

Regulation Digest Weekly

March 6th, 2013

Vol. 2 No. 10

Opinion

- How Airline Ticket Prices Fell 50% in 30 Years (And Why Nobody Noticed)
- The Fed Shouldn't Regulate What It Doesn't Understand
- FDA Reform Can Lift U.S. Economy
- Let the CFPB do its job
- Harmonisation lifts systemic risk
- No Need to Rush New Money-Market Fund Regulations

Marketplace of Ideas

American Action Forum

- The Week in Regulation: February 25 to March 1, *Sam Batkins*
- Affordable Care Act and Doctor Shortages: A Bad Situation Worsens, *Thomas Hemphill*
- Regulatory Reform in the Senate: Reviewing Dodd-Frank, *Dan Goldbeck*

American Enterprise Institute

- New Qualified Mortgage rule setting us up for another meltdown, *Peter Wallison & Edward Pinto*
- FDA wants to regulate drug firms on the Internet, is targeting Facebook likes, *Scott Gottlieb*

Cato Institute

- EVENT: A Looming Scientific Revolution in Environmental Regulation?, *March 21st 4:00pm*

Center for Effective Government (Formerly OMB Watch)

- Kudos to the Office of Advocacy!, *Randy Rabinowitz*
- President Obama Nominates Former Clean Air Director to Lead EPA, *Katie Greenhaw*
- State Department Ignores the Environmental Impacts of Keystone XL, *Sofia Plagakis*

Center for Progressive Reform

- It's Past Time to Appoint an OIRA Administrator, *Rena Steinzor*

Feature Story

Fed Board Proposes Rule Establishing Accounts for Systemically Important Financial Market Utilities

The Federal Reserve Board published a [proposed rule](#) implementing provisions of the Dodd-Frank Act which allow the Board to establish and maintain an account for financial market utilities (FMUs) that are designated as systemically important by the Financial Stability Oversight Council. The Fed will be able to provide certain financial services to FMUs through establishment of this account. These services, outlined in section 11A(b) of the Federal Reserve Act, “include wire transfers, settlement, and securities safekeeping, as well as services regarding currency and coin, check clearing and collection, and automated clearing house transactions.” In addition, “the Dodd-Frank Act permits a Federal Reserve Bank to pay earnings on balances maintained by or on behalf of a designated FMU in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.” [Comments](#) are due on May 3rd.

In the News

2/27/13

- [Chamber study claims to debunk EPA figures on job-creating regulations](#), *The Hill*
- [OSHA promises to protect workers who report healthcare reform law violations](#), *The Hill*
- [CFPB rules would drive community banks out of mortgage lending, group warns](#), *The Hill*
- [SEC examining Milken's relationship with investment firm; firm says he's not managing funds](#), *Washington Post*
- [Supreme Court defines time limits for SEC to pursue civil cases](#), *Washington Post*
- [Reform group sues U.S. regulators over Volcker rule delays](#), *Reuters*
- [SEC to consider proposal to prevent market glitches next week](#), *Reuters*
- [Curry Says OCC Still Urging Banks to Slow Cuts to Loan Reserves](#), *Bloomberg*
- [Dimon Says Banks to Have More Capital Than They Can Use](#), *Bloomberg*

2/28/13

- [Too Big to Fail Rules Hurting Too Small to Compete Banks](#), *Bloomberg*
- [Overdraft Rules Get Go-Slow Approach at Consumer Bureau](#), *Bloomberg*
- [Boeing 787 Fix Has Layers to Prevent Fires, FAA Says](#), *Bloomberg*
- [FAA investigating mid-flight 'Harlem Shake' video](#), *The Hill*
- [U.S. nuclear regulators on hot seat over post-Fukushima rules](#), *The Hill*
- [Rising e-cigarette sales spur call for regulations](#), *The Hill*
- [Feds ask financial industry to keep tabs on its social media](#), *The Hill*
- [Regulators assert new power to seize assets of fraudulent healthcare pools](#), *The Hill*
- [Obama picks Edith Ramirez to lead FTC](#), *The Hill*



- Robert Glicksman Testifies in House Hearing on Regulatory Policy, *Ben Somberg*
- Statement of Robert L. Glicksman to the House Judiciary Committee's Subcommittee on Regulatory Reform, Commercial, and Antitrust Law Hearing on "The Obama Administration's Regulatory War on Jobs, the Economy, and America's Global Competitiveness", *Robert Glicksman*

Chamber of Commerce

- EVENT: The Importance of Cost-Benefit Analysis, *March 12th 8:30am – 12:45pm*

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*

Davis Polk

- Dodd-Frank Progress Report, *March 2013*

George Washington University Competition Law Center

- EVENT: Antitrust in the Obama Second Term: What to Expect?, *March 11th 2:00pm* (RSVP here)

The George Washington University Regulatory Studies Center

- The Unintended Consequences of Revolving Door Laws, *Marc Law & Tara Sinclair*

The Mercatus Center

- Public Interest Comment: National Highway Traffic Safety Administration Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, *Jerry Ellig*
- The Economic Situation March 2013, *Bruce Yandle*
- Volcker Rule Continues to Trouble Regulators and Industry, *Hester Peirce*
- Helping the Poor Without Hurting the Recovery: Why Regulatory Reform Is a Better Alternative to Raising the Minimum Wage, *Mark Adams*

Penn Program on Regulation

- The Regulatory Week in Review: March 1, 2013, *RegBlog Staff*
- Improving Insurance Decision Making, *Howard Kunreuther & Mark Pauly*
- FDA Convenes Public Meeting on Proposed Food Safety Rules, *Brady Sullivan*

[FDA Commissioner Hamburg says budget cuts mean fewer inspections, less safe food](#), *Washington Post*

[MSHA says mining violations down since impact inspections began after fatal 2010 W.Va. blast](#), *Washington Post*

[CDC smoking chief says awareness, use of electronic cigarettes underscores need for regulation](#), *Washington Post*

[Subsidies for big banks would be problem for regulators-Raskin](#), *Reuters*

[SEC Fraud Actions Lag, Currency, EU Cartels: Compliance](#), *Bloomberg*

[CBOE Says SEC Probe Settlement May Cost As Much As \\$10 Million](#), *Bloomberg*

[Risk Council Led by Lew Hears SEC Update on Money Fund Rules](#), *Bloomberg*

[U.S. FHA to Propose Own Version of Consumer Bureau Mortgage Rule](#),

Bloomberg

[U.S. Regulators Lay Out Plan for Foreclosure Compensation](#), *Bloomberg*

[Fed Governor Raskin Says Bank Reputations Harmed by Bailouts](#), *Bloomberg*

3/1/13

[Dodd-Frank Swap Oversight Goal Stymied as Firms Fight Over Data](#), *Bloomberg*

[Bair Says Regulators Lack Spine to Name Systemic Firms](#), *Bloomberg*

[FDA inspects specialty compounding pharmacies in targeted action](#), *Washington*

Post

[SEC seeks data for possible broker fiduciary plan](#), *Reuters*

[High-Risk Compounding Pharmacies Targeted for FDA Review](#), *Bloomberg*

[Citigroup Says Dodd-Frank Drives Off Overseas Clients](#), *Bloomberg*

[Regulators expected to approve horse slaughter houses](#), *The Hill*

[FDA revisits rule on cow intestines in food, cosmetics](#), *The Hill*

[FTC to talk regulations on Twitter](#), *The Hill*

[More than 700 pages of healthcare rules released](#), *The Hill*

3/2/13

[Democrats turn to FCC to unveil secret donors behind political ads](#), *The Hill*

3/3/13

[Banks scramble to make sense of upcoming mortgage regulations](#), *Washington*

Post

[Zeller takes reins at FDA's Center for Tobacco Products](#), *Washington Post*

3/4/13

[Obama rounds out cabinet with EPA, Energy picks](#), *Chicago Tribune*

[Ernest Moniz, MIT physicist, is to be nominated as energy secretary](#), *Washington*

Post

[Obama to name EPA official Gina McCarthy to head agency](#), *Washington Post*

[Air-Traffic Error Probes Cut as U.S. Close Calls Rise](#), *Bloomberg*

[Treasury's Miller Sees Systemic-Risk Votes in Next Few Months](#), *Bloomberg*

[Obama Naming Moniz at Energy, McCarthy at EPA, Official Says](#), *Bloomberg*

[Obama names new heads of OMB, EPA and Energy](#), *Politico*

[Obama nominates McCarthy for EPA, Moniz for Energy chief](#), *The Hill*

[Fannie Mae, Freddie Mac merger plan unveiled by FHFA director DeMarco](#),

Washington Post

[EPA declines to appeal ruling that attempts to regulate stormwater runoff in Va.](#)

went too far, *Washington Post*

[Obama filling out Cabinet, will nominate new budget chief, EPA director and](#)

[energy secretary](#), *Washington Post*

[Gina McCarthy for EPA could be Obama's most significant nominee](#), *Washington*

Post

[Gina McCarthy, EPA's air chief, nominated to head agency](#), *Washington Post*

[Obama's second-term Cabinet to play bigger policy role](#), *Washington Post*

[US regulator puts out plan to combine Fannie and Freddie's mortgage securities](#)

[operations](#), *Washington Post*



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[Fannie, Freddie to hand securitization business to new firm](#), *Reuters*
[Volcker urges progress on namesake trading ban](#), *Reuters*
[Watch out for fake cure-alls, agency warns](#), *The Hill*
[House members look to stop feds from ducking regulatory transparency rules](#), *The Hill*
[Down payment rule could torpedo housing industry, groups warn](#), *The Hill*
[Cabinet Picks Could Take On Climate Policy](#), *New York Times*

3/5/13

[FDA Seeks Input on Improving Food Traceability to Help Craft Future Rule](#), *Food Safety News*
[Credit Rating Rules Insufficient, Kanjorski Says](#), *Bloomberg TV*
[52 US House members urge feds to keep wolf protection in areas where they haven't been dropped](#), *Washington Post*
[EPA won't appeal ruling on Va. storm-water regulation](#), *Washington Post*
[EPA, Energy Department can tackle climate change on several fronts](#), *Washington Post*
[Gensler Said to Discuss Chance of Second Term at CFTC](#), *Bloomberg*
[FDIC Promises Big U.S. Banks a Helping Hand on Next Living Wills](#), *Bloomberg*
[State Regulators Ask Congress to Probe High-Speed Traders](#), *Bloomberg*
[State Dept. envisions 'proactive role' in oil payment disclosure regs](#), *The Hill*
[Experts: Bill to give Congress power over regulations is constitutional](#), *The Hill*
[Sen. Shelby: Time has come to tweak Dodd-Frank](#), *The Hill*

3/6/13

[Stress Tests Seen Boosting U.S. Bank Shareholder Payouts](#), *Bloomberg*
[Obama's Interior Pick Owns Stock in U.S. Lease Holders](#), *Bloomberg*
[President faces deadline to find gatekeeper for new regulations](#), *The Hill*

Rulemaking

Department of Transportation

FRA Expands Post-Accident Toxicological Testing to Include Over-the-Counter and Prescription Drugs

The Federal Railroad Administration published a [final rule](#) that would expand the breadth of the Administration's existing post-accident toxicological testing for railroad employees. Currently, FRA tests railroad employees with involvement in serious train accidents for alcohol and some controlled substances, such as marijuana, cocaine, opiates, and amphetamines. In this final rule, FRA is expanding post-accident toxicological testing to include non-controlled substances, such as over-the-counter and prescription medications. "This final rule adds certain non-controlled substances with potentially impairing side effects to its standard post-accident testing panel. The non-controlled substances include tramadol and sedating antihistamines. This final rule makes clear that FRA intends to keep the post-accident test results for these non-controlled substances confidential while it continues to obtain and analyze data on the extent to which prescription and over-the-counter (OTC) drug use by railroad employees potentially affects rail safety." [Comments](#) are due on June 18th.

Office of Government Ethics

OGE Amends Conflict of Interest Requirements for Some Government Employees

The Office of Government Ethics published a [final rule](#) amending OGE's regulation describing which federal employees' "financial interests" are exempt from the prohibition in [18 U.S.C. 208\(a\)](#). Title 18 regulations prohibit Government employees from participating in an official capacity in particular Government matters in which they have a financial interest, if the particular matter would have a direct and predictable effect on that interest. "These final rule amendments would revise the existing regulatory exemptions by: Creating a new exemption that permits Government employees to participate in particular matters affecting the financial interests of nonprofit organizations in which they serve in an official capacity as officer, director or trustee, notwithstanding the employees' imputed financial interest under 18 U.S.C. 208(a); and revising the existing exemption for interests in the holdings of sector mutual funds to clarify that it applies to interests in the holdings of sector unit investment trusts."



Food and Drug Administration

FDA Reopens Comment Period for '04 Interim Final Rule Prohibiting Cattle Derivations in Food, Cosmetics

The Food and Drug Administration [reopened](#) the comment period for an interim final rule, published in 2004, that prohibited the use of some cattle material in human food and cosmetics to address the potential risk of mad cow disease (bovine spongiform encephalopathy, or “BSE”). In 2005, FDA amended the interim final rule so that “the small intestine of cattle, formerly prohibited cattle material, could be used in human food and cosmetics if the distal ileum was removed by a specified procedure or one that the establishment could demonstrate is equally effective in ensuring complete removal of the distal ileum. Since 2005, peer-reviewed studies have been published showing the presence of infectivity in the proximal ileum, jejunum, ileocecal junction, and colon of cattle with BSE. Therefore, we are reopening the comment period for the interim final rule to give interested parties an opportunity to comment on the new studies concerning infectivity in parts of the small intestine other than the distal ileum.” [Comments](#) are due on May 3rd.

Environmental Protection Agency

EPA Rule Identifies Additional Biofuel Pathways for Renewable Fuel Standards Program

The Environmental Protection Agency published a [final rule](#) identifying some additional fuel pathways for biomass-based diesel, advanced biofuel or cellulosic biofuel that meet the standards for lifecycle greenhouse gas (GHG) reduction specified in regulations implementing the Clean Air Act (CAA) and the Renewable Fuel Standard (RFS) program. “This final rule describes EPA’s evaluation of biofuels produced from camelina (*Camelina sativa*) oil and energy cane; it also includes an evaluation of renewable gasoline and renewable gasoline blendstocks, and clarifies our definition of renewable diesel. The inclusion of these pathways creates additional opportunity and flexibility for regulated parties to comply with the advanced and cellulosic requirements of [the Energy Independence and Security Act] and provides the certainty necessary for investments to bring these biofuels into commercial production from these new feedstocks.”

Agencies

Environmental Protection Agency

EPA Announces Availability of Draft Human Health Assessment for Silica Dioxide and Silica Gel in Pesticide

The Environmental Protection Agency published a [notice](#) announcing the availability of draft human health and ecological risk assessments for the registration review of cyromazine, silica silicates (silica dioxide and silica gel), glufosinate ammonium, dioctyl sodium sulfosuccinate and undecylenic acid. “Registration review is EPA’s periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed draft risk assessments for each of the subject chemicals and is making them available for public comment. After reviewing comments received during the public comment period, EPA will issue a revised risk assessment, if appropriate, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation. Through this program, EPA is ensuring that each pesticide’s registration is based on current scientific and other knowledge, including its effects on human health and the environment.” [Comments](#) are due on May 6th.

EPA Announces May 8th Public Teleconference of the Clean Air Scientific Advisory Committee

The Environmental Protection Agency published a [notice](#) announcing a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) on May 8th from 1:00pm – 3:00pm. The teleconference is to review CASAC’s draft letters on EPA’s integrated science assessment for lead (Pb) and EPA’s *Policy Assessment for the Review of the Lead National Ambient Air Quality Standards (First External Review Draft—January 2013)*. “These draft letters are being prepared as part of CASAC’s review of the National Ambient Air Quality Standards (NAAQS) for lead... Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six “criteria” air pollutants, including lead. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for lead.”



Export-Import Bank

Ex-Im Bank Receives Application for \$100+ Million to Fund Satellite Exports to Hong Kong

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 satellites and satellite launch services to Hong Kong. “The loan will enable the Hong Kong based company to finance the construction and launch of two U.S. manufactured satellites. The satellites are expected to provide additional capacity to broadcasting and telecommunications companies in the company's existing customer base in North East Asia, MENA, South Asia, Australia and ASEAN as well as potential growth in other markets such as India and Australasia.” [Comments](#) are due on March 25th.

Ex-Im Bank Receives Application for \$100+ Million to Fund Helicopter Exports to Brazil, Norway, UK

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 helicopters to Brazil, Norway, and the United Kingdom. These exports would be used “to transport passengers and equipment to oil platforms off the coast of Brazil, Norway, the United Kingdom, and/or other countries acceptable to Ex-Im Bank.” [Comments](#) are due on March 26th.

