

Regulation Digest Weekly

September 12th, 2012

Vol. 1 No. 27

Opinion

- SEC bureaucracy is threatening to quash an innovation renaissance
- Watch out for the regulatory cliff
- Cost-Effectiveness: The Prerequisite for Cybersecurity Regulation
- The Path To Job Creation Runs Through Regulatory Reform
- To save Obama, Clinton ignores his own deregulation moves

Marketplace of Ideas

American Action Forum

- The Week in Regulation: September 4-7, *Sam Batkins*

American Enterprise Institute

- Let banks trade securities — it's where their future lies, *Peter Wallison*

Competitive Enterprise Institute

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

Federal Regulations Advisor

- Monday Morning Regulatory Review – 9/10/12, *Leland Beck*
- Food Safety Statute & Delay: Litigating Congressional Deadlines, *Leland Beck*

- Delicate Technicalities of Judicial Review of Final Agency Action, *Leland Beck*

Government Accountability Office

- Regulatory Fee Process Needs to Be Updated, *Mark Goldstein*
- FAA Faces Implementation Challenges, *Gerald Dillingham*
- Justice and Treasury Should Determine Costs and Benefits of Potential Consolidation, *David Maurer*

Feature Story

SEC Finalizes \$4 Billion Conflict Minerals Rule

The Securities and Exchange Commission published a [final rule](#), pursuant to Section 1502 of the Dodd-Frank Act, relating to the use of conflict minerals. Section 1502 of the Dodd-Frank Act “requires the Commission to promulgate rules requiring issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose annually whether any of those minerals originated in the Democratic Republic of the Congo or an adjoining country. If an issuer's conflict minerals originated in those countries, [the issuer is required] to submit a report to the Commission that includes a description of the measures it took to exercise due diligence on the conflict minerals' source and chain of custody. The measures taken to exercise due diligence must include an independent private sector audit of the report that is conducted in accordance with standards established by the Comptroller General of the United States.”

The final rule does not define when a conflict mineral is “necessary to the functionality” of a product or when it is “necessary to the production” of a product as required by section 1502; instead, the Commission offers guidance for determining which products may meet this description and be subject to regulation. After taking public comments into consideration, the Commission believes that “it is likely that the initial cost of compliance is approximately \$3 billion to \$4 billion, while the annual cost of ongoing compliance will be between \$207 million and \$609 million.”

In the News

9/5/12

- [Obama Critics Overstate Rules' Effects, Sunstein Says](#), *Bloomberg News*
- [FTC Releases General Guidance for Application Developers](#), *Regulatory Focus*
- [Farm bureaus: EPA lawsuit could affect thousands](#), *Wall Street Journal*
- [CFTC to clear up confusion over swap dealer registration](#), *Reuters*
- [FINRA suit alleges test-prep firm copied exam questions](#), *Reuters*

9/6/12

- [Group Sues FDA, Seeking to Compel it to Withdraw Alzheimer's Drug from Market](#), *Regulatory Focus*
- [Human Protections Oversight Body Seeks New Members](#), *Regulatory Focus*
- [SBA chief defends Obama's small business record at convention](#), *Washington Post*
- [Barney Frank Jabs at Romney Over Financial Regulation](#), *Wall Street Journal*
- [Study: FDA Beats EU Counterparts in Approving Oncology Drugs, but Otherwise Slower](#), *Regulatory Focus*
- [Regulator - 42.98 pct US Gulf oil output remains shut post-Isaac](#), *Reuters*
- [SEC charges investment adviser for not disclosing revenue-sharing deal](#), *Reuters*

9/7/12

- [Drug shortages down overall, but some linger longer](#), *NBC News*
- [UBS sued by U.S. regulator over sale of mortgage-backed securities](#), *Reuters*

The Mercatus Center

- The Economic Situation September 2012, *Bruce Yandle*

Nature

- Rethink chemical risk assessments, *George Gray & Joshua Cohen*

OMB Watch

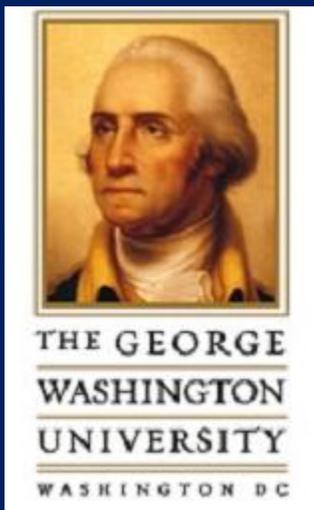
- Sponsors of the Independent Agency Regulatory Analysis Act Try To Slip Bill in Under the Radar

Penn Program on Regulation

- The Regulatory Week in Review: September 7, 2012, *Mima Mohammed*
- Failing at Failure: An Institutional Analysis of Dodd-Frank's Orderly Liquidation Authority, *Jonathan Lipson*
- Department of Energy Announces Solar Energy Investments, *Jenna Schweitzer*

Phoenix Center for Advanced Legal & Economic Public Policy Studies

- Taxation by Condition: Spectrum Repurposing at the FCC and the Prolonging of Spectrum Exhaust, *T. Randolph Beard, George S. Ford, Lawrence J. Spiwak, & Michael Stern*



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[FCC to propose rules for new spectrum auction](#), *Reuters*

[Consumer Product Safety Commission begins to consider bans in addition to warning labels](#), *Washington Post*

[Regulators close small bank in Minnesota for total of 41 US failures so far this year](#), *Washington Post*

[Investment adviser and firms paying \\$23.5M to settle SEC fraud charges on mortgage securities](#), *Washington Post*

[Calif. businessman accused by consumer bureau of mortgage schemes is in settlement talks](#), *Washington Post*

9/9/12

[Lawmakers Push to Increase White House Oversight of Financial Regulators](#), *NYT DealBook*

9/10/12

[Report: Drug Shortages Abating Thanks to FDA Efforts](#), *Regulatory Focus*

[Vascepa awaits FDA nod on marketing exclusivity](#), *Reuters*

[FDA Science Board Seeks New Members](#), *Regulatory Focus*

[FDA: Budget Sequestration Could Lead to 'Loss of Whole User Fee Programs'](#), *Regulatory Focus*

[FDA Drug Review Deal Set to Unravel as Fiscal Cliff Looms](#), *Bloomberg Businessweek*

[FSA taps Nasdaq to help tackle market abuse](#), *Reuters*

[CFTC cancels vote on customer protection rules](#), *Reuters*

[Sleep tight, and don't let deceptive claims on bed bug remedies bite, FTC says; sues 2 firms](#), *Washington Post*

[AIG bailout success a two-sided coin](#), *Washington Post*

[New FDA Device Helps ID Fake Drugs](#), *Med Page Today*

[Regulator Vows New Rules to Repair Mortgage Markets](#), *Wall Street Journal*

9/11/12

[EPA withholds bay cleanup funds from Va., cites lack of progress with stormwater pollution](#), *Washington Post*

[FTC finalizes Myspace privacy settlement](#), *The Hill*

[FDA warns L'Oreal over anti-aging cream marketing](#), *Associated Press*

[Cosmetic Company L'Oreal Hit by Warning Letter for Questionable Claims](#), *Regulatory Focus*

[More than 1600 pages of regulations added to Federal Register last week, cost now \\$1.8 trillion per year](#), *Daily Caller*

[EPA official: GOP bill would 'cripple' global climate efforts](#), *The Hill*

[Knight glitch likely to lead to regulatory changes: CEO](#), *Thomson Reuters*

[Obama's FTC pick has sided with Google](#), *Washington Post*

[FDA issues warning letter to L'Oreal over drug-like marketing claims for Genefique skin cream](#), *Washington Post*

[Legislation Would Keep FDA Budget at 2012 Levels Through March](#), *Regulatory Focus*

9/12/12

[HHS Secretary Sebelius found in violation of Hatch Act](#), *Federal Times*

[Office of Special Counsel Says HHS Secretary Violated Hatch Act](#), *ABC News*

[Reviving enforcement of consumer laws, regulator sprays lenders with subpoenas](#), *Washington Post*

[A look at some of the ways the Consumer Financial Protection Bureau enforces the law](#), *Washington Post*

[Tough tactics from a new agency: How the consumer bureau shut down a Calif. mortgage operation](#), *Washington Post*

Rulemaking

Environmental Protection Agency

EPA Finalizes Revisions to NESHAPs Rule for Pulp and Paper Industry

The Environmental Protection Agency published a [final rule](#) establishing National Emission Standards for Hazardous Air Pollutants (NESHAPs) from the pulp and paper industry, one of the most [heavily regulated](#) industries in the United States. “This action finalizes amendments to the national emission standards for hazardous air pollutants that include a requirement for 5-year repeat emissions testing for selected process equipment; revisions to provisions addressing periods of startup, shutdown and malfunction; a requirement for electronic reporting; additional test methods for measuring methanol emissions; and technical and editorial changes. The amendments are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility; we estimate facilities nationwide will spend \$2.1 million per year to comply.” The Agency estimates that 114 major source mills nationwide will be affected by this rule.

Small Business Administration

SBA Proposes to Redefine Which Finance and Insurance Companies are “Small Businesses”

The Small Business Administration published a [proposed rule](#) increasing small business size standards “for 37 industries in North American Industry Classification System (NAICS) Sector 52, Finance and Insurance, and for two industries in NAICS Sector 55, Management of Companies and Enterprises. In addition, SBA proposes to change the measure of size from average assets to average receipts for NAICS 522293, International Trade Financing. As part of its ongoing comprehensive size standards review, SBA evaluated all receipts based and assets based size standards in NAICS Sectors 52 and 55 to determine whether they should be retained or revised. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector.” Determination of which businesses are “small businesses” is necessary because the purpose of the Small Business Act is to help small businesses compete in the marketplace, necessitating standards to define which businesses qualify as small businesses. Businesses that will acquire small business status because of this rule will “[gain] eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses.” [Comments](#) are due on November 13th.

Securities and Exchange Commission

SEC Final Rule Requires Disclosure for Resource Extraction Issuers

The Securities and Exchange Commission published a [final rule](#) requiring the disclosure of payments by resource extraction issuers for oil, natural gas, or mineral development commercial projects, pursuant to section 1504 of the Dodd-Frank Act. According to the Commission: “Congress enacted Section 1504 to increase the transparency of payments made by oil, natural gas, and mining companies to governments for the purpose of the commercial development of their oil, natural gas, and minerals. A primary goal of such transparency is to help empower citizens of those resource-rich countries to hold their governments accountable for the wealth generated by those resources.” “Resource extraction issuers” are issuers who: 1) are required to file annually with the Commission; and 2) who engage in the commercial development of oil, natural gas, or minerals.

Consumer Financial Protection Bureau

CFPB Proposes Amendments to Regulation Z Changing Loan Originator Composition Provisions

The Consumer Financial Protection Bureau published a [proposed rule](#) that would amend Regulation Z (Truth in Lending) pursuant to statutory requirements of the Dodd-Frank Act. The proposed rule implements changes “to Regulation Z's current loan originator compensation provisions, including a new additional restriction on the imposition of any upfront discount points, origination points, or fees on consumers under certain circumstances. In addition, the proposal implements additional requirements imposed by the Dodd-Frank Act concerning proper qualification and registration or licensing for loan originators. The proposal also implements Dodd-Frank Act restrictions on mandatory arbitration and the financing of certain credit insurance premiums. Finally, the proposal provides additional guidance and clarification under the existing regulation's provisions restricting loan originator compensation practices, including guidance on the application of those provisions to certain profit-sharing plans and the appropriate analysis of payments to loan originators based on factors that are not terms but that may act as proxies for a transaction's terms.” [Comments](#) are due on October 16th.

Commodity Futures Trading Commission

CFTC Finalizes Dodd-Frank Rule on Portfolio Reconciliation and Compression for Swap Participants

The Commodity Futures Trading Commission published a [final rule](#) implementing sections of the Dodd-Frank Act, which amended the Commodity Exchange Act (CEA). The CEA regulates swap dealers (SDs) and major swap participants (MSPs) pertaining to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps; this rule establishes requirements for swap confirmation, portfolio reconciliation, portfolio compression, and swap trading relationship documentation for SDs and MSPs. “Documentation of swaps is a critical component of the bilaterally-traded, over-the-counter (OTC) derivatives market, while confirmation, portfolio reconciliation, and portfolio compression have been recognized as important post-trade processing mechanisms for reducing risk and improving operational efficiency. Each of these processes has been the focus of significant domestic and international attention in recent years by both market participants and their regulators.”

Agencies

Securities and Exchange Commission

SEC Announces Public Meeting of the Dodd-Frank Investor Advisory Committee

The Securities and Exchange Commission announced a [public meeting](#) on Friday, September 28th, for the Commission’s Investor Advisory Committee, which was established by the Dodd-Frank Act. “The public is invited to submit written statements to the Committee. The agenda for the meeting includes: introductory remarks from Commissioners; introductory remarks from Committee officers; and reports from the four Investor Advisory Committee subcommittees (the Investor as Owner subcommittee, the Investor as Purchaser subcommittee, the Investor Education subcommittee, and the Market Structure subcommittee).” [Comments](#) are due on September 28th

Department of Commerce

Commerce Requests Nominations for Economic Advisors to the BLS, BEA, and Census Bureau

The Department of Commerce and the Census Bureau published a [notice](#) in the Federal Register seeking nominations of persons to serve on the Federal Economic Scientific Advisory Committee, which advises the directors of the Bureau of Labor Statistics, Bureau of Economic Analysis, and the Census Bureau “on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics.” Responsibilities of committee members include: 1) recommending research addressing important technical problems arising in federal economic statistics; 2) identifying areas for better coordination of the agencies’ activities and avoiding duplication of effort; and 3) establishing relationships with professional associations with an interest in federal economic statistics. “Nominees must be economists, statisticians, survey methodologists, and behavioral scientists and will be chosen to achieve a balanced membership across those disciplines. Nominees must be prominent experts in their fields, and recognized for their scientific and professional achievements and objectivity. Such knowledge and expertise are needed to advise the agencies on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics.” [Nominations](#) are due on October 9th.

NOAA Announces Open Meeting of the National Climate Assessment and Advisory Committee

The National Oceanic and Atmospheric Administration announced a [public meeting](#) of the National Climate Assessment and Development Advisory Committee (NCADAC) on Thursday, September 27th. Established in December 2010, NCADAC’s mission is to “synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee’s specific objective is to produce a National Climate Assessment.” Written comments for the open meeting must be received in the NCADAC office by September 24th.

Environmental Protection Agency

EPA Approves Use of Alternative Equipment to Measure Ambient Air PM_{2.5} Concentrations

The Environmental Protection Agency [announced](#) the designation of a new “equivalent method” of measuring particulate matter (PM_{2.5}) concentrations in the air. “The new equivalent method for PM 2.5 is an automated monitoring method utilizing a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation... As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designated method description.”

Internal Revenue Service

IRS Announces Open Meeting of the Taxpayer Advocacy Panel on Taxpayer Burden Reduction

The Internal Revenue Service announced an [open meeting](#) of the Taxpayer Advocacy Panel’s Committee on Taxpayer Burden Reduction on Wednesday, October 17th. “The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.”