Feature Story

OMB Memo: Federal Forms Should be Simplified, Tested for Complexity

Cass Sunstein, outgoing administrator of the Office of Information and Regulatory Affairs in the OMB, issued a memorandum on Thursday to the heads of executive branch agencies and to the independent regulatory commissions asking that federal forms be simple and understandable to the public. Sunstein instructs agencies to test information collections (including forms) in advance in order “to ensure that they are not unnecessarily complex, burdensome, or confusing...to obtain the best available information about the likely burdens on members of the public (including small businesses), and...to identify ways to reduce burdens and to increase simplification and ease of comprehension. Such advance testing should occur either before proposing information collections to the public or during the public comment period required by the [Paperwork Reduction Act].” The advance testing can take the form of focus groups, online experiments, randomized controlled experiments, and cognitive tests. The annual burden of current paperwork requirements exceeds 10 billion hours, according to OIRA data.
• Perpetuating Puffery: An Analysis of the Composition of OMB's Reported Benefits of Regulation, Susan E. Dudley

The Heritage Foundation
• Chemical Security in the U.S.: CFATS Regulations Too Complex, Overly Burdensome, Jessica Zuckerman
• Ignore the Spin: GAO Says to Ease Cell Phone Rules, James Gattuso
• Agriculture Department Paid $2 Million for a Single Intern, Lachlan Markay

The Mercatus Center
• Mercatus Policy Guide Part II: Why Regulation Matters
• Mercatus Policy Guide Part III: Rethinking Financial Markets Reform
• Regulation: A Primer 2nd Ed., Susan Dudley & Jerry Brito

National Bureau of Economic Research
• Airports and Urban Growth: Evidence from a Quasi-Natural Policy Experiment, Bruce Blonigen & Anca Cristea

National Center for Policy Analysis
• Energy Regulations: Protecting Irrational Consumers from Themselves

Office of Management and Budget
• MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, AND OF THE INDEPENDENT REGULATORY COMMISSIONS: Testing and Simplifying Federal Forms, Cass Sunstein
• Making Forms Simpler, Cass Sunstein

OMB Watch
• Sunstein’s Legacy: Retrospective Reviews = An Unjustified Burden on Regulatory Agencies, Randy Rabinowitz

Penn Program on Regulation
• The Regulatory Week in Review: August 10, 2012, Mima Mohammed

The Phoenix Center for Advanced Legal & Economic Public Policy Studies
• Justifying the Ends: Section 706 and the Regulation of Broadband, George Ford & Lawrence Spiwak

Ag Dept unveils new steps to stop food stamp fraud, Washington Post
FTC: $22.5 million penalty sends message to Google, Washington Post
FTC fines Google a record $22.5 million to settle allegations of broken privacy promises, Washington Post
Consumer Group Files Suit Against Sweetener For Claiming It’s Essential, NPR
Google's Interactions With Federal Regulators, NPR
Google Fined $22.5M For Latest Privacy Breakdown, NPR

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FTC Names Agency's New Inspector General, Federal Trade Commission
Consumer Bureau Moves To Make Mortgages Clearer, Foreclosures Fewer, NPR
Consumer bureau proposes mortgage servicer overhaul, NPR
U.S. Unveils Mortgage Protections For Homeowners, Associated Press
Why Evading U.S. Rules May ’Temp' Foreign Banks, NPR
OMB to agencies: Ask users if your forms make sense, Government Executive
SEC Waves Caution Flag in Wake of Nascar-Themed Fund Crash, Wall Street Journal
SEC Asked Herbalife Same Questions Einhorn Raised, Wall Street Journal
Decision not to prosecute Goldman Sachs shows weakness: senator, Reuters
Ex-Fannie Mae execs lose bid to end SEC fraud lawsuit, Reuters
Miami offers finance staff shakeup to SEC, Reuters
SEC charges NASCAR stock fund adviser over withholding records, Reuters
U.S. consumer agency proposes rules for mortgage servicers, Reuters
Consumer cop takes on 'robo-signing', Politico
FTC OKs Facebook's privacy settlement, Politico
CFPB proposes new rules for mortgage servicers, Washington Post

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Small banks to benefit from Dodd-Frank exemption on foreign transfers, Washington Post
Fishermen say hideous, coveted monkfish is too long on regulations, too short on data, Washington Post

8/13/12
Agencies to simplify forms, ease burden on businesses, Washington Business Journal
NYT to White House: Move Forward on Food Safety Rules, Food Safety News
SEC issues investor bulletin on ETFs, Reuters
Top lawyer at U.S. bank regulator OCC to retire after 19 years, Reuters
Verizon Deal Nears Regulatory Approval, Wall Street Journal
Trans-Atlantic Tensions Increase, Wall Street Journal
Consumer Advocates Cheer Exit of OCC's Top Counsel, Wall Street Journal

8/14/12
Expanding Child Protection Online, RegBlog
Federal appeals court sides with Texas against EPA, CNBC
Memo Orders Agencies to Simplify Language, Strip Jargon from Forms, ExecutiveGov
FDA Calls for Evaluation of Suicidal Ideas and Behavior in all CNS Drug Trials, Regulatory Focus
Clearing for OTC derivatives market finally in sight, Reuters
Wells Fargo to pay more than $6.5 million to settle SEC charges, Reuters
Standard Chartered, New York regulator reach $340 mln settlement, Reuters
FDA warns Hershey over chocolate syrup labeling, Reuters

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Regulators propose appraisals for high risk home loans, Reuters
Johnson & Johnson removing harsh chemicals from adult toiletries and cosmetic

THE GEORGE WASHINGTON UNIVERSITY
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Rulemaking

Commodity Futures Trading Commission
CFTC and SEC Final Rule Further Defines “Swap”
The Commodity Futures Trading Commission, in conjunction with the Securities and Exchange Commission, published a final rule defining the terms “swap,” “security-based swap,” “mixed swaps,” and “security-based swap agreements.” In examining the potential costs and benefits of this rulemaking, the CFTC claims that a more concrete definition of these terms will reduce costs by increasing certainty for regulated entities: “The CFTC believes that the rulemaking to further define the terms “swap,” “security-based swap,” “security-based swap agreement,” and “mixed swap” is consistent with how market participants understand these products. The further definitions increase legal certainty and thereby reduce assessment costs by clarifying that certain products that meet the requirements of the applicable rules and interpretations, such as traditional insurance products, are not swaps.”

Department of Homeland Security
DHS Proposes Extension of New Mexico Border Zone
The Department of Homeland Security published a proposed rule that would extend the border zone in New Mexico by 30 miles. Currently, Mexican nationals with a Border Crossing Card must remain within 25 miles of the border; in order to travel beyond 25 miles, a Mexican national must obtain a U.S. Customs and Border Protection I-94 Form, otherwise known as an arrival/departure record. The DHS proposed an extension of the zone to 55 miles “to promote commerce and tourism in southern New Mexico while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.” Comments on the proposed rule are due on October 9.

United States Department of Agriculture
USDA Final Rule Implements Program to Identify Disqualified, Deceased Food Stamp Recipients
The Department of Agriculture issued a final rule implementing deceased matching and prisoner verification systems for the Supplemental Nutrition Assistance Program. The rule requires food stamp agencies to screen applicants prior to certification by verifying against disqualified recipient data. Food stamp agencies must examine applications using a computer matching system to ensure that deceased or incarcerated individuals are not counted as eligible to receive food stamps. Agencies must verify that a recipient is disqualified with the agency that submitted the disqualification, and the disqualified recipient must be notified of his or her status.

Environmental Protection Agency
EPA Establishes New Emissions Standards for Nitric Acid Plants
The Environmental Protection Agency issued a final rule implementing new emissions standards for nitric acid plants that begin or modifies construction after October 14, 2011. Nitric acid is used to make nitrogen fertilizer, which is used heavily by in agriculture. This rule reduces the nitrogen oxides (NOX) emissions limit from 3.0 pounds of NOX per ton of nitric acid to 0.5 pounds of NOX per ton of nitric acid, but does not change the nitrous oxide greenhouse gas emission standards.

EPA Approves Substitutes for Ozone-Depleting Substances
The Environmental Protection Agency released a determination of acceptability listing additional substitutes for ozone-depleting substances to the list of acceptable substances. The EPA allowed four new substitutes in the refrigeration and air condition industry, including carbon dioxide. It also added new substitutes in the foam blowing, solvent cleaner, aerosol, and fire suppression sectors.
Securities And Exchange Commission
SEC Announces Roundtable Discussion on Stabilizing High-Frequency Trading
The Securities and Exchange Commission announced that it is hosting a roundtable on September 14th, Technology and Trading: Promoting Stability in Today’s Markets, to “discuss ways to promote stability in markets that rely on highly automated systems.” The highly-automated systems referenced by the Commission are computerized systems for high-frequency trading (HFT), which recently led to a $440 million loss by Knight Capital Group due to a software glitch. This incident brought the topic of HFT back to the attention of regulators, who are seeking ways to reduce the risks that HFTs pose to both individual companies and the U.S. financial market at large. “Recent events have highlighted some of the risks of increasingly complex and interconnected trading systems, setting aside the larger public debate regarding high frequency trading. The roundtable discussions will be focused on the design and control of all types of automated market systems. When these systems do not work as intended, the failures can directly harm not only the operator of the system but in some cases a range of other innocent parties.”

Administrative Conference of the United States
ACUS Publishes Recommendations in Federal Register
The Administrative Conference of the United States, an independent federal agency that provides recommendations on improving the administrative process, published in the Federal Register five recommendations adopted during its fifty-sixth plenary session including requirements for regulatory analysis, midnight rules, the Paperwork Reduction Act, and the improved coordination of agency responsibilities. The ACUS recommendations are available both on the ACUS website and in the August 10th Federal Register notice.

Consumer Product Safety Commission
CPSC Publishes Administrative Complaint Against Zen Magnets
The Consumer Product Safety Commission published in the Federal Register an administrative complaint “to protect the public from the substantial risks of injury presented by aggregated masses of high-powered, small rare earth magnets known as Zen Magnets TM Rare Earth Magnetic Balls, imported and distributed by Zen Magnets, LLC.” The Commission holds that these products pose a threat of injury to the public because, when more than one magnet is ingested, the magnets can become attracted through the walls of intestines, leading to perforation and damage requiring medical intervention and surgery. Certain package labeling could be interpreted at marketing the product to children under the age of 14, which would require a different level of product safety regulation than for products intended solely for adults. The Commission states that Zen Magnets, as designed, are defective, and pose “a substantial risk of injury.” The relief sought by the CPSC is for Zen Magnets to discontinue manufacture and sale, as well as to refund consumers the purchase price of any Zen Magnets. The Commission voted 3-1 to authorize this complaint, with Commissioner Nancy A. Nord voting the only dissent.

CPSC Announces Safety Academy on Product Safety Testing and Compliance
The Consumer Product Safety Commission announced its intent to host a daylong Safety Academy on September 20th in Bethesda, MD, to discuss current CPSC testing and certification requirements for children's products and compliance with CPSC standards. “The CPSC Safety Academy intends to bring together CPSC staff and stakeholders, including manufacturers, consumer advocates, academic researchers, and others to disseminate and share information on areas of particular interest to stakeholders, including testing and certification of children's products, as well as navigating compliance issues and the Fast-Track process.” Interested attendees and participants must RSVP by September 14th.

Department of Energy
DOE Announces Public Meeting on Clothes Washer Regulations
The Department of Energy issued notice of a public meeting on September 24th in Washington, DC, to “consider whether to amend the energy and water conservation standards for commercial clothes washers. DOE also announces a public meeting to discuss and receive comments on issues that it will address in this rulemaking proceeding. DOE is initiating data collection for considering amended energy and water conservation standards for commercial clothes washers. DOE also encourages written comments on potential amended standards, including comments on the issues identified in the framework document.” Technical support documents and information
about this rulemaking can be found here. Anyone wishing to participate in the public meeting or to receive relevant meeting materials should contact Ms. Brenda Edwards at (202) 586-2945. Comments are due on October 10th.

**International Trade Commission**

**ITC Solicits Comment on Retrospective Review of Existing Rules**
The International Trade Commission published a [proposed rule](#) inviting comments from the public on the Commission’s first biannual retrospective review plan. “In response to Executive Order 13579 of July 11, 2011, the Commission recently adopted its Plan for Retrospective Analysis of Existing Rules… This Plan provides that the Commission will, every two years, review its significant regulations to determine whether any should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The Commission is now conducting such a periodic review, and invites comments from the public as to Commission rules that might be suitable for modification or elimination.” The Commission has not made the rulemaking [docket](#) open to the public; comments are due on October 9th.

**Food and Drug Administration**

**FDA Releases Draft Guidance Document on Addressing Suicidal Ideation During Clinical Trials**
The Food and Drug Administration released a draft [guidance document](#) for industry, *Suicidal Ideation and Behavior: Prospective Assessment of Occurrence in Clinical Trials*. “The purpose of this guidance is to assist sponsors in prospectively assessing the occurrence of treatment-emergent suicidal ideation and behavior in clinical trials of drug and biological products. Specifically, this guidance addresses FDA’s current thinking regarding the importance of suicidal ideation and behavior assessment in psychiatric and nonpsychiatric drug trials and the general principles for how best to accomplish this assessment during drug development. Prospective assessment of suicidal ideation and behavior involves actively querying patients about the occurrence of suicidal thinking and behavior, rather than relying on patients to report such occurrences spontaneously, followed by retrospective classification of events into appropriate categories. This guidance recommends a specific suicidal ideation and behavior assessment instrument that can be used to conduct such prospective assessments and offers guidance on the use of alternative instruments.” Comments on the draft guidance are due on October 15th.

**Export-Import Bank**

**Ex-Im Bank Receives Request for $1.03 Billion Long-term Loan Guarantee**
The Export-Import Bank has received a [request](#) for a long-term loan guarantee for $1.03 billion “to support the export of approximately $910 million in U.S. semiconductor manufacturing equipment and services to a dedicated foundry in Germany. The U.S. exports will enable the dedicated foundry to increase existing 300mm (non-DRAM) production capacity of logic semiconductors by approximately 34,000 wafers per month. Available information indicates that this new production will be consumed globally.” Comments on this long-term loan guarantee are due August 24th.