July 27, 2012, *Mima Mohammed*

- Is Flexible Regulation an Oxymoron?, *Cary Coglianese*

- Smartphone Patent Wars: The Role for Import Bans, *Abigail Slater*

[Chris Dodd: Breaking Up Banks 'Too Simplistic](#), *Wall Street Journal*
[Small Companies Still Wonder if Sarbanes-Oxley Is Worth It](#), *CFO Journal*
[Big-Bank Pioneer Now Seeks Breakup](#), *Wall Street Journal*
[Dereg bill passes with all its typos fixed](#), *Wall Street Journal*
[Are the Banks Too Big to Fail, Manage and Regulate?](#), *The Fiscal Times*
[Regulations wrapped in red tape](#), *USA Today*

7/27/12

[White House slower to regulate as election approaches](#), *USA Today*
[US Court: Stem Cells may be Regulated as Drugs](#), *Regulatory Focus*
[FDA Wants More Data on Antibiotics](#), *Regulatory Focus*
[Is FDA on Pace to Beat Its 2011 Drug Approval Numbers?](#), *Regulatory Focus*
[Travelocity fined for violating DOT airfare advertising rules](#), *The Hill*
[Utility plan will shut down old coal plants, upgrade Sheboygan plant](#), *Milwaukee Journal Sentinel*
[Product Recall? Buckyballs Are Dangerous to Swallow](#), *Bloomberg Businessweek*

7/28/12

[SEC alleges insider trading ahead of CNOOC-Nexen deal](#), *Reuters*

7/29/12

[U.S. Government Wants Input on Burdensome Regulations](#), *Business Insider*
[Table-saw bill would save fingers, but critics say it would create monopoly](#), *Ventura County Star*
[Boeing says NTSB investigating 787 engine issue, sees no challenge to safety](#), *Washington Post*

7/30/12

[Regulators boost financial utilities' risk management rules](#), *Reuters*
[Filing Review Process to See Changes Under Proposed CDRH Guidance](#), *Regulatory Focus*
[New federal rules that could provide ammunition to Republicans sit idle as election approaches](#), *Washington Post*
[Genetic testing company 23andMe seeks credibility boost with FDA application](#), *Washington Post*
[Reid: Nuclear official is a 'first-class rat' and a 'treacherous, miserable liar'](#), *Washington Post*
[ICE to Transition Cleared Energy Swaps to Futures](#), *Wall Street Journal*
[As the election nears, new rules are facing delays](#), *Huffington Post*
[Are the benefits of Wall Street reform impossible to quantify?](#), *Washington Post*

7/31/12

[New Bill Seeks to Overturn EPA, FDA Ban of OTC Inhalers](#), *Regulatory Focus*
[Senator Calls on Agencies to Investigate FDA Surveillance Activities](#), *Regulatory Focus*
[SEC urges Congress to require fuller disclosure for \\$3.7T municipal securities market](#), *Washington Post*
[User Fees Published for Drugs, Biosimilar Products](#), *Regulatory Focus*
[Regulator Rebuffs Obama on Plan to Ease Housing Debt](#), *New York Times*
[Regulator rejects government mortgage write-down plan](#), *Reuters*
[SEC seeks more investor protections for U.S. municipal bond market](#), *Reuters*
[Regulator says no to Obama mortgage write-down plan](#), *Reuters*
[SEC loses civil fraud case against ex-Citigroup manager](#), *Reuters*
[FTC backs \\$22.5 million Google settlement over Safari](#), *Reuters*
[US judge: EPA illegally seized powers given to states on water-quality guidance for coal mines](#), *Washington Post*
[FCC fines Verizon \\$1.25M for blocking tethering apps](#), *Washington Post*

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Rulemaking

Food and Drug Administration

FDA Considers New Reporting Requirements for Animal Antibiotics

The Food and Drug Administration [released](#) an advanced notice of proposed rulemaking to potentially change FDA's reporting regulations for approved new animal drugs, incorporating certain requirements from the Animal Drug User Fee Amendments of 2008. "As part of that process, FDA is reviewing other reporting requirements applicable to antimicrobial new animal drug sponsors to determine whether additional information should be reported. Collecting data on antimicrobial drugs used in food-producing animals will assist FDA in tracking antimicrobial use trends and examining how such trends may relate to antimicrobial resistance." FDA is considering collecting new information on the distribution and sales for each species of antimicrobial animal drugs, a category which includes antibiotics, in order to better understand how these drugs may be related to antibiotic resistance in animals meant for human consumption. [Comments](#) are due September 25th.

National Credit Union Administration

NCUA Proposal Would Require Contingency Funding Plans to Address Liquidity Shortfalls

The National Credit Union Administration released a [proposed rule](#) that would require "federally insured credit unions (FICUs) with assets of \$10 million or more to have a contingency funding plan that clearly sets out strategies for addressing liquidity shortfalls in emergency situations." Additionally, the rule would require larger FICUs with assets of \$100 million or more to have access to a federal liquidity source for emergency situations, and requires FICUs with assets of less than \$10 million to write up and maintain a basic policy for managing liquidity, and listing contingent liquidity sources that can be used in emergency situations. As explained in the proposed rule text: "Governmental liquidity facilities were created by Congress to provide a stability mechanism to preempt illiquidity situations before they lead to unnecessary insolvencies or cause systemic disruptions to the depository industry. This is because depository institutions are a key element of financial services and the overall economy. Federal entities that exist to provide liquidity assistance are unique in their capacity to obtain funding in times of crisis, and this is based on their backing by the full faith and credit of the U.S. government. These liquidity facilities are viewed as the ultimate backstop for institutions seeking emergency liquidity in time of need and have proven to be a critical component of the U.S. government's contingency management during times of widespread instability." [Comments](#) are due September 28th.

NCUA Proposes Giving itself Authority to Declare State-Chartered Credit Unions in "Troubled Condition"

The National Credit Union Administration published a [proposed rule](#) that would expand its authority over federally-insured state-chartered credit unions (FISCUs). Currently, FISCUs can only be declared to be in "troubled condition" by the appropriate state supervisory authorities (SSAs); this proposal would also permit the NCUA to declare FISCUs to be in "troubled condition" based on the FISCU's composite CAMEL rating, with a score of 4 or 5 indicating a troubled condition. "Statistics indicate that in approximately 2 to 4 percent of all joint FISCU examinations, either the variation between NCUA's CAMEL rating and that given by the applicable SSA made the difference between a troubled versus an untroubled FISCU (i.e., a "4" versus a "3"), or the SSA's troubled rating was lower than that given by NCUA (i.e., a "5" instead of a "4"). These statistics show that disagreement between an SSA and NCUA on a FISCU rating could result from either regulator issuing the higher or lower score. When the variation in scores determines whether a FISCU is troubled versus untroubled, it is significant from a supervisory perspective." NCUA states that the primary purpose of this proposed rule is to eliminate this ratings and definitional discrepancy. [Comments](#) on this proposed rule are due October 1st.

Environmental Protection Agency

EPA Releases Approvals of Air Quality Implementation Plans

The Environmental Protection Agency issued a [proposed rule](#) approving the Air Quality State Implementation Plan in Utah. The Ogden City nonattainment area is now meeting the 1987 National Ambient Air Quality Standards for particulate matter, which stemmed from requirements in the Clean Air Act. The area was originally classified as a nonattainment area in 1995 because its particulate matter exceeded the standards by six exceedances. Since 2002, however, they have had no more than two exceedances per year, and the exceedances were from exceptions, such as fireworks. [Comments](#) are due August 29th.

EPA Authorizes Alternative Sulfur Emissions Testing Method

The Environmental Protection Agency issued a [final rule](#) this week allowing the use of Method 16C to measure total reduced sulfur (TRS) emissions from Kraft Pulp Mills and petroleum refineries subject to New Source Pollution Standards. Method 16C allows testers to receive real-time data, which is not available in the methods currently used to test sulfur emissions. This rule does not require the use of Method 16C, but allows its use instead of the current methods at the users' discretion.

Department of Education

Ed. Dept. Announces Requirements for Charter School Program

The Department of Education [released](#) the final requirements and selection criteria for the Charter School Program Collaboration Awards. The Charter School Program seeks to promote understanding of charter schools by providing financial assistance to charter schools and increasing the amount of charter schools in the United States. In order to qualify for the awards, a charter school must be considered a high-quality charter school and be involved in a partnership with a non-charter public school or school district. Winners must use the grant money to continue the partnership for which they received the award.

Agencies

Department of Energy

DOE Announces \$41 Million to Fund Biofuels Development

The Department of Energy [announced](#) it is awarding \$41 million to 13 biomass and biofuel development projects in Iowa, Wisconsin, Ohio, and Illinois. These projects are intended to make biofuels production more efficient and to improve feedstocks. From DOE's announcement: "As part of President Obama's all-of-the-above strategy to deploy every available source of American energy, we continue to strive for more efficient, cost-competitive technologies to produce U.S. energy," said Energy Secretary Steven Chu. "The investments announced today are helping to accelerate innovation across America's growing biofuels industry, which will help to reduce our dependence on imported oil and support job creation across rural America."

Export-Import Bank

Ex-Im Bank Seeks Comment on \$2.3 Billion to Support Petrochemical Exports to India

The Export-Import Bank is accepting public comments on an [application](#) to "support" the export of \$2.3 billion in U.S. petrochemical exports to an existing Indian facility. The U.S. exports will enable the foreign buyer to increase its annual production of linear low density polyethylene, low density polyethylene, monoethylene glycol, paraxylene, and polypropylene. Available information indicates that these products will be mostly consumed in India, with the remainder exported to China, Europe, and Africa. [Comments](#) are due on August 13th.

Ex-Im Bank Seeks Public Comment on \$100 Million Boeing Export Loan Guarantee

The Export-Import Bank is [accepting](#) public comments on an application for a "final commitment" for a long-term loan guarantee in excess of \$100 million to fund the export of Boeing 737 aircraft to Norway. "To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry." [Comments](#) on this loan guarantee are due on August 21st.