

Migratory Bird Rule Update – the Biden Administration Delays Effective Date and Requests Public Comment

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Following up on our recent [blog post](#) regarding the uncertain future of the Migratory Bird Treaty Act (MBTA) rule published at the end of the Trump Administration, the U.S. Fish and Wildlife Service (USFWS) recently signaled that the Biden Administration is unlikely to keep the rule around. On February 5, 2021, the USFWS [announced](#) that it is delaying the effective date of the Trump-era regulation to March 8, 2021, pursuant to the Congressional Review Act, which provides that major rules shall not take effect for at least 60 days after publication in the *Federal Register*. In addition, USFWS is requesting public comments on the MBTA rule, and is specifically looking for comments that address:

- the scope of the MBTA as it applies to conduct resulting in the injury or death of migratory birds protected by the MBTA;
- the impact of the rule on the U.S.'s treaty partners, namely Canada, Mexico, Japan, and Russia;
- the impact of the rule on regulated entities;
- the effect of the pending litigation on the rule (including two lawsuits filed in the Southern District of New York in January 2021 challenging the MBTA rule); and
- the appropriateness of delaying the effective date of the MBTA rule beyond March 8, 2021.

The public comment period will remain open until March 1, 2021.

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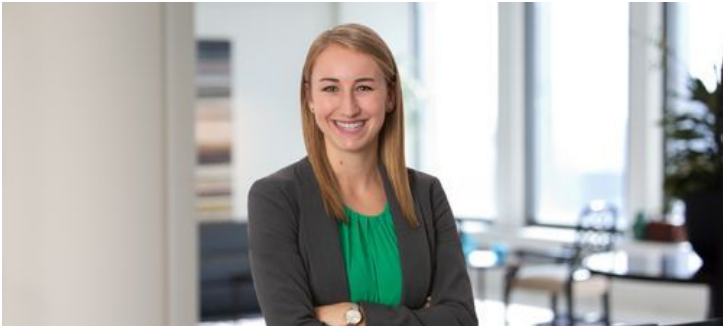
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