

Regulation Digest Weekly

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Opinion

- Dodd-Frank Regulatory Actions to Watch in 2013
- 10 Ways Dodd-Frank Will Hurt the Economy in 2013
- Big-Bank Regulator Targets the Little Guy
- Breaking Up Banks Is Easy When They Aren't Failing
- High-Frequency Trading Provides Essential Liquidity
- Federal Regulation: The Costs of Benefits
- Basel's golden ticket for bankers
- Why bankruptcy rules work best when big institutions break down
- The SEC Ponders Circumventing Citizens United
- The EPA Is Politicized—So Make It Official
- Meaningful banking reform and why it is so unlikely
- Dodd-Frank's 10 biggest omissions
- Dodd-Frank Remains a Troubled Work in Progress

Marketplace of Ideas

American Action Forum

- Regulatory Calendar: Administration Releases 2013 Regulatory Plan, *Sam Batkins*
- Examining the U.S. Regulatory 'Budget', *Sam Batkins & Ike Brannon*
- Regulatory Calendar: Administration Releases 2013 Regulatory Plan, *Sam Batkins*

Center for American Progress

- Banks Get Delay In New Rule, Keeping Taxpayers On The Hook For Risky Trades, *Pat Garofalo*

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- Feds Say Hybrid Electric Vehicles Too Quiet, Noisemakers Should Be Mandated, *Marc Scribner*

Feature Story

CFTC Rule Delays Dodd-Frank Compliance for Non-U.S. Swap Dealers

The Commodity Futures Trading Commission published a [final rule](#) delaying compliance with certain Dodd-Frank swap regulations for non-U.S. entities registering as a swap dealer or as a major swap participant. This rule finalizes a July 2012 [proposed order](#) delaying compliance for these entities, and extending the compliance date for these rules until July 12, 2013. "Under this final order ("Final Order"), a non-U.S. person that registers as a swap dealer ("SD") or major swap participant ("MSP") may delay compliance with certain entity-level requirements of the CEA (and Commission regulations promulgated thereunder), and non-U.S. SDs and MSPs and foreign branches of U.S. SDs and MSPs may delay compliance with certain transaction-level requirements of the CEA (and Commission regulations promulgated thereunder), subject to specified conditions." The primary benefit of this rule cited by the Commission is reduced compliance costs: "The Commission is cognizant that compliance costs may be increased simply by the need to implement compliance quickly, which could entail, for example, retaining outside consultants rather than having in-house employees effect the necessary implementation steps. Thus, the Commission believes that by giving non-U.S. market participants additional time to come into compliance with certain of its regulations, the overall cost of compliance implementation will be reduced, not just delayed."

In the News

1/2/13

- [Financial reform battle continues over Dodd-Frank law](#), *Washington Post*
- [News Summary: Microsoft tries to turn up pressure on regulators to crack down on Google](#), *Washington Post*
- [Microsoft argues Google is still stifling competition as government regulators wrap up probes](#), *Washington Post*
- [SEC defends rule forcing oil, mining payment transparency](#), *Reuters*
- [Basel Becomes Babel as Conflicting Rules Undermine Safety](#), *Bloomberg*
- [JPMorgan Among 65 to Register as Swap Dealers Under Dodd-Frank](#), *Bloomberg*

1/3/13

- [Swaps Registry, Prepaid Cards, Goldman Stock: Compliance](#), *Bloomberg*
- [Google Said Poised to Resolve FTC Antitrust Probe Today](#), *Bloomberg*
- [The Top 25 Regulatory Stories of 2012 \(US Edition\): 10-1](#), *Regulatory Focus*
- [FDA Finalizes Three Critical Medical Device Guidance Documents](#), *Regulatory Focus*
- [New rules to help exchanges break brokers' grip on swaps](#), *Reuters*
- [FTC: Google agrees to change search display, to license patents to rivals](#), *Washington Post*
- [Amazon, Macy's, Sears settle FTC suits over mislabeling](#), *Washington Post*
- [Google Probe by FTC Ends in Voluntary Changes](#), *Bloomberg TV*



Federal Regulations Advisor

- First FDA Food Safety Proposed Rules Released: A Long, Long Road Ahead, *Leland Beck*

Free State Foundation

- Regulators Can't Be Trusted to Self-Regulate: High Court Can Halt Expansion of Administrative State, *Randolph May*

The George Washington University Regulatory Studies Center

- DOT Rule Doesn't Address Market Failure: An Analysis of EO 12866 Requirements, *Sofie Miller*

Government Accountability Office

- Causes and Consequences of Recent Bank Failures, *Lawrance Evans*

- Treasury Sees Some Returns as It Exits Programs and Continues to Fund Mortgage Programs, *Thomas McCool*

- EPA Should Develop a Strategic Plan for Its New Compliance Initiative, *David Trimble*

- Annuities with Guaranteed Lifetime Withdrawals Have Both Benefits and Risks, but Regulation Varies across States, *Alicia Cackley*

The Mercatus Center

- Will the FDA's New Rules Improve Food Safety?, *Richard Williams*

- Dodd-Frank: What It Does and Why It's Flawed, *Hester Peirce & James Broughel*

Penn Program on Regulation

- The Regulatory Week in Review: January 4, 2013, *Mima Mohammed*

- Assessing Regulations in the Wake of Disaster, *Ted Oxholm*

- A Portfolio Approach to Addressing Catastrophic Risk, *Christopher Tipler*

[Amazon.Com, Macy's, Sears Settle FTC Mislabelling Claims](#), *Bloomberg*
[Google Investigation by FTC Ends With Voluntary Changes](#), *Bloomberg*
[Whiskey Business: The regulatory ordeal of the American micro-distiller](#), *The Atlantic*

[In victory for Va., judge rules EPA can't regulate storm water as pollutant](#), *Washington Post*

[FTC: Google did not break antitrust law with search practices](#), *Washington Post*
[Judge in Va. rules EPA exceeded authority in trying to regulate stormwater as pollutant](#), *Washington Post*

[Some of Google's interactions with federal regulators](#), *Washington Post*

1/4/13

[FDA To Release Rules To Strengthen Safety Of Food Supply](#), *NPR*

[FDA issues sweeping new food safety rules](#), *Associated Press*

[FDA begins implementing sweeping food-safety law](#), *Washington Post*

[F.D.A. Offers Rules to Stop Food Contamination](#), *New York Times*

[FDA proposes sweeping new food safety rules covering farms and processing plants](#), *Washington Post*

[Appeals court sides with environmental groups challenging EPA soot regulation](#), *Washington Post*

[For small exporters, security-related regulations can be a thicket](#), *Washington Post*

[Fed's Yellen backs initial margins for OTC swaps](#), *Reuters*

[Fed's Yellen Says Tighter Regulation Needed for Crises](#), *Bloomberg*

[Food Processors Face Stricter Rules Under U.S. Proposal](#), *Bloomberg*

[Federal agency sues JPMorgan over sales by Washington Mutual of mortgage securities](#), *Washington Post*

1/5/13

[Google free to extend web search lead as U.S. FTC ends antitrust probe](#), *Washington Post*

[House Oversight Committee asks to see proposed settlement between banks, Fed, Treasury Dept.](#), *Washington Post*

[FDA: proposed rules covering farms and processing plants will make food safer](#), *Washington Post*

[Levitt Says Banks 'Succeeded' in Easing Basel Rule](#), *Bloomberg*

1/7/13

[CFPB Readies New Mortgage Rules as Banks Seek More Time](#), *Bloomberg*

[U.S. Banks to Pay \\$8.5 Billion to Settle Foreclosure Missteps](#), *Bloomberg*

[Corporate Bond Yields May Fall Further Amid Relaxed Basel Rules](#), *Wall Street Journal*

[Financial Regulation: The Year Ahead](#), *Wall Street Journal*

[Issa urges FTC to smoke out Google tipsters](#), *The Hill*

[Banks have to pay up, despite win on liquidity rule](#), *Reuters*

[SBA authorizes first venture capital firm to invest government-backed start-up funding](#), *Washington Post*

[Banks Win 4-Year Delay as Basel Liquidity Rule Loosened](#), *Bloomberg*

[Tarullo Sees Big Banks With Fed Rule Protecting Taxpayer](#), *Bloomberg*

1/8/13

[Fulbright, SEC GC, Latham, Zuckerman: Business of Law](#), *Bloomberg*

[Banks' \\$8.5 Billion Deal Kills Reviews That Never Saw Results](#), *Bloomberg*

[Swap Traders Close to Winning U.S. Portfolio Collateral Offset](#), *Bloomberg*

[Secret Goldman Team Sidesteps Volcker After Blankfein Vow](#), *Bloomberg*

[FDA staff: Johnson & Johnson diabetes drug could pose slight heart risk, looks safe otherwise](#), *Washington Post*

[DEA's Regulatory Agenda Affects Pharma Supply Chain, Distribution and Disposal Regulations](#), *Regulatory Focus*

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[NFIB supports Kipke's regulation schedule](#), *Maryland Gazette*

1/9/13

[Timeline: Geithner's stormy tenure at Treasury nears end](#), *Reuters*

[Analysts View: Obama set to appoint Jack Lew as Treasury chief](#), *Reuters*

[Former OCC Chief Counsel Williams Joins Consulting Firm](#), *Bloomberg*

[Regulators Grapple With Complexities of Preparing for Nuclear, Chemical](#)

[Disaster Events](#), *Regulatory Focus*

Rulemaking

Commodity Futures Trading Commission

CFTC Proposes Rule Defining “U.S. Person” for Cross-Border Swaps Regulations

The Commodity Futures Trading Commission published a [proposed rule](#) regarding the Commission’s [interpretive guidance](#) on the cross-border application of the swaps provisions of the Dodd-Frank Act’s Title VII provisions relating to the Commodity Exchange Act (CEA). “Specifically, this proposed interpretive guidance and policy statement describes the following: The general manner in which the Commission will consider whether a person’s swap dealing activities or swap positions may require registration as a swap dealer or major swap participant, respectively, and the application of the related requirements under the CEA to swaps involving such persons; and the application of the clearing, trade execution, and certain reporting and recordkeeping provisions under the CEA, to cross-border swaps involving one or more counterparties that are not swap dealers or major swap participants.” This proposed rule further clarifies the term “U.S. person” in the interpretive guidance, which is used in determining which entities will be subject to swaps regulations.

To this effect, the Commission’s initial guidance interprets the term “U.S. person” to include the foreign branch or agency of a U.S. person. The new proposed rule “would treat an entity as a U.S. person if one or more of its U.S. majority owners has unlimited responsibility for losses of, or nonperformance by, the entity. This would reflect that when the structure of an entity is such that the U.S. direct or indirect owners are ultimately liable for the entity’s obligations and liabilities, the connection to activities in, or effect on, U.S. commerce satisfies the requisite jurisdictional nexus. This “look-through” requirement also would serve to prevent persons from creating such indirect ownership structures for the purpose of evading the Dodd-Frank regulatory regime.” The Commission further clarifies that “a pool, fund, or other collective investment vehicle that is publicly traded will be deemed a U.S. person only if it is offered, directly or indirectly, to U.S. persons.” Additionally, the Commission proposes extending swap dealer registration requirements to non-U.S. persons who engage in more than a *de minimis* level of swap dealing with U.S. persons. [Comments](#) are due on February 6th.

Department of Transportation

PHMSA Requests Comment on Lithium Battery Transport Regulations

The Pipeline and Hazardous Materials Safety Administration published a [proposed rule](#) seeking comment from the public on the impacts of existing standards for the air transport of lithium batteries. “In this document, PHMSA is seeking additional comment on the impact of changes to the requirements for the air transport of lithium cells and batteries that have been adopted into the 2013-2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air (ICAO Technical Instructions), and subsequently incorporated by reference in a [final rule](#) published elsewhere in this issue of the Federal Register. PHMSA is considering the long-term impacts of permitting shippers and carriers to choose between compliance with the existing HMR, or compliance with the ICAO Technical Instructions 2013-2014 edition, when transporting batteries domestically by air. Incorporation by reference of the 2013-2014 Edition of the ICAO Technical Instructions will allow each shipper and carrier to choose the method of compliance that is most appropriate for its operation; likewise, each shipper and carrier will have the responsibility to ensure that the proper method of compliance is chosen for each shipment, since the chosen method may not comply with the ICAO Technical Instructions.” [Comments](#) are due on March 8th.



FAA Proposes Rule Amending Use of Oxygen Generators in Airplane Lavatories

The Federal Aviation Administration published a [proposed rule](#) amending requirements for airplanes to contain oxygen generators accessible in airplane lavatories. Currently, airplanes are required to contain two oxygen masks within airplane lavatories in the case of a sudden change in cabin pressure during flight. However, some components of the oxygen generators could be subject to misuse from within the airplane lavatory, resulting in a threat to passenger safety. Following recommendations from the Lavatory Oxygen Aviation Rulemaking Committee, FAA is proposing new standards for onboard chemical oxygen generators (COGs) applicable to future applications for type certificates, and intended to “address potential security vulnerabilities with those devices, and provide performance-based options for acceptable COG installations.”

“The primary benefit from this proposed rule is that it would allow the airplane to continue to provide supplemental oxygen to individuals in lavatories during emergencies while ensuring that individuals in lavatories could not tamper with the supplemental oxygen system. The FAA believes that the proposed rule would impose minimal costs because it would only apply to new type-certificated airplane models so that the manufacturer would be able to design the most cost-effective emergency oxygen system for the model before construction would start on the first airplane. Again, the Boeing 787 and the Airbus 350 are two new type-certificate projects which include designs for supplemental oxygen systems that would be in compliance with this proposed rule. The FAA believes that similar emergency oxygen systems could be designed for future type-certificated airplanes at a minimal cost. The FAA requests comments on this initial conclusion of minimal expected costs for future type-certificated airplane models.” [Comments](#) are due on March 11th.

National Transportation Safety Board

NTSB Publishes Plan to Update Regulations after Retrospective Review Process

The National Transportation Safety Board published a [proposed rule](#) announcing its intent to update all NTSB regulations following its retrospective review of existing regulations pursuant to President Obama’s Executive Order 13579, *Regulation and Independent Regulatory Agencies*. “As described in the NTSB’s June 25, 2012 request for information, Executive Order 13579 encourages independent agencies to review “significant regulations”; however, the executive order does not define what agencies should consider to be “significant regulations.” The NTSB decided to utilize the definition of a “significant regulatory action” provided in Executive Order 12866, “Regulatory Planning and Review,” which is the executive order that established the modern regulatory review structure. The NTSB then determined that a very limited number of its regulatory actions are “major rules,” because they do not have a “significant economic impact upon a substantial number of small entities.” The NTSB’s request for information, therefore, described only the NTSB regulations that could, when viewed in the broadest sense, have a significant economic impact upon a substantial number of small entities.” NTSB lists the rules intended for improvement in this rule, along with any accompanying public comments.

Department of the Interior

Interior Designates 1,227 Stream Miles in CA, CO, UT, AZ, & NM as Flycatcher Critical Habitat

The Department of the Interior published a 192-page [final rule](#) designating revised critical habitat for the southwestern willow flycatcher under the Endangered Species Act (ESA). This rule designates 1,227 stream miles as critical habitat for the flycatcher, which is an endangered species, in order to conserve the flycatcher’s habitat. Designation of an area as critical habitat ensures that “those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species’ life-history processes and are essential to the conservation of the species.” The areas designated as critical habitat for the flycatcher include areas of California, Utah, Colorado, Arizona, and New Mexico,

Environmental Protection Agency

EPA Proposed Rule Denies Petition to Reconsider Ozone NAAQS Rule

The Environmental Protection Agency published a [proposed rule](#) stating that the Agency is denying submitted petitions of reconsideration pertaining to the 2012 rule *Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards*. After publication of this rule on May 21, 2012, EPA received multiple petitions for



reconsideration of EPA's designation areas. "The EPA carefully considered the petitions and supporting information, along with information contained in the rulemaking docket, in reaching decisions on the petitions. The EPA denied all the petitions for reconsideration in separate letters to the petitioners dated December 14, 2012. The letters explain the EPA's reasons for the denials. Four petitioners also requested that the EPA stay the effectiveness of the designation rule as it applies for a particular area, pending reconsideration. Because the EPA denied the reconsideration requests, the EPA also denied the stay requests."

Agencies

Department of the Treasury

OCC Announces Intent to Give Favorable Consideration to Swap Dealer Requests for Federal Assistance

The Office of the Comptroller of the Currency published a [notice](#) informing federal depository institutions that are or may become swap dealers that OCC is prepared to look favorably upon requests for federal assistance in the form of a Dodd-Frank transition period. "Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibits providing Federal assistance to swaps entities, a term that includes Federal depository institutions that are swap dealers. The prohibition does not apply to insured depository institutions that limit their swap activities to those activities specified in section 716(d) (conforming swap activities)... Section 716(f) provides that the appropriate Federal banking agency *shall permit* a transition period, as appropriate, for insured depository institution swap entities to divest or cease nonconforming swap activities. The prohibition on Federal assistance does not apply during this transition period." OCC has decided to provide a transition period, during which federal assistance to swap dealers is not prohibited, for insured depository institutions. OCC reached this decision because the regulatory framework assumed in Dodd-Frank section 716 has not yet been established.

According to the notice: "the OCC believes that implementation of section 716 without transition periods would cause unwanted adverse consequences and that transition periods therefore are appropriate. Accordingly, an insured Federal depository institution that is or will be a swaps entity and that seeks a transition period for its nonconforming swaps activities should formally request a transition period from the OCC. The OCC is prepared to consider such requests favorably, provided that the requests conform to the guidance provided below." Federal depository institutions that are unsure as to whether they will become a swaps entity are also encouraged to request a transition period for compliance.

Environmental Protection Agency

EPA Seeks Comments, Reviewers for 5 Draft Chemical Risk Assessments

The Environmental Protection Agency published a [notice](#) announcing the availability of several draft chemical risk assessments and the beginning of a 60-day public comment period. "These draft risk assessments address five of the initial seven chemicals from the Agency's TSCA Work Plan identified on March 1, 2012, for assessment during 2012. The chemicals are antimony trioxide, methylene chloride, n-methylpyrrolidone, trichloroethylene, and 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran...EPA is also asking the public for nominations of expert peer reviewers and to submit names with contact information (full name, address, affiliation, telephone, and email) within 30 days of the opening of this public comment period. The nominations of expert peer reviewers from the public will be relayed to the independent peer review contractor setting up the individual peer review panels. Public comments submitted on these draft risk assessments will be included in materials submitted to peer review panels for their reviews of the assessments after this public comment period closes." [Comments](#) are due on March 11th.

Export-Import Bank

Ex-Im Bank Receives Application for \$100+ Million to Support Boeing Exports to Luxembourg

The Export-Import Bank published a [notice](#) announcing the receipt of an application for a long-term loan or financial guarantee in excess of \$100 million to support the export of Boeing 747 aircraft to Luxembourg. If exported, these aircraft would be used for global cargo services. [Comments](#) are due on February 4th.

