

Regulation Digest Weekly

February 27th, 2013

Vol. 2 No. 9

Opinion

- First U.S. Bank Regulations May Look Strikingly Familiar
- Fed Regulations Are Making Banks Riskier

Marketplace of Ideas

American Action Forum

- The Week in Regulation: February 18-22, *Sam Batkins*

American Enterprise Institute

- More personnel changes at FDA, *Scott Gottlieb*

Center for American Progress

- Wells Fargo Latest Bank Attempting To Skirt New Rules On Risky Financial Trading, *Travis Waldron*

Center for Effective Government (Formerly OMB Watch)

- Stronger Standards for Hazardous Chemicals Benefit the Public and Spur Innovation, *Katie Greenhaw*
- Leaked BLM Draft May Hinder Public Access to Chemical Information
- Disclosure at the Office of Information and Regulatory Affairs: Written Comments and Telephone Records Suspiciously Absent
- Anti-Regulatory Forces Target Agency Science to Undermine Health and Safety Standards

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- FCC Is Third Most Expensive Agency of Federal Government, *Christine Hall & Ryan Young*
- Regulatory Report Card: FCC, *Ryan Young*

Consumer Financial Protection Bureau

- Consumer Financial Protection Bureau takes first step to develop student loan affordability plan
- Prepared remarks of Richard Cordray at a

Feature Story

FAA Seeks Comments on Privacy Concerns in Proposed Rule Developing Sites for Drone Tests

The Federal Aviation Administration published a [proposed rule](#) setting procedures to develop domestic test sites for unmanned aircraft systems (UAS), commonly referred to as “drones”, into the National Airspace System (NAS). FAA has been instructed by Congress to develop a test site program for drones to gather a body of data and operational experiences to inform integration and the safe operation of unmanned aircraft systems. The proposed rule announces the process by which the FAA will select the test sites for the program, and would require sites to enter into an Other Transaction Agreement (OTA) with the FAA that will, among other things, address some privacy concerns. “While the expanded use of UAS presents great opportunities, it also presents significant challenges as UAS are inherently different from manned aircraft. The UAS test site program will help the FAA gain a better understanding of operational issues, such as training requirements, operational specifications, and technology considerations, which are primary areas of concern with regard to our chief mission, which is ensuring the safety and efficiency of the entire aviation system. The FAA also acknowledges that the integration of UAS in domestic airspace raises privacy issues, which the FAA intends to address through engagement and collaboration with the public. To address privacy concerns relating to the operation of the test site program, the FAA intends to include in each final OTA privacy requirements applicable to all operations at a test site. This notice is specifically requesting comments on those potential privacy considerations, associated reporting requirements, and how the FAA can help ensure privacy considerations are addressed through mechanisms put in place as a result of the OTAs.” [Comments](#) are due on April 23rd.

In the News

2/20/13

[Crowdfunders urge SEC to hand down rules for public comment](#), *Washington Post*
[OSHA: Veterans Affairs at fault for death of San Francisco researcher exposed to meningitis](#), *Washington Post*

[AP source: Boeing to propose plan to FAA to temporarily fix 787 Dreamliner's batteries](#), *Washington Post*

[Pharmacists say drug disposal rule should include controlled substances](#), *The Hill*
[Sandra Fluke urges comments favoring birth control rule](#), *The Hill*

[EPA sets renewable fuel standards, tackles fraud](#), *The Hill*

[New healthcare rule expands benefits for substance abuse, mental disorders](#), *The Hill*

[U.S. issues final word on essential benefits under "Obamacare"](#), *Reuters*
[Ex-Romney Aide Joins MIT Physicist on Obama Short List](#), *Bloomberg*

2/21/13

[Report: Unreliable data could hinder EPA efforts to control pollution from natural](#)



meeting of the National Association of Attorneys General, *Richard Cordray*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 2/25/13, *Leland Beck*

Free State Foundation

- Comments of the Free State Foundation in the Matter of United States Telecom Association Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services, *Randolph May & Seth Cooper*

The George Washington University Regulatory Studies Center

- Crises, Bootleggers, and Baptists, *Bruce Yandle*

Government Accountability Office

- Federal Deposit Insurance Corporation Funds' 2012 and 2011 Financial Statements, *James Dalkin*
- EPA Faces Challenges in Addressing Damage Caused by Airborne Pollutants, *David Trimble*
- Further Steps by OSHA Would Enhance Monitoring of Enforcement and Effectiveness, *Revae Moran*
- PPACA: Effect on Long-Term Federal Budget Outlook Largely Depends on Whether Cost Containment Sustained, *Susan Irving & James Cosgrove*

The Mercatus Center

- Research Summary | The Regressive Effects of Regulation: Who Bears the Cost?, *Diana Thomas*

MIT Joint Program on the Science and Policy of Global Change

- Should a vehicle fuel economy standard be combined with an economy-wide greenhouse gas emissions constraint? Implications for energy and climate policy in the United States, *Karplus, Paltsev, Babiker & Babiker*

Penn Program on Regulation

- The Regulatory Week in Review: February 22, 2013, *RegBlog Staff*
- EPA Proposes to Increase Fuel Ethanol Content Standards, *Margot Campbell*
- Solving the Add-On Insurance Dilemma, *Tom Baker & Peter Siegelman*
- A Proposed Environmental Agenda for Obama's Second Term, *Maxwell Blum*
- New Proposal to Cut Red Tape for Rural Health Care Facilities, *Bianca Nunes*

[gas boom](#), *Washington Post*

[FCC approves new rules for cell phone signal boosters & proposes Wi-Fi decongestant plan](#), *Washington Post*

[DOJ mulls revised beer company merger, puts brakes on antitrust lawsuit](#), *The Hill*

[Groups flock to White House to talk 'fracking' rules](#), *The Hill*

[USDA bars cash refunds for food stamp purchases](#), *The Hill*

[Industry groups appeal high-ethanol fuel case to Supreme Court](#), *The Hill*

[FAA seeks comment on Dreamliner grounding — one month later](#), *The Hill*

[Flawed Fracking Air Pollution Data Is Hindering EPA Efforts To Police Drilling, New Report Says](#), *Huffington Post*

[Consumer Bureau Said to Warn Banks of Auto Lending Suits](#), *Bloomberg*

[CFTC Chairman Gensler Questions Long-Term Viability of Libor](#), *Bloomberg*

[CFPB wants to make private student loan repayment affordable](#), *Reuters*

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[Smartphone maker HTC settles with FTC over security flaws](#), *Washington Post*

[SEC enforcement successes not all part of overhaul, data show](#), *Washington Post*

[FDA veteran to spearhead tobacco regulatory efforts; current director to step down in March](#), *Washington Post*

[Study: Gas taxes are six times as effective as stricter fuel-economy standards](#), *Washington Post*

[HHS churning out Affordable Care Act regulations](#), *The Hill*

[Embattled federal office reports saving small businesses billions](#), *The Hill*

[Obama administration finalizes popular pieces of healthcare law](#), *The Hill*

[Watchdogs call for new campaign regulator to replace 'woefully inept' FEC](#), *The Hill*

[Report: Gaps found in EPA drilling emissions reporting](#), *The Hill*

[SEC Boosts Tally of Enforcement Successes With Routine Actions](#), *Bloomberg*

[Lorillard Falls After FDA Tobacco Chief Named: Atlanta Mover](#), *Bloomberg*

[Goldman Has No 'Direct Access' to Data on Heinz Account](#), *Bloomberg*

[Energy Nominee Moniz Sees Fracking as Bridge to Renewables](#), *Bloomberg*

[U.S. Approves \\$6.8 Trillion in Pension Funds for Cleared Swaps](#), *Bloomberg*

[Fed's Tarullo urges global action on regulating banks](#), *Reuters*

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[SEC Wins Asset Freeze After Heinz Traders Fail to Appear](#), *Bloomberg*

[Boeing's Proposed Dreamliner Fix Awaits U.S. FAA Analysis](#), *Bloomberg*

2/24/13

[BlackRock Gains SEC Approval for Copper-Backed Fund](#), *Bloomberg*

2/25/13

[Phone company CEOs say US regulators are better than European ones at helping speed up data](#), *Washington Post*

[FDA expands approval of Bayer cancer drug](#), *Associated Press*

[AEP to Shutter Three Coal Units in Legal Settlement With EPA](#), *Bloomberg*

[ITT Educational Falls After SEC Asks For Loan Documents](#), *Bloomberg*

[FDA approves Bayer cancer pill for hard-to-treat tumors of the intestinal tract](#), *Washington Post*

[8 northeastern states, US, part of deal to end coal use at 2 Ohio power plants](#), *Washington Post*

[Tanning parlors may misinform clients about risks](#), *Reuters*

[Reg roundup: FDA updates research rules, Education renews grant fund](#), *The Hill*

[Exxon, BP, Halliburton take 'fracking' case to White House](#), *The Hill*

[SEC plans to beef up high-speed trading regulations](#), *The Hill*

[Utility settles with EPA, agrees to stop burning coal at three sites](#), *The Hill*

[SBA official denies accusations that office works to block regulations](#), *The Hill*

[More Cantaloupe Inspections Planned by FDA After Outbreak](#), *Bloomberg*



Phoenix Center for Advanced Legal & Economic Public Policy Studies

▪ Searching for a New Regulatory Paradigm: A Comment on AT&T's Petition for Wire Center Trials, *George Ford & Larry Spiwak*

Small Business Administration Office of Advocacy

▪ Report on the Regulatory Flexibility Act FY 2012

Contact Us

www.regulatorystudies.gwu.edu

Twitter: @RegStudies

Email: regulatorystudies@gwu.edu

[Departing SBA Chief: What's Next for Small Business](#), *Bloomberg*

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[Senate Finance Committee approves Obama's nominee Jacob Lew to be US Treasury secretary](#), *Washington Post*

['Gluten-free' labeling rules head to White House](#), *The Hill*

[Oil industry, at White House, makes case against EPA fuels rule](#), *The Hill*

[SEC Shines Light on Derivatives-Backed Notes: Credit Markets](#), *Bloomberg*

[Google to Apple Gird for FTC-Led Mobile-Privacy Crackdown](#), *Bloomberg*

[Libor Faces U.S. Critic Gensler at CFTC Rate Roundtable](#), *Bloomberg*

[Pending EPA ruling on coal ash dumping escalates feud between Lake Michigan ferry companies](#), *Washington Post*

[FDA halts pediatric studies of Amgen parathyroid drug after 14-year-old patient dies](#), *Washington Post*

[Community bankers want out from under 'crippling regulatory burdens'](#), *The Hill*

[Zogenix Says FDA Delays Approval Decision on Painkiller](#), *Bloomberg*

[GE Says Finance Arm in Last Stage of Systemic-Risk Review](#), *Bloomberg*

[Regulators Moving Soon on Principles to Replace Libor](#), *Bloomberg*

[Amgen Pediatric Trials of Sensipar Halted by FDA After Death](#), *Bloomberg*

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[Obama's SEC Pick Wary of Zealous Wall Street Prosecutions](#), *Bloomberg*

[Food safety regulators put US cantaloupe growers on notice after outbreak deaths](#), *The Hill*

[While waiting for SEC regulations, crowdfunding leaders focus on investor education](#), *Washington Post*

Rulemaking

Environmental Protection Agency

EPA Extends Comment Deadline for Rule Setting 2013 Cellulosic Biofuel Standards

The Environmental Protection Agency [extended](#) the public comment deadline for a [proposed rule](#) published on February 7th, *Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards*. The proposed rule would set the minimum volume standards of cellulosic ethanol to be blended into gasoline. In November of each year, EPA sets the RFS for the following year either above or below the statutory baseline established in the Energy Policy Act of 2005. "The cellulosic biofuel industry is transitioning from research and development (R&D) and pilot-scale to commercial scale facilities, leading to increases in production capacity. Construction has begun on several facilities with multiple facilities having progressed to the start-up phase. Based on detailed information from production companies and a consideration of various potential uncertainties, we are projecting that 14 million ethanol-equivalent gallons of cellulosic biofuel will be available in 2013." Fewer than 500,000 gallons of cellulosic biofuel were produced in 2012, despite regulations requiring the use of 10.5 million gallons in 2012. [Comments](#) for the 2013 standards are now due on April 7th.

EPA Proposes Rule to Limit Fraud in the Renewable Fuel Standards Program

The Environmental Protection Agency published a [proposed rule](#) that would address fraud within the Renewable Fuel Standards (RFS) program. Currently, "producers and importers of renewable fuel generate Renewable Identification Numbers (RINs) that are used by petroleum refiners and importers to demonstrate compliance with their renewable fuel volume obligations. Several cases of fraudulently generated RINs, however, have led to inefficiencies and a significant reduction in the overall liquidity in the RIN market. The result has been greater difficulty for smaller renewable fuel producers to sell their RINs. [This rule] proposes additional regulatory provisions that would promote greater liquidity in the RIN market in a way that assures reasonable oversight of RIN generation and assures use of the required renewable fuel volumes. The proposal includes a voluntary quality assurance program and related provisions intended to meet these goals. The proposed program also includes elements designed to make it possible to verify the validity of RINs for all of 2013. Additionally, we are proposing a number of new regulatory provisions to ensure that RINs are retired for all renewable fuel that is exported and to address RINs that become invalid downstream of a renewable fuel producer." [Comments](#) are due on April 18th.



Department of Agriculture

FNS Proposes Rule to Punish Retailers Accused of Trafficking through Federal Food Stamp Programs

The Food and Nutrition Service (FNS) published a [proposed rule](#) that would suspend Supplemental Nutrition Assistance Program (SNAP) benefits payments to retailers who fail to report certain things to FNS or engage in certain fraudulent activities. This rule is being promulgated in response to Congressional action, and is intended to address the integrity of the food stamp program: “The compliance of authorized retailers and wholesalers with the rules of the SNAP is essential to program integrity. Unless retail food stores and wholesale food concerns consistently and diligently abide by program requirements, SNAP cannot fully accomplish its objectives and may, in fact, become less effective. The exchange of SNAP benefits for cash, ineligible items or other consideration reduces the value of benefits available for recipients to purchase eligible food items. Thus, in addition to the improper use of Federal funds, the realization of the basic objective of the SNAP, to improve nutrition in the diets of needy families, is undermined.” In fiscal year 2011, 0.5% of all firms authorized to accept SNAP benefits were sanctioned with trafficking of these benefits, and civil or court action was concluded on 0.002% of all authorized firms in response to trafficking. This proposed rule targets the most flagrant violators of SNAP trafficking terms. However, the rule would also withdraw SNAP authorization from any currently-authorized firm that fails to report a change in ownership to FNS within 10 days. [Comments](#) are due on April 23rd.

Department of Health and Human Services

HHS Finalizes Rule Establishing Health Insurance Market Rules, Rates

The Department of Health and Human Services published a [final rule](#) implementing portions of the Patient Protection and Affordable Care Act (PPACA) related to fair health insurance premiums, guaranteed availability, guaranteed renewability, single risk pools, and catastrophic plans. “This final rule: (1) Provides that health insurance issuers may vary the premium rate for health insurance coverage in the individual and small group markets only based on family size, geography, and age and tobacco use within limits; (2) directs health insurance issuers to offer coverage to and accept every employer or individual who applies for coverage in the group and individual market, subject to certain exceptions; (3) directs health insurance issuers to renew or continue in force coverage in the group and individual market, subject to certain exceptions; (4) codifies the requirement that issuers maintain a single risk pool for the individual market and a single risk pool for the small group market (unless a state decides to merge the markets into a single risk pool); and (5) outlines standards for enrollment in catastrophic plans for young adults and people who cannot otherwise afford health insurance.”

HHS Finalizes Rule Setting Standards for Exchanges, Issuers

The Department of Health and Human Services published a [final rule](#) implementing title I of the Patient Protection and Affordable Care Act (PPACA). “Specifically, this final rule outlines Exchange and issuer standards related to coverage of essential health benefits and actuarial value. This rule also finalizes a timeline for qualified health plans to be accredited in Federally-facilitated Exchanges and amends regulations providing an application process for the recognition of additional accrediting entities for purposes of certification of qualified health plans.”

National Credit Union Administration

NCUA Finalizes Rule Allowing Credit Unions to Purchase Treasury Inflation Protected Securities

The National Credit Union Administration published a [final rule](#) amending its existing investment regulations to allow federal credit unions (FCUs) to purchase Treasury Inflation Protected Securities (TIPS). TIPS were prohibited as investment vehicles for FCUs because they increase with inflation and decrease with deflation, as measured by the Consumer Price Index (CPI). The CPI is currently a prohibited index for variable rate instruments, and FCUs are prohibited by 12 CFR §703.14 from purchasing TIPS for this reason. By allowing a previously prohibited activity, the Administration states that the proposed rule “reduces compliance burden and extends regulatory relief while maintaining existing safety and soundness standards.” NCUA is taking this action so that FCU’s can better manage inflation risk with investments.

Federal Reserve System

Fed Board Extends Comment Period on Standards for Foreign Banks, Nonbank Financial Companies

The Federal Reserve Board [extended](#) the comment period for a rule proposed on December 28th, 2012, *Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies*. The proposed rule would establish certain prudential standards for foreign banks and foreign nonbank financial companies that operate within the United States. The Dodd-Frank Act addressed



regulation of foreign banks and nonbank financial companies because of the perceived risk posed by these activities to the United States and to the global financial market: “While some foreign banking organizations were aided by their ability to move liquidity freely during the crisis, this model also created a degree of cross-currency funding risk and heavy reliance on swap markets that proved destabilizing. In many cases, foreign banking organizations that relied heavily on short-term U.S. dollar liabilities were forced to sell U.S. dollar assets and reduce lending rapidly when that funding source evaporated. This deleveraging imposed further stress on financial market participants, thereby compounding the risks to U.S. financial stability.”

Foreign banks and nonbank financial companies currently are supervised under standards comparable to those applied to domestic banks and nonbank financial companies, although some foreign financial holding companies are not required to meet the Board’s capital standards. The proposed rule would establish new standards intended to stabilize foreign banking operations in the U.S. “The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.” The Board estimates that the proposed rule would incur 58,660 hours of annual paperwork burden for affected entities. [Comments](#) are now due on April 30th.

Agencies

Department of State

State Dept. Seeks Expert Reviewers for IPCC’s 5th Assessment Report: Mitigation of Climate Change

The Department of State published a [notice](#) announcing that the Department is seeking expert reviewers for the Second Order Draft of the Working Group III Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), *Mitigation of Climate Change*. Working group III is designated with assessing the options for limiting greenhouse gas emissions and otherwise mitigating climate change. “The United States Global Change Research Program will coordinate collection and compilation of U.S. expert comments and the review of the report by a Review Committee of Federal scientists and program managers in order to develop a consolidated U.S. Government submission, which will be provided to the IPCC by April 22, 2013. Instructions for review and submission of comments are available at: <http://review.globalchange.gov>.”

Environmental Protection Agency

EPA Announces Availability of Inventory of U.S. Greenhouse Gas Emissions and Sinks for Public Comment

The Environmental Protection Agency published a [notice](#) announcing the availability of [EPA’s Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2011](#). The draft is available for public review, and EPA is requesting comments on the draft inventory. EPA is seeking comment particularly on the role of the natural gas sector in GHG emissions and approaches for using facility-level data reported under EPA’s Greenhouse Gas Reporting Program. [Comments](#) are due on March 24th.

Export-Import Bank

Ex-Im Bank Receives Application for \$100+ Million to Fund Boeing Exports to Mexico

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 fund the export of commercial Boeing aircraft to Mexico. These exports would provide short- and medium-haul airline service within Mexico and between Mexico and other countries and continents. [Comments](#) are due on March 19th.

Ex-Im Bank Receives Application for \$115 Million Direct Loan to Fund Export of Equipment to India

The Export-Import Bank published a [notice](#) announcing the receipt of an application for a \$115 million direct loan to fund the export of vehicle assembly equipment to India. “The U.S. exports will enable the Indian company to produce approximately 330,000 vehicles per year. Available information indicates that the majority of this new vehicle production will be sold in India with the remainder sold in Mexico, the Middle East, Africa, and ASEAN regions.” [Comments](#) are due on March 8th.

