

Regulation Digest Weekly

August 29th, 2012

Vol 1. No 25

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- Food safety law is being delayed
- A Coca-Cola Solution to High Gas Prices
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Marketplace of Ideas

American Action Forum

- The Week in Regulation: August 20-24, *Sam Batkins*
- FCC: Regulate First, Ask Questions Later, *Sam Batkins*

American Enterprise Institute

- The uses of LIBOR and the victims of its manipulation: A primer, *Matthew Jensen*

Competitive Enterprise Institute

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

Federal Regulations Advisor

- Monday Morning Regulatory Review – 8/27/12, *Leland Beck*
- Judicial Review & EO 12866 Regulatory Impact Analysis, *Leland Beck*

Feature Story

DOJ Rule Grants ATF Authority to Seize and Sell Property Involved in Drug Offenses

The Department of Justice finalized a [rule](#) granting the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) authority to seize and “administratively forfeit” (to sell) property involved in controlled substance offenses for a yearlong trial period. “Many years of experience have demonstrated that forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations that would continue to function after the conviction and incarceration of individual offenders.” Prior to the issuance of this rule, authority over forfeit property belonged to the Drug Enforcement Administration. DOJ argues that costs are reduced when forfeiture is executed administratively rather than judicially: “the costs associated with judicial forfeiture can amount to hundreds or thousands of dollars and the judicial process generally can take anywhere from 6 months to years. In the meantime, the government incurs additional costs if the property requires storage or maintenance until a final order of forfeiture can be obtained.”

In the News

8/22/12

- [U.S. SEC forces disclosure of oil, mining payments abroad](#), *Reuters*
- [SEC's Schapiro fails to win votes for money funds reform](#), *Reuters*
- [Wal-Mart, Target Avoid Mining Rule](#), *Wall Street Journal*
- [FTC Clears Facebook's Instagram Purchase](#), *WSJ Deal Journal*

8/23/12

- [FDA names Ind. farm tied to contaminated melons](#), *Associated Press*
- [USDA, McDonald's suspend slaughterhouse buys](#), *Associated Press*
- [U.S. Dept. of Transportation says plan for 54.5 mpg averages by 2025 will be completed 'soon'](#), *Daily News*
- [FCC suspends deregulation of special access telecom markets](#), *NextGov*
- [FTC charges Ab Circle Pro marketers with false fitness claims](#), *Reuters*
- [U.S. Treasury weighs money fund reforms, faces hurdles](#), *Reuters*
- [Reform looms anew for money market funds](#), *Bloomberg*
- [FDA still warns consumers to discard SW Ind. cantaloupes because of salmonella outbreak](#), *Washington Post*
- [FTC wins record \\$478 million judgment against infomercial marketers of 3 easy-money schemes](#), *Washington Post*
- [Straw That Broke SEC Vote](#), *Wall Street Journal*
- [Action on Money Funds Could Still Be in the Cards](#), *Wall Street Journal*
- [Money Funds Still Face Regulatory Threat After SEC Backs Off](#), *CFO Journal*
- [SEC's Schapiro Cancels Vote on Money-Fund Curbs](#), *Wall Street Journal*

The George Washington University Regulatory Studies Center

- Improving Causal Inferences in Risk Analysis, *Tony Cox*
- CSAPR Remand Uncomfortable on Many Levels, *Susan Dudley*

Government Accountability Office

- Estimates of the Effect on the Prevalence of Employer-Sponsored Health Coverage, *John Dicken*

The Mercatus Center

- Midnight Regulation: Decisions in the Dark?, *Jerry Ellig*
- The Phenomenon of Midnight Regulations, *Sherzod Abdukadirov*

New England Journal of Medicine

- Ethical Considerations in Studying Drug Safety — The Institute of Medicine Report, *Michelle Mello, Steven Goodman., Ruth Faden*

OMB Watch

- How Many More Food Recalls Will It Take to End Delay on New Food Safety Rules?, *Jessica Randall*

Penn Program on Regulation

- The Regulatory Week in Review: August 24, 2012, *Mima Mohammed*
- Improving Regulatory Performance through Ex Post Evaluation, *Cary Coglianese*
- Regulation as a Dynamic Macroeconomic Enterprise, *David Driesen*

Regulation & Governance

- Continuity, Change, and Priorities: The Quality and Use of Regulatory Analysis Across U.S. Administrations, *Jerry Ellig, Patrick McLaughlin, & John Morrall*

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[Hamburg: Device Approvals Process Set to Become Less Burdensome](#), *Regulatory Focus*

[Researchers: FDA Needs to Take More Control over Postmarketing Studies](#), *Regulatory Focus*

8/24/12

[Swap Margins, New York Fed, SEC-Money Funds: Compliance](#), *Bloomberg*
[Reagan-Appointed Judge: Deregulation Movement Made 'A Fundamental Mistake'](#), *Huffington Post*

[Treasury, Fed looking at new ways to oversee money market funds](#), *Washington Post*

[Appeals court upholds decision blocking graphic health warnings on cigarette packs](#), *Washington Post*

[Federal court smacks down new tobacco labels](#), *Washington Post*

[Court Strikes Graphic Cigarette Labels](#), *Wall Street Journal*

[Money Funds Pose Test for New Watchdog](#), *Wall Street Journal*

8/25/12

[Democrat Luis Aguilar willing to go his own way on SEC](#), *Washington Post*

8/27/12

[SEC to review "quiet period" IPO rule after Facebook mess](#), *Reuters*

[FAA to study allowing more electronic device use during flight](#), *The Hill*

[A Father Of High-Speed Trading Thinks We Should Slow Down](#), *NPR*

[Citigroup to settle MBS suit for \\$24.9 million](#), *Reuters*

[Big loans see quality boost in 2012: regulators](#), *Reuters*

[Consolidation of small banks on the rise](#), *Washington Post*

[Stress Tests for Midsize Banks Likely Delayed](#), *Wall Street Journal*

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[New mileage standards would double fuel efficiency](#), *Associated Press*

[Reports: Obama Administration Will Unveil New Fuel-Efficiency Standards](#), *NPR*

[SEC probing ResCap for possible mortgage fraud](#), *Reuters*

[EPA issues new fuel-efficiency standard; Autos must average 54.5 mpg by 2025](#), *Washington Post*

[F.A.A. to Review Rules on Use of Electronic Devices](#), *New York Times*

[FDA Approves New HIV Treatment](#), *Regulatory Focus*

[Questions and answers about new government gas mileage requirements](#), *Washington Post*

[Putting Dodd-Frank to the Test: Is Private Equity Ready?](#), *Wall Street Journal*

8/29/12

[U.S. SEC votes to lift ban on advertising private offerings](#), *Reuters*

[CISOs Welcome SEC Cyber Security Disclosure Guidance But Struggle to Respond](#), *CIO Journal*

Rulemaking

Consumer Product Safety Commission

CPSC Proposes "Catastrophic Failure" Rule for Infant Bassinets

The Consumer Product Safety Commission published a [proposed rule](#) that would enact new manufacturing requirements for infant bassinets that are accessories to play yards, which the CPSC also regulates. When the bassinet accessories are incorrectly assembled by consumers, the bassinet is more likely to tip, increasing the risk of accidental suffocation for the infant. In response to these misassembly concerns, which were raised by a commenter, CPSC is requiring bassinets to fail "catastrophically" if any structural element is missing. CPSC argues that, because some types of structural misassembly can be difficult for consumers to visibly identify, products that

are misassembled should catastrophically fail so that consumers will be alerted to any structural problems. “The requirement is meant to ensure that the omission of a key structural element is so visually obvious that the consumer will not use the product and place the child in danger inadvertently. It should be noted that in order to pass this test, the item must *fail catastrophically* when each key structural element is omitted.” CPSC defines catastrophic failure as either 1) total collapse of the product or 2) tilt of more than 30° when an infant dummy is placed in the bassinet; alternatively, manufacturers can permanently attach key structures in the bassinet and forego the catastrophic failure test. [Comments](#) on the proposed rule are due November 13th.

Environmental Protection Agency

EPA Rule Denies Petition to Reconsider Rule Establishing Emission Standards for Heavy-Duty Vehicles

The Environmental Protection Agency published a [final rule](#) in response to Plant Oil Powered Diesel Fuel Systems, Inc. (“POP Diesel”), denying its petition to reconsider EPA’s final rules, published in September of last year, that established standards for greenhouse gas emissions from on-road heavy-duty vehicles. EPA’s rule, published jointly with the National Highway Traffic Safety Administration, established emission standards for CO₂, methane, nitrous oxide, and greenhouse gases for on-road heavy-duty vehicles such as combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles.

In its petition to the Agency, POP Diesel argued that EPA did not adequately consider the potential rebound effects of the rule, wherein consumers may be incentivized increase energy use because of increased efficiency. Consideration of the rebound effect would affect EPA’s regulatory analysis, showing fewer benefits from reduced emissions, and introducing the possibility that certain emissions could increase as a result of the rule. In a supplement to its original petition, POP Diesel maintained that “the rules would increase GHG emissions from heavy-duty vehicles due to aspects of the rebound effect not accounted for in EPA’s analysis. Specifically, POP Diesel maintains that EPA underestimated the direct rebound effect and that a revised estimate of the direct rebound effect would result in an increase in greenhouse gas emissions.” However, because rebound effects were not mentioned during the public comment period, and therefore were not put on the public record, EPA has no legal obligation to reconsider the final rule based on this petition. “Because all of the objections or claims raised in POP Diesel’s petition could have been presented to EPA during the rulemaking, EPA is denying the request for reconsideration. EPA also finds that the petitioner has not provided substantial support for the argument that the promulgated regulation should be revised and is denying the request for reconsideration for that reason as well.” [Comments](#) on denial of this petition are currently being accepted by NHTSA.

EPA Proposes Amendments to Turbine New Source Performance Standards

The Environmental Protection Agency published a [proposed rule](#) in response to a petition for reconsideration amending the new source performance standards (NSPS) for stationary gas turbines and stationary combustion turbines, which EPA finalized in 2006. The petition, filed in 2006 by the Utility Air Regulatory Group (UARG), requested that EPA reconsider subpart KKKK of its promulgated rule on standards of performance for stationary combustion turbines. EPA is proposing amendments to the final rule to “increase the environmental benefits of the existing requirements because the emission standards would apply at all times. The proposed amendments would also promote efficiency by recognizing the environmental benefit of combined heat and power and the beneficial use of low energy content gases.” [Comments](#) are due on October 29th.

Consumer Financial Protection Bureau

CFPB Proposed Rule Would Streamline Disclosure Forms for Consumer Mortgages

The Consumer Financial Protection Bureau published a 343-page [proposed rule](#) establishing new disclosure requirements and forms for most closed-end consumer credit transactions secured by real property (e.g. mortgages); this proposal would amend Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures Act), both of which pertain to disclosure for consumer credit transactions. In part because these disclosures are administered under two separate rules, “[t]he information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.” This proposed rule includes new forms combining aspects from both Regulation Z and Regulation X to replace the old forms, and also includes detailed instructions for the use of the forms. In discussing the costs and benefits of the proposal, CFPB indicates that most costs will be one-time costs rather than ongoing costs, while the benefits of simplified forms should be felt by consumers well into the future. [Comments](#) on this proposed rule are due November 6th.

Agencies

Export-Import Bank

Ex-Im Receives Application to Fund Exports for Brazilian Aquarium Construction

The Export-Import Bank [received](#) an application for a final commitment granting a long-term loan or financial guarantee in excess of \$100 million, which is intended to fund the export of design, engineering and construction services, and equipment to build an aquarium in Brazil. The Brazilian aquarium, once constructed, is intended to serve as a center for tourism and education. [Comments](#) are due on September 17th.

Ex-Im Bank Receives Application to Fund Export of Lockheed Martin Telecom Equipment to Vietnam

The Export-Import Bank [received](#) an application for a final commitment granting a long-term loan or financial guarantee in excess of \$100 million to fund the export of telecommunications satellite and related equipment to Vietnam. Ex-Im's notice in the Federal Register lists the Lockheed Martin Corporation as the principal supplier of exported equipment. [Comments](#) are due on September 17th.

Ex-Im Bank Receives Application to Fund Export of Boeing Aircraft to Ireland

The Export-Import Bank [received](#) an application for a final commitment granting a long-term loan or financial guarantee in excess of \$100 million to fund the export of Boeing aircraft to Ireland to be sub-leased to foreign airlines for passenger air service in East Asia, South Asia, and Europe. [Comments](#) are due on September 24th.

Ex-Im Bank Receives Application to Fund Export of Boeing Aircraft to Dubai

The Export-Import Bank [received](#) an application for a final commitment granting a long-term loan or financial guarantee in excess of \$100 million to fund the export of Boeing commercial aircraft to Dubai for use in passenger air service between the United Arab Emirates and other countries. [Comments](#) are due on September 24th.