

Regulatory Oversight Newsletter — November 2023

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REGULATORY OVERSIGHT BLOG

Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

Regulatory Oversight will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

Data Incidents Updates

YOUR ORGANIZATION HAS SUFFERED A DATA INCIDENT: NOW HERE ARE THE REGULATORS IT WILL LIKELY ENCOUNTER

By [Stephen C. Piepgrass](#), [Gene Fishel](#), and [Sadia Mirza](#)

This article was originally published on October 16, 2023 in [Reuters](#) and [Westlaw Today](#). It is republished here with permission.

Government regulators are seemingly as numerous as the stars nowadays, especially in the universe of data incidents. When organizations experience a data incident, they will need to quickly assess what happened, why it happened, and who (e.g., clients, consumers, vendors, employees) was affected. They will also need to chart a course by which they resolve the incident while limiting their legal exposure.

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CLEANUP ON AISLE 1: PENNSYLVANIA GROCER RUTTERS LATEST TO SETTLE SINGLE-STATE DATA BREACH INVESTIGATION WITH PENNSYLVANIA AG

By [Troutman Pepper State Attorneys General Team](#)

Rutters, a prominent grocery chain in Pennsylvania with 80 locations statewide, settled a data breach investigation with Attorney General (AG) Michelle Henry's office by agreeing to pay \$1 million and to implement certain injunctive relief. Henry [announced the settlement](#) on Wednesday, October 11, following a months-long data breach lasting from 2018 to 2019 that potentially exposed the payment card data of 1.3 million Pennsylvania consumers.

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SEC Updates

SEC TARGETS CRYPTOCURRENCY, EMERGING TECHNOLOGIES, AND ANTI-MONEY LAUNDERING FOR 2024 EXAMINATION PRIORITIES

By [Jay Dubow](#), Matthew Orso, [Ethan G. Ostroff](#), and [Trey Smith](#)

On October 16, the Securities and Exchange Commission's Division of Examinations (the Division) released its 2024 Examination Priorities report. The report highlights that future examinations will focus on "risk areas impacting various market participants," emphasizing risks posed by products and services: (1) related to cryptocurrency; and (2) that leverage emerging technology. In addition, the report indicates that examinations will focus on market participants' compliance with Anti-Money Laundering (AML) laws.

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Tobacco Updates

ENDS COMPANIES TAKE LEGAL ACTION AGAINST ALLEGEDLY NONCOMPLIANT COMPETITORS

By [Bryan Haynes](#), [Agustin Rodriguez](#), and [Nick Ramos](#)

Recently, NJOY LLC filed a [complaint](#) in the U.S. District Court for the Central District of California against more than 30 foreign and domestic defendants that manufacture, market, distribute, and sell tobacco products in an (indirect) effort to force them to comply with federal and state laws. R.J. Reynolds Tobacco Company and R.J. Reynolds Vapor Company (collectively, RJR) also recently [filed a complaint](#) with the U.S. International Trade Commission (ITC) against more than 25 foreign and domestic manufacturers, distributors, and retailers (collectively, the respondents) that seeks to prevent the import and resale of certain tobacco products. These lawsuits serve as two examples of how industry is trying to take independent legal action to target allegedly noncompliant actors and force them to comply with applicable law.

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Gaming Updates

US SUPREME COURT STAYS ORDER UPHOLDING STATE GAMING COMPACT GIVING FLORIDA SEMINOLE TRIBE EXCLUSIVE SPORTS BETTING RIGHTS

By [Michael Lafleur](#)

In an interim order, the U.S. Supreme Court has temporarily stayed an order by the D.C. Circuit Court of Appeals upholding a gaming compact between the state of Florida and the Seminole Tribe of Florida, which would allow the tribe exclusive rights to offer sports betting in Florida.

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Energy Updates

ADVANCING NUCLEAR ENERGY: THE ROLE OF ADVANCED TECHNOLOGIES IN A CHANGING POLITICAL AND REGULATORY LANDSCAPE

By [Andy Flavin](#), [Bonnie Gill](#), [Timothy McHugh](#), John Sample, and [Trey Smith](#)

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Nuclear energy has long been a significant source of reliable, clean energy within the United States. In 2021 alone, nuclear energy accounted for approximately 20 percent of electricity generated in the country and 50 percent of its carbon-free electricity. And while some sources of carbon-free generation are necessarily intermittent, nuclear generation has a high-capacity factor, capable of running at all hours of the day.

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ARKANSAS AG ISSUES LETTER TO SOLAR INSTALLATION COMPANIES

By [Troutman Pepper State Attorneys General Team](#)

On October 5, Arkansas Attorney General (AG) Tim Griffin issued an [enforcement advisory](#) to Arkansas solar installation companies. The letter outlines solar installation companies' legal obligations under the Arkansas Deceptive Trade Practices Act. Specifically, Griffin expresses concern over companies' "predatory sales tactics" and deficient contracts.

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State AG Updates

WASHINGTON AG ORDERED TO PAY \$4.3M IN ATTORNEY'S FEES AND COSTS TO THRIFT STORE CHAIN

By [Troutman Pepper State Attorneys General Team](#), [Ryan J. Strasser](#), and [David N. Anthony](#)

On October 17, following Washington Attorney General (AG) Bob Ferguson's unsuccessful consumer protection action against thrift store chain, Savers Value Village Inc. (Savers), the Washington Superior Court of King County granted Savers' motion for attorney's fees and costs in the amount of \$4.3 million. This substantial award — which

is allowable under the Washington Consumer Protection Act (WA CPA) — represents a substantial recoupment of Savers’ attorneys’ fees spent to defend the almost decade-long litigation.

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STATE AGS AND STATE MONEY TRANSMISSION REGULATORS SETTLE WITH PAYMENT PROCESSOR OVER UNAUTHORIZED MORTGAGE WITHDRAWALS

By [Troutman Pepper State Attorneys General Team](#), [Keith J. Barnett](#), and [Carlin McCrory](#)

On October 17, 52 state and territorial attorneys general, in addition to state money transmission regulators, entered into settlements amounting to more than \$20 million with ACI Worldwide (ACI), to resolve claims involving a money transmission error that led to the unauthorized withdrawal of \$2.3 billion from Nationstar Mortgage (also known as Mr. Cooper) customers.

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DC OAG ISSUES GUIDANCE ON RESTAURANT FEE DISCLOSURES

By [Troutman Pepper State Attorneys General Team](#)

On August 9, District of Columbia Attorney General Brian L. Schwalb issued a Supplemental Business Advisory regarding restaurants’ obligation to properly disclose service fees and charges to diners. The advisory comes after the Office of the Attorney General’s (OAG) March 2023 consumer alert providing guidance on unlawful restaurant fees.

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Cannabis Updates

BANKRUPTCY IN THE CANNABIS SPACE

By Jean Smith-Gonnell, [Gary Marsh](#), [Michael Lafleur](#), and [Tori Lynn Remington](#)

Though controversial, cannabis^[1] has steadily grown into a booming industry. Despite this rapid growth and the legalization of cannabis in numerous states^[2], cannabis is still classified as a Schedule I drug under the Controlled Substances Act (CSA). As cannabis is illegal under federal law, individuals and companies involved or related to the cannabis industry face an uphill battle when insolvency issues arise. Federal forums that traditionally address insolvency matters, such as bankruptcy, have historically been unavailable to those engaged in the cannabis industry, forcing them to seek state-controlled alternatives, such as receivership. However, as more and more states have legalized commercial transactions involving cannabis in some form, bankruptcy courts have begun to adopt two distinct paths: one for individuals and entities directly engaged in growing, processing, distributing, or selling cannabis products, and one for entities that are associated with cannabis more indirectly, which the bankruptcy system recently has been more open to.

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MARYLAND CANNOT REQUIRE HEMP PRODUCERS TO OBTAIN STATE CANNABIS LICENSE, FOR NOW

By Jean Smith-Gonnell, [Michael Jordan](#), and Christina Sava

On October 12, hemp producers and retailers notched an early win in litigation challenging the legality of Maryland's cannabis licensing program as it applies to hemp. By way of background, the Maryland General Assembly recently passed the Cannabis Reform Act (CRA), after voters gave their stamp of approval to recreational cannabis in the state via a 2022 referendum. Rather than create a separate licensing system for hemp products, the CRA requires anyone selling a "product intended for human consumption or inhalation that contains more than 0.5 milligrams of tetrahydrocannabinol per serving or 2.5 milligrams of tetrahydrocannabinol per package" to be licensed as a cannabis business. "Tetrahydrocannabinol" (THC) is defined to include delta-8, delta-9, and delta-10 THC. This lack of distinction between hemp- and marijuana-derived products results in the inclusion of existing producers and retailers of hemp-derived THC products into the new cannabis program.

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OREGON ASPERGILLUS TESTING NO LONGER REQUIRED, BUT REQUIREMENTS VARY ACROSS STATES

By Jean Smith-Gonnell, [Zie Alere](#), and Christina Sava

As a result of a legal challenge by the Oregon Cannabis Industry Alliance and cannabis cultivators in Oregon, the Oregon Health Authority's (OHA) aspergillus fungus testing rule for marijuana, marijuana products, and industrial hemp concentrates and extracts has been withdrawn, and 2,500 pounds of marijuana plus 65,000 units of infused pre-rolls that failed aspergillus testing were released from administrative hold.

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APPLICATION FOR LAST AVAILABLE MEDICAL CANNABIS LICENSE IN VIRGINIA TO BE SUPERVISED BY VIRGINIA CANNABIS CONTROL AUTHORITY

By [Agustin Rodriguez](#), Jean Smith-Gonnell, and Christina Sava

On October 2, the Virginia Board of Pharmacy posted a [general notice](#) indicating that it had voted to rescind the request for applications (RFA) for a Pharmaceutical Processor license in Health Service Area I. The RFA will now be conducted by the Virginia Cannabis Control Authority (the CCA) sometime after it assumes oversight of the state's medical cannabis program on January 1, 2024.

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COLORADO'S EXCISE TAXES ON RECREATIONAL MARIJUANA: A REVENUE BOON FOR THE STATE THAT DISADVANTAGES VERTICALLY INTEGRATED CANNABIS OPERATIONS

By Jean Smith-Gonnell and [Michael Lafleur](#)

Since its [first recreational marijuana dispensary opened](#) in 2014, Colorado has been at the forefront of the

burgeoning adult-use cannabis industry, setting a precedent for other states considering the legalization of recreational marijuana, and reaping significant tax benefits for the state in the process.

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GEORGIA TO BECOME FIRST STATE IN THE NATION TO ALLOW MEDICAL MARIJUANA IN PHARMACIES

By Jean Smith-Gonnell and [Michael Lafleur](#)

The Georgia Board of Pharmacy has begun accepting applications from independent, licensed pharmacies for authorization to dispense authorized medical marijuana products, and nearly 120 pharmacies [reportedly have agreed](#) to provide medication from Botanical Sciences, one of the state's two licensed production companies, according to a company statement.

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Stephanie Kozol, Senior Government Relations Manager – State Attorneys General, also contributed to this newsletter.

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

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