

Regulation Digest Weekly

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Opinion

- How to Get Rid of Unnecessary Regulations
- Deep FX Markets Mostly Safe From Computer Glitches
- Improving How Agencies Collect Information
- Replacing Cass Sunstein
- The FTC's Threat to Web Consumers
- Let's Relax, and Not Break Up the Big Banks
- What Can Be Done After the Knight Computer Glitch?
- Catfish Regulations: What's the Catch?
- EPA Smack-Down Number Six
- An energy blueprint for America

Marketplace of Ideas

American Action Forum

- President's Regulatory Record in the Courts, *Sam Batkins*
- The Week in Regulation: August 13 – 17, *Sam Batkins*

American Enterprise Institute

- Five Myths about Glass-Steagall, *Peter J. Wallison*

Americans for Prosperity

- Public Comment: Proposed Application to the Export-Import Bank of the United States for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million, *Christine Harbin*

The Brookings Institution

- SEC's Day of Reckoning on Transparency: Dodd-Frank Section 1504 on Disclosure of Natural Resource Revenues, *Daniel Kaufmann*

Competitive Enterprise Institute

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

Feature Story

CFTC Proposes Inter-Affiliate Swap Clearing Exemption

The Commodity Futures Trading Commission published a [proposed rule](#) exempting certain inter-affiliate swaps from clearing requirements under the Commodity Exchange Act (CEA) as amended by the Dodd-Frank Act. Prior to the Dodd-Frank Act, swaps were not required to be cleared; however, the Dodd-Frank Act preserved the Commission's authority to "promote responsible economic or financial innovation and fair competition" by exempting any transactions, including swaps, from certain CEA provisions (including clearing requirements). This rule specifically would exempt swaps between certain affiliated entities within a corporate group, and would require instead that "inter-affiliate swaps [be] subject to a centralized risk management program reasonably designed to monitor and manage the risks associated with the inter-affiliate swaps." According to Commissioners [Sommers and O'Malia](#): "Inter-affiliate swaps enable a corporate group to aggregate risk on a global basis in one entity through risk transfers between affiliates. Once aggregated, commercial risk of various affiliates is netted, thereby reducing overall commercial and financial risk. This practice allows for more comprehensive risk management within a single corporate structure."

The Commission believes it likely that this proposed rule "will be used for inter-affiliate swaps between two financial entities that do not qualify for the end-user exception or for swaps involving a non-financial entity that do not qualify for the end-user exception because the swaps do not hedge or mitigate commercial risk." The Commission is only requesting comments on specific aspects of the proposed rule, including: whether the Commission should exercise its authority under the CEA, whether inter-affiliate swaps pose risk to corporate groups; whether the proposed exemption would promote "responsible economic or financial innovation and fair competition"; and whether the proposed exemption would be in the public interest. [Comments](#) on this proposed rule are due on September 20th.

In the News

8/15/12

[Delay of US auto efficiency rule a win for consumers –GOP](#), *Reuters*

[Bank Deal Rankles Regulators](#), *Wall Street Journal*

[Hepatitis C outbreak could boost regulation bill](#), *Wall Street Journal*

[4 million Bumbo infant floor seats recalled following skull fractures](#), *Washington Post*

[Genetic Predisposition to Codeine Overdose Potentially Fatal to Children, Warns FDA](#), *Regulatory Focus*

8/16/12

[State regulators ask SEC to delay JOBS Act rule](#), *Reuters*

[Oracle settles SEC charges over secret India payments](#), *Reuters*

[SEC charges Hall of Fame football coach in Ponzi scheme](#), *Reuters*

Federal Regulations Advisor

- D.C. Circuit Vacates EPA “Cross-State” Air Pollution Rule: Exceeds Statutory Authority, *Leland Beck*
- Monday Morning Regulatory Review – 8/20/12, *Leland Beck*

The Free State Foundation

- Regulatory Forbearance and the Rule of Law: The FCC’s Arbitrary and Capricious Obstruction of Deregulation, *Seth Cooper*

The George Washington University Regulatory Studies Center

- Improving Regulatory Transparency and Accountability, *Susan Dudley*

Government Accountability Office

- EPA REGULATIONS AND ELECTRICITY: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges, *Franklin Rusco & David Trimble*
- Reports and Key Studies Support the Scientific Conclusions Underlying the Proposed Exposure Limit for Respirable Coal Mine Dust, *Revae Moran*

- Environmental Protection Agency Needs to Resolve Weaknesses, *Gregory C. Wilshusen & Nabajyoti Barkakati*

The Mercatus Center

- Inflated Benefits in Agencies' Economic Analysis, *Sherzod Abdukadirov & Deema Yazigi*
- Public Interest Comment: FEDERAL MOTOR VEHICLE SAFETY STANDARDS; Electronic Stability Control Systems for Heavy Vehicles, *Antony Dnes*

National Bureau of Economic Research

- The SO₂ Allowance Trading System: The Ironic History of a Grand Policy Experiment, *Richard Schmalensee & Robert Stavins*

Sunlight Foundation

- The President's Super-Regulators: What's Next for OIRA?: Video

Penn Program on Regulation

- Ryan's Record on Regulation, *Brian Ryoo*
- "Revolutionary Turnaround" for SEC's Rulemaking, *Henry Manne*
- The Regulatory Week in Review: August 17, 2012, *Mima Mohammed*

[CFTC proposes to exempt affiliate swaps from clearing](#), *Reuters*
[FCC chairman says Verizon-cable deals ready for approval](#), *Reuters*
[Justice Department okays Verizon spectrum deal with conditions](#), *Reuters*
[To Forestall Seizure, Some Banks Turn to Bankruptcy](#), *Wall Street Journal*
[FDA Setback for Hepatitis Drug](#), *Wall Street Journal*
[Dodd-Frank Compliance: Tracking and Reporting Incentive Pay](#), *WSJ CIO Journal*
[Regulators sign rule to cut haze in Big Sky Country; Montana plant faces \\$83M in capital costs](#), *Washington Post*
[Idenix skids as FDA halts testing of hepatitis C drug due to concerns about heart side effects](#), *Washington Post*
[Senators Call on FDA to Strengthen Antibiotic Monitoring](#), *Regulatory Focus*
[When Does Mom's Blog Become An Ad?](#), *NPR*

8/17/12

[Study Supports Regulators' Effort To Limit Miners' Exposure To Coal Dust](#), *NPR*

8/19/12

[NY Regulator Has Friends, Foes After Bank Deal](#), *NPR*
[New York bank regulator's controversial deal](#), *Politico*

8/20/12

[U.S. consumer agency opposes "cramming" phone fees settlement](#), *Reuters*
[Treasury taps prosecutor for financial crime unit](#), *Reuters*
[USDA probing whether beef from sick cows at Calif slaughterhouse entered human food supply](#), *Washington Post*
[Accounting industry watchdog finds deficiencies in audits of 23 brokerages it inspected](#), *Washington Post*

8/21/12

[Should we regulate the president's regulators?](#), *Washington Post*
[SEC approves \\$50,000 payout under new whistleblower program](#), *Reuters*
[Regulator Streamlines Foreclosure Prevention Program](#), *Reuters*
[JetBlue fined for violating federal rules](#), *Reuters*
[Federal appeals court strikes down Obama air pollution rule](#), *Washington Post*
[Appeals court overturns regulation to reduce power plant pollution spoiling air downwind](#), *Washington Post*
[Against big banks, state regulators flex their muscles](#), *Washington Post*
[Regulations a rising economic burden to manufacturers, report says](#), *Washington Post*

[Rules Reduce U.S. Manufacturing By \\$500 Billion: Study](#), *Bloomberg*
[GOP legislators push for further review of fuel economy rules](#), *The Detroit News*
[Michigan Drivers to Test Crash-Avoidance System](#), *Wall Street Journal*
[The Cost of Federal Rules on Manufacturing](#), *Wall Street Journal*
[Judge Kavanaugh Hits EPA Again](#), *Wall Street Journal*
[Court slaps down EPA on coal plant rule](#), *Washington Times*
[In Reversal, FDA to no Longer Publish Agreements in Federal Register](#), *Regulatory Focus*

[Court Voids Rule on Coal Pollution](#), *Wall Street Journal*
[SEC Pays \\$50,000 in First Whistleblower Award](#), *Wall Street Journal*
[California Slaughterhouse Abuse Video: USDA Probes Whether Tainted Beef Entered Food Supply](#), *Huffington Post*
[SEC delays consideration of JOBS Act rule](#), *Reuters*
[Court overturns border-crossing pollution rule](#), *Politico*
[Court strikes down EPA air pollution rule](#), *Politico*

8/22/12

[The SEC's Quest for Informational Symmetry](#), *RegBlog*
[Regulators to Study use of Composite Scores in Drug Advertising](#), *Regulatory*

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www.regulatorystudies.gwu.edu

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Focus

[FDA Changes Regulation to Allow Some Carcinogenic Products to be Used in Animals](#), *Regulatory Focus*

[Coal Plants' Victory Over EPA Is Muted by Low Gas Prices](#), *Bloomberg*

[GAO Questions EPA's Ability to Secure Data](#), *Gov Info Security*

[SEC to force companies to reveal conflict mineral use](#), *Reuters*

[SEC approves \\$50,000 payout under new whistleblower program](#), *Reuters*

[SEC approves rules on 'conflict minerals'](#), *The Hill*

[U.S. auto efficiency rules coming soon – DOT](#), *Reuters*

Rulemaking

Environmental Protection Agency

EPA Final NSPS Rule for Oil and Natural Gas Does not Include Monetized Benefits in Analysis

The Environmental Protection Agency published a [final rule](#) establishing new source performance standards (NSPS) for hazardous air pollutants in the oil and natural gas category, establishing emission limits that reflect maximum achievable control technology (MACT) for certain uncontrolled emission sources in these source categories. “In addition to the operations covered by the existing standards, the newly established standards will regulate volatile organic compound [VOC] emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and storage vessels. This action also finalizes the residual risk and technology review for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category.”

EPA was unable to provide monetized benefits for this rule: “With the data available, *we are not able to provide credible health benefit estimates for the reduction in exposure to HAP, ozone and PM_{2.5} for these rules*, due to the differences in the locations of oil and natural gas emission points relative to existing information and the highly localized nature of air quality responses associated with HAP and VOC reductions. This is not to imply that there are no benefits of the rules; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this industrial sector with the data currently available.” The Agency’s Regulatory Impact Analysis instead lists the qualitative benefits of reducing these hazardous air pollutants, including the health benefits of reduced particulate matter: “PM_{2.5} is associated with health effects, including premature mortality for adults and infants, cardiovascular morbidity such as heart attacks, and respiratory morbidity such as asthma attacks, acute and chronic bronchitis, hospital admissions and emergency room visits, work loss days, restricted activity days and respiratory symptoms, as well as visibility impairment.” Many of the benefits derived by EPA are co-benefits from methane and VOC reductions not targeted by this rule, calculated at a 3% discount rate; other benefits stated by the Agency are calculated using the Social Cost of Carbon and the “global warming potential” approach, as outlined in the Intergovernmental Panel on Climate Change’s 2nd assessment report.

Consumer Financial Protection Bureau

CFPB Proposes Rule Amending Regulation B

The Consumer Financial Protection Bureau published a [proposed rule](#) amending Regulation B, which implements the Equal Credit Opportunity Act (ECOA). “In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.” The Bureau estimates that this requirement will cost depository institutions roughly \$1.70 per loan originated. [Comments](#) are due on October 15th.

CFPB Amends Electronic Fund Transfer Rules

The Consumer Financial Protection Bureau published a [final rule](#) amending Regulation E, which implements the Electronic Fund Transfer Act (EFTA) as amended by the Dodd-Frank Act. The Dodd-Frank Act amended the EFTA “to create a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries.” Among these protections are: the “provision of disclosures prior to and at the time of payment by the sender for the transfer; cancellation and refund rights; the investigation and remedy of errors by remittance transfer providers; and liability standards for remittance transfer

providers for the acts of their agents.” The final rule differs from the CFPB’s previous rule by providing a regulatory “safe harbor” from these requirements for persons whose “normal course of business” is not reliant on remittance transfers.

Agencies

Commodity Futures Trading Commission

CFTC Commissioners Sommers and O’Malia Dissent on Swap Rule, Citing Burden and Cost

The Commodity Futures Trading Commission published a [joint statement](#) by Commissioners Jill Sommers and Scott O’Malia dissenting from the CFTC’s recent [proposed rule](#) exempting certain swaps from the clearing requirements in the Dodd-Frank Act. The proposed rule, published in the Federal Register on Tuesday, exempts swaps between certain affiliated entities within a corporate group from Dodd-Frank clearing requirements for swaps, and requires that these affiliated entities be subject to a centralized risk management program. From the dissent: “We believe it is entirely appropriate that the Commission exempt inter-affiliate swaps from the clearing mandate. Unfortunately, this proposal inserts a requirement that most financial entities engaging in inter-affiliate swaps post variation margin to one another. It is not clear that this requirement will do anything other than create administrative burdens and operational risk while unnecessarily tying up capital that could otherwise be used for investment... We believe this proposal may have the unintended consequence of imposing substantial costs on the economy and consumers. With this in mind, we welcome comments from the public as to the costs and benefits of the variation margin requirement and hope that we incorporate those views in adopting the final rule.” [Comments](#) on the Commission’s proposed rule are due September 20th.

Export-Import Bank

Ex-Im Bank Receives Application for \$100 Million to Fund Saudi Arabian Petrochemical Facility

The Export-Import Bank [published notice](#) of receipt of an application for Ex-Im’s commitment to a long-term loan or financial guarantee in excess of \$100 million. This loan or guarantee would fund the export of U.S. goods to be used in the construction of a Saudi Arabian petrochemical facility. “The items being exported are design work, construction services, technology licenses, chemicals, and steam generation equipment.” Project guarantors include the Dow Chemical Company and Saudi Arabian Oil Company. [Comments](#) are due on September 14th.

Architectural and Transportation Barriers Compliance Board

Access Board Announces Public Meeting on ADA Guidelines for Bus Accessibility

The Architectural and Transportation Barriers Compliance Board (Access Board) announced a [public meeting](#) on September 19th in Washington, DC to discuss a pending rulemaking altering accessibility guidelines for buses, vans, and over-the-road buses. “The purpose of the meeting is to discuss issues related to the design and slope of bus ramps and the space needed at the top of ramps by individuals who use wheeled mobility devices to access the fare collection device and to turn into the main aisle.” The Access Board is also reopening the [comment period](#) on the 2010 [proposed rule](#), with comments due on October 31st. Interested participants should contact Scott Windley at (202) 272-0025 or windley@access-board.gov.