

Regulation Digest Weekly

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American Action Forum

- Regulation Review: Dodd-Frank's "Blood Diamond" Rules, *Dan Goldbeck*
- The Week in Regulation: August 27-31, *Sam Batkins*
- Regulation Review: Final Health IT Rules, *Sam Batkins*

Competitive Enterprise Institute

- TIP OF THE COSTBERG: On the Invalidity of All Cost of Regulation Estimates & the Need to Compile Them Anyway [*Fall 2012 Draft*], *Wayne Crews*
- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
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Feature Story

CPSC Proposes Rule Banning Sets of Small, Strong Magnets

The Consumer Product Safety Commission is [proposing a rule](#) banning sets of small, high-powered magnets marketed to adults as desk toys due to the Commission's preliminary determination that there may be an unreasonable risk of injury from children ingesting the high-powered magnets. "In contrast to ingesting other small parts, when a child ingests a magnet, the magnetic properties of the object can cause serious, life-threatening injuries. When children ingest two or more of the magnets, the magnetic forces pull the magnets together, and the magnets pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences. Although magnet sets have only been available since 2008, we have determined that an estimated 1,700 ingestions of magnets from magnet sets were treated in emergency departments between January 1, 2009 and December 31, 2011. To address the unreasonable risks of serious injury associated with these magnet sets, the Commission is issuing this notice of proposed rulemaking (NPR), which would prohibit such magnet sets. Under the proposal, if a magnet set contains a magnet that fits within the CPSC's small parts cylinder, magnets from that set would be required to have a flux index of 50 or less, or they would be prohibited."

An estimate of net injury reduction comprises the entirety of the Commission's \$25 million in anticipated benefits, while the costs of foregone profit are estimated at \$7.5 million. However, the Commission does not calculate the value to consumers of the products this rule proposes to ban: "We have no information regarding aggregate consumer surplus, and hence, the amount of utility that would be lost from a ban of magnetic sets. While the magnetic desk sets clearly provide "utility" to purchasers, they are not necessities. Consequently, the demand for magnetic desk sets is probably not price inelastic, a factor that would tend to reduce estimates of utility losses." [Comments](#) are due on November 19th.

In the News

8/29/12

[FCPA Guidance to Be Released by October](#), *Wall Street Journal*

8/30/12

[SEC Study Proves That Stock-Picking Should Probably Be Left to the Professionals](#), *New York Magazine*

[FTC Said Poised to Finish Google Antitrust Probe in Weeks](#), *Bloomberg*

[FDA Approves Drug for Rare Brain Tumor in Kids](#), *Regulatory Focus*

[FDA Limits Research Misconduct Information Release](#), *Regulatory Focus*

[FCC to Review Mobile-Airwaves Policy](#), *Wall Street Journal*

[Regulator Orders External Review After Peregrine Collapse](#), *Wall Street Journal*

8/31/12

[Shell clears air permit hurdle in quest to drill exploratory wells off Alaska](#),

The Journal of the American Medical Association

- The Safety Risks of Innovation: The FDA's Expedited Drug Development Pathway, *Thomas Moore & Curt Furberg*

Penn Program on Regulation

- Agencies Double Fuel Economy Standards, *Brian Ryoo*
- The Regulatory Week in Review: August 31, 2012, *Mima Mohammed*
- Democrats Defend Obama's Record on Regulation, *Brian Ryoo*

Risk Analysis

- Uncertain Benefits Estimates for Reductions in Fine Particle Concentrations, *Art Fraas & Randy Lutter*

Securities and Exchange Commission

- Study Regarding Financial Literacy Among Investors

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Washington Post

[No evidence that sick animals from Calif. slaughterhouse entered food supply](#), *Washington Post*

[Dealpolitik: SEC Proposes Rule which Could Have Huge Impact on IPO Dynamics](#), *WSJ Blog: Deal Journal*

9/1/12

[Secrecy surrounding 'zero-day exploits' industry spurs calls for government oversight](#), *Washington Post*

[German Drug Maker Apologizes to Victims of Thalidomide](#), *New York Times*

9/2/12

[Influx of employment lawsuits, regulations a bright spot for law firms](#), *Washington Post*

9/4/12

[Regulations, cost keep cars looking the same, but future points to more distinctive design](#), *Washington Post*

[How Companies Can Apply the SEC's Cyber Security Disclosure Guidance](#), *CIO Journal*

[Democratic platform celebrates the low number of regulations Obama has approved](#), *Washington Post*

[Democratic, Republican Political Platforms Contrast Approaches to FDA Regulation](#), *Regulatory Focus*

[FDA Looks to Regulatory to Plan for Potential Mass Casualty Event](#), *Regulatory Focus*

[After 50 Years, Victims Finally Receive Apology from Thalidomide Manufacturer](#), *Regulatory Focus*

[Article Says Agency Let Risky Drugs Hit Market](#), *Wall Street Journal*

9/5/12

[FCC to measure cellphone service speeds](#), *The Hill*

[Study: Are FDA's Expedited Approval Pathways Worth the Risk?](#), *Regulatory Focus*

Rulemaking

Department of Transportation

FAA Seeks Comment on In-flight Use of Portable Electronic Devices

The Federal Aviation Administration published a [proposed rule](#) seeking comments on current policy, guidance, and procedures that aircraft operators must use when determining if portable electronic devices (PEDs) be allowed to be used by passengers during any phase of flight. "Current FAA regulations generally prohibit the use of all PEDs during flight, with the exception of portable voice recorders, hearing aids, heart pacemakers, and electric shavers. These regulations also provide an exception for any other PED that the aircraft operator has determined will not cause interference with the navigation or communication systems on the aircraft." According to the proposed rule, FAA intends that soliciting comments on in-flight use of PEDs will give flight operators sufficient information "to better assess whether more widespread use of PEDs during flight is appropriate, while maintaining the highest levels of safety to passengers and aircraft. The Agency stresses that the existing regulations allow the operator to authorize the use of PEDs, and that no specific FAA approval is required. The aircraft operator is responsible for assuring that the interference from PEDs does not pose a flight risk. Once all the comments have been collected, the FAA intends to establish an Aviation Rulemaking Committee (ARC) to review the comments and provide recommendations that might permit the more widespread use of PEDs during flight while maintaining the highest levels of safety for the passengers and aircraft." [Comments](#) are due on October 30th.

Department of the Treasury

Treasury, NCUA, CFPB, Fed Board, and FHFA Propose Rule on Appraisals for High Risk Mortgages

The Department of the Treasury—in conjunction with the National Credit Union Administration, Consumer Financial Protection Bureau, the Federal Reserve Board System, and the Federal Housing Finance Agency—published a [proposed rule](#) that would amend Regulation Z, which implements the Truth in Lending Act (TILA). “The proposed revisions to Regulation Z would implement a new TILA provision requiring appraisals for “higher-risk mortgages” that was added to TILA as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the proposed rule would require creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.”

The definition of a “higher risk mortgage” is a residential mortgage loan with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction by either 1.5, 2.5, or 3.5 percentage points, depending on the type of loan. Qualified mortgages, which have not yet been defined by the CFPB, are excluded from the definition of higher risk mortgages. The Dodd-Frank amendments to TILA prohibit any creditor from extending credit in the form of a higher-risk mortgage loan to any consumer unless the credit has first 1) obtained an appraisal written by a certified or licensed appraiser who physically visits the property interior; 2) obtained an additional appraisal from a different certified or licensed appraiser (if the purpose of the loan is to finance the purchase of a mortgaged property that is being flipped by the seller); and 3) provided the applicant with a statement that any appraisal prepared for the mortgage is solely for the use of the creditor, and with one copy of each appraisal conducted in accordance with TILA section 129H. [Comments](#) are due on November 5th.

Treasury, OCC, Fed Board, and FDIC Finalize Rule Revising Market Risk Capital Standards

In conjunction with the Comptroller of the Currency, Federal Reserve Board System, and the Federal Deposit Insurance Corporation, the Department of the Treasury published a [final rule](#) intended to reduce procyclicality, enhance sensitivity to additional risks, and increase transparency by introducing new disclosures. “The final rule does not include all of the methodologies adopted by the Basel Committee on Banking Supervision for calculating the standardized specific risk capital requirements for debt and securitization positions due to their reliance on credit ratings, which is impermissible under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Instead, the final rule includes alternative methodologies for calculating standardized specific risk capital requirements for debt and securitization positions.” The purpose of enhancing the risk sensitivity of the market risk capital rule is “particularly important because of banks' increased exposures to traded credit and other structured products, such as credit default swaps (CDSs) and asset-backed securities, and exposures to less liquid products. Generally, the risks of these products have not been fully captured by VaR models that rely on a 10-business-day, one-tail, 99.0 percent confidence level soundness standard.”

Environmental Protection Agency

EPA Proposed Rule Would Not Require Permits for Logging Road Stormwater Discharges

The Environmental Protection Agency published a [proposed rule](#) clarifying that stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity, and that a National Pollutant Discharge Elimination System (NPDES) permit is not required for these discharges. “The EPA did not intend logging roads themselves to be regulated as industrial facilities. However, in light of NEDC, the EPA proposes the addition of language to 40 CFR 122.26(b)(14) to clarify the Agency's intent. The EPA believes that stormwater discharges from forest roads, including logging roads, should be evaluated under section 402(p)(6) of the Clean Water Act because the section allows for a broad range of flexible approaches that may be better suited to address the complexity of forest road ownership, management, and use.” [Comments](#) are due on October 4th.

Federal Deposit Insurance Corporation

FDIC, OCC, and Fed Board Propose Basel III Market Risk Capital Rule

The Federal Deposit Insurance Corporation, with the Comptroller of the Currency and the Federal Reserve Board System, released a [proposed rule](#) that would “revise the advanced approaches risk-based capital rule to incorporate certain aspects of “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” (Basel III) that the agencies would apply only to advanced approach banking organizations.” In addition, the Agencies propose “that the market risk capital rule be applicable to federal and state savings associations, and the

Board is proposing that the advanced approaches and market risk capital rules apply to top-tier savings and loan holding companies domiciled in the United States that meet the applicable thresholds.” [Comments](#) are due on October 22nd.

FDIC, OCC, and Fed Board Propose Rule for Risk-weighted Assets

The Federal Deposit Insurance Corporation, with the Comptroller of the Currency and the Federal Reserve Board System, released a [proposed rule](#) that would to revise and harmonize the Agencies’ rules for calculating risk-weighted assets to enhance risk sensitivity and address recently-identified weaknesses, including by incorporating aspects of the standardized framework in Basel II, and providing alternatives to credit ratings, consistent with section 939A of the Dodd-Frank Act. “The revisions include methodologies for determining risk-weighted assets for residential mortgages, securitization exposures, and counterparty credit risk. The Standardized Approach NPR also would introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with \$50 billion or more in total assets, including disclosures related to regulatory capital instruments.” [Comments](#) are due on October 22nd.

FDIC, OCC, and Fed Board Propose Rule for Minimum Capital Ratios

The Federal Deposit Insurance Corporation, with the Comptroller of the Currency and the Federal Reserve Board System, released a [proposed rule](#) revising the Agencies’ “risk-based and leverage capital requirements consistent with agreements reached by the Basel Committee on Banking Supervision (BCBS) in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” (Basel III). The proposed revisions would include implementation of a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for banking organizations subject to the advanced approaches capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator measure. Additionally, consistent with Basel III, the agencies are proposing to apply limits on a banking organization's capital distributions and certain discretionary bonus payments if the banking organization does not hold a specified amount of common equity tier 1 capital in addition to the amount necessary to meet its minimum risk-based capital requirements. This NPR also would establish more conservative standards for including an instrument in regulatory capital. As discussed in the proposal, the revisions set forth in this NPR are consistent with section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires the agencies to establish minimum risk-based and leverage capital requirements.” [Comments](#) are due on October 22nd.

Agencies

Department of Transportation

FAA Releases Draft Report on In-flight Cell Phone Use

The Federal Aviation Administration [announced](#) availability of a [draft report](#) on the impact of in-flight use of cellphones. “The FAA Modernization and Reform Act of 2012 section 410 directed the FAA to conduct a study on the impact of the use of cell phones for voice communications in scheduled passenger air transportation. The study included— (1) A review of foreign government and air carrier policies on the use of cell phones during flight; (2) A review of the extent to which passengers use cell phones for voice communications during flight; (3) A summary of any impacts of cell phone use during flight on safety, the quality of the flight experience of passengers, and flight attendants. FAA requested information on these subjects from the national aviation authorities that have approved the installation of on-board cell phone base stations, and allowed the use of cell phones in flight on aircraft equipped with these base stations. The responses from these national aviation authorities were documented in the FAA report to address the requirements of FAA Modernization and Reform Act section 410.” [Comments](#) are due November 5th.

Administrative Conference of the United States

ACUS Announces Eight Public Meetings to Consider Committee Reports

The Administrative Conference of the United States [published notice](#) of eight public meetings: “two meetings each for the Committee on Administration and Management, Committee on Collaborative Governance, Committee on Judicial Review, and Committee on Regulation of the Assembly of the Administrative Conference of the United States. At these meetings, the committees will consider reports by Conference consultants and work on preparing recommendations...At the September 24 and October 22 meetings, the Committee on Regulation will consider a set of draft recommendations dealing with the Science in the Administrative Process project. The committee will

consider recommendations proposed in a consultant report by Professor Wendy Wagner (University of Texas Law School) and additional input received at a September 10, 2012 workshop on agencies' use of science on which the Conference is collaborating with the National Academies." ACUS is an independent federal agency that provides recommendations to the federal government for improving the administrative process.

Environmental Protection Agency

EPA Announces Public Stakeholder Meeting on Upcoming Perchlorate Standards for Drinking Water

The Environmental Protection Agency [announced](#) it is holding a public stakeholder meeting on September 20th informing participants about the Agency's intent to regulate perchlorate levels in drinking water supplies. [Perchlorate](#) is a chemical that is present in bleach and some fertilizers that "may have adverse health effects because scientific research indicates that this contaminant can disrupt the thyroid's ability to produce hormones needed for normal growth and development." Currently, EPA is formulating a proposed national primary drinking water regulation for perchlorate, and this public meeting is "to share information with the public related to treatment technologies, analytical methods and other information" pertaining to the development of a perchlorate standard. Interested participants should RSVP to Junie Percy at junie.percy@itsysteminc.com or by phone at (937) 427-4148 ext. 210.

Export-Import Bank

Ex-Im Bank Receives Application Seeking \$21 Million Guarantee for Czech Wire Rod Mill Exports

The Export-Import Bank received an application seeking a [\\$21 million](#) guarantee to support the \$19 million export of a wire rod mill to the Czech Republic. "The U.S. export will replace an existing facility and enable the Czech company to expand its production of wire rod by approximately 50,000 metric tons annually during the 8.5-year repayment term of the obligation. Available information indicates that the additional wire rod production will be sold domestically in the Czech Republic and Slovakia, Germany, and Italy." [Comments](#) are due on September 14th.