



441 G St. N.W.
Washington, DC 20548

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January 18, 2017

The Honorable Michael Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Office of the Comptroller of the Currency:
Industrial and Commercial Metals*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of the Comptroller of the Currency (OCC) entitled "Industrial and Commercial Metals" (RIN: 1557-AD93). We received the rule on January 5, 2017. It was published in the *Federal Register* as a final rule on December 30, 2016. 81 Fed. Reg. 96,353.

The final rule prohibits national banks and federal savings associations from dealing or investing in industrial or commercial metals. For the purpose of this prohibition, the final rule defines the term "industrial or commercial metal" to mean metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes. The final rule supersedes a prior OCC interpretation which permitted national banks to trade copper and is consistent with recommendations from the U.S. Senate Permanent Subcommittee on Investigations.

Enclosed is our assessment of OCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that OCC complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Shaquita Merritt
Regulatory Specialist, LRA
Office of the Comptroller of the Currency
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMPTROLLER OF THE CURRENCY
ENTITLED
“INDUSTRIAL AND COMMERCIAL METALS”
(RIN: 1557-AD93)

(i) Cost-benefit analysis

The Office of the Comptroller of the Currency (OCC) did not include a written statement of the costs and benefits in the final rule, but did generally discuss the impact of costs and benefits in its discussion under the Unfunded Mandates Reform Act analysis.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

OCC states that as of December 31, 2015, it supervised 1,032 small entities. Although the final rule applies to all OCC-supervised small entities, and thus affects a substantial number of small entities, OCC also states that no small entities supervised by OCC currently buy or sell metal in a physical form primarily suited to commercial or industrial use for the purpose of dealing or investing in that metal. Thus, the rule will not have a substantial impact on any OCC-supervised small entities.

Therefore, OCC certifies that the final rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995. Under this analysis, OCC states that it considered whether the rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). More specifically, although the final rule would apply to all OCC-supervised institutions, very few of these institutions are currently involved in activities involving dealing or investing in copper or other metals in a physical form primarily suited to commercial or industrial use. While the final rule may prevent OCC-supervised institutions from realizing potential gains from prohibited investments in physical metals, the rule also may protect them from realizing potential losses from investments in physical metals. OCC states that it is not able to estimate these potential gains or losses because they will depend on future fluctuations in the prices of the various physical metals. However, OCC states that it does expect OCC-supervised institutions to be able to achieve comparable returns in alternative non-prohibited investment opportunities. Thus, OCC estimated that the opportunity cost of the final rule will be near zero. The final rule may impose one-time costs on affected institutions with respect to the disposal of current physical metal inventory that a bank may not deal in or invest in under the rule. This cost will depend to some extent on the amount of physical metal inventory that affected institutions must dispose of. According to OCC, given the divestiture period in the final rule, a

gradual sell-off should not affect market prices and the affected institutions would receive fair value for their metals. Under these circumstances, OCC estimates that the disposal costs will also be minimal. Finally, by establishing that buying and selling physical metal in commercial or industrial form is generally not part of the business of banking, the rule implies that customers of OCC-supervised institutions will have to identify another reliable source of supply of physical metals and that OCC-supervised institutions will be less able to compete with non-bank metals dealers. OCC states that, given how technology has made the physical metals markets more accessible, it expects bank customers will face minimal costs associated with identifying another supplier of physical metals. OCC also states that it expects that losing the ability to compete with non-bank metal dealers will not significantly detract from the strength of OCC-supervised institutions, especially given that the final rule would recognize several business-of-banking incidental exceptions to the prohibition on buying and selling physical metal. These permissible activities should enable OCC-supervised institutions to continue to provide metals related services to bank customers that do not involve dealing or investing in commercial and industrial metals. OCC determined that the final rule would not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more. Accordingly, OCC did not prepare a written statement to accompany the final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On September 15, 2016, OCC issued a Notice of Proposed Rulemaking (NPRM). 81 Fed. Reg. 63,428. OCC received four comments on the NPRM. Two comments were from financial industry trade associations and two were from individuals. While the comments generally were supportive of the NPRM, the trade association commenters requested that OCC confirm the permissibility of certain lending and leasing transactions involving physical metals and expressed concern about the potential impact of the rulemaking on the liquidity of the copper market. OCC provided a detailed discussion of the commenters' concerns and responded to the comments.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

OCC states that under PRA, it may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. OCC determined that this final rule does not introduce any new collections of information; therefore, it does not require a submission to OMB.

Statutory authorization for the rule

OCC promulgated this final rule under the authority of the National Bank Act, the Home Owners Loan Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, specifically, 12 U.S.C. 1 et seq., 25b, 71, 71a, 92, 92a, 93, 93a, 371, 371a, 481, 484, 1463, 1464, 1818, and 5412(b)(2)(B).