Week in Regulation

An Active but Ultimately Modest End to July

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Last week there were 17 rulemakings with some kind of measurable economic impact – making it a conspicuously high-volume week. Directionally, these regulatory actions were all over the place with some cutting costs or paperwork while others produced increases in both categories. The topics covered varied from such items as hazardous materials to drug label barcodes to train crew operations. No single rulemaking was earth-shattering in its impact, however, so the week's topline figures netted out to relatively muted totals. Across all rulemakings, agencies published $17.2 million in total net costs but cut 110,586 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 48
- Final Rules: 42
- 2022 Total Pages: 46,813
- 2022 Final Rule Costs: $13.8 billion
- 2022 Proposed Rule Costs: $84.3 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was the Department of Transportation (DOT) rule regarding "Hazardous Materials: Harmonization With International Standards." Per the title, the rule makes a series of changes to the regulations involved with the transportation of hazardous materials to hew closer to those of international partners, including, "to allow for better alignment with Transport Canada's Transportation of Dangerous Goods Regulations." DOT identified three issues areas for which it could estimate quantifiable economic effects. In its analysis of these areas, the agency expects the rule to produce net cost savings of between $172 million and $199 million across a 10-year window.

The most significant *cost-adding* rulemaking of the week was the Food and Drug Administration's (FDA) proposed rule entitled "Revising the National Drug Code Format and Drug Label Barcode Requirements." The proposal seeks to create a standardized format for "National Drug Codes" (NDCs). In particular, "all NDCs will be required to be 12 digits in length with 3 distinct segments." Since many NDCs are currently 10 digits and contain diverging formats, FDA expects there to be some level of conversion costs for affected drug producers that "would include one-time costs of updating software systems, new training for employees, coordinating labeling updates, and reading and understanding the proposed rule." The agency estimates that these costs would add up to $87.1 million over a 10-year window.

TRACKING THE ADMINISTRATIONS

As we have already seen from executive orders and memos, the Biden Administration will surely provide plenty of contrasts with the Trump Administration on the regulatory front. And while there is a general expectation that the current administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the AAF RegRodeo data extend back to 2005, it is possible to provide weekly updates on how the top-level trends of President Biden's regulatory record track with those of his two most recent predecessors. The following table provides the cumulative totals of final rules containing some quantified economic impact from each administration through this point in their respective terms.

TRACKING THE ADMINISTRATIONS

REGULATORY ACTIVITY FROM INAUGURATION DAY TO JULY 29th (Year 2)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	383	$214.8B	135.3M
TRUMP 2017	406	$893.5M	8.4M
OBAMA 2009	544	$173.4B	77.2M

LAST UPDATED: JULY 29TH, 2022 AMERICANACTIONFORUM.ORG

The hazardous materials rule discussed above provided the majority of the shift in the Biden Administration final rule cost tally, which ticked downward by roughly $180 million. There was minimal movement in the Trump Administration totals. But the real story comes from the Obama Administration. The end of July 2010 saw that administration’s totals shoot up by $7.9 billion in costs and 6.8 million annual hours of paperwork. Two rules drove the bulk of these increases: an electronic health records rule implementing provisions of the

2009 stimulus bill and a multi-agency rule instituting new requirements for mortgage loan originators.

THIS WEEK'S REGULATORY PICTURE

By Mariam Chachava, Regulatory Policy Intern

This week, the Federal Railroad Administration (FRA) resurrects an Obama Administration crew size proposal.


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Source: “Freight Train” by Akshay Nanavati

On July 28, the FRA published a notice of proposed rulemaking (NPRM) regarding “Train Crew Size Safety Requirements.” As the title implies, the rule would establish a minimum requirement of having at least two crew members (which includes a locomotive engineer and at least one additional crew member) for all railroad operations.

FRA published a similar NPRM back in March 2016 to introduce a minimum of two crew member requirement for railroads. The proposed rule argued for the necessity of these minimum requirements to increase railroad safety based on two railroad accidents that took place in Quebec (July 2013) and North Dakota (in December 2013). In 2019, however, FRA (then under the Trump Administration) withdrew the proposed regulation because it could not find sufficient data to prove the correlation between the number of crew members and safety of railroad operations.

The new NPRM has many similarities with the 2016 NPRM. The main difference is that the new proposal requires railroads to have a yearly risk assessment, which would allow FRA “to play a more active role in ensuring that railroads appropriately consider any relevant safety risks that may arise from train operations using less than two person crews.”

A total of 10 exceptions can be made from the minimum requirement if the railroad conducts this risk assessment and proves that operations can be performed in compliance with the safety standards with a single crew member. Nevertheless, if a train contains certain quantities and types of hazardous materials, it can be prohibited from applying for such exceptions.

The main benefit associated with the new regulation is (unquantified) safety improvement, according to FRA. The new regulation is also expected to place additional burdens on railroads by requiring hiring (when applicable) additional crew members and increasing administrative costs to ensure the certification of crew members as well as monitoring the railroads’ compliance with the new regulation. Hiring additional crew members can significantly increase railroads’ operation costs and lead to corresponding increases in railroads’ services fees. The total estimated 10-year cost of the regulation is $2.0 million (using a 7 percent discount rate). The annualized cost is estimated at $0.3 million.

The expected cost of the new NPRM is noticeably lower than the estimated cost of the 2016 NPRM, which ranged from $5.1–$27.7 million, discounted at a 7 percent rate. The main reason for the lower cost estimate is a diverging assumption in the expected labor cost. In 2016, the estimates were based on the assumption that railroads would need to hire one to three additional crew members, while in 2022, the estimates assumed just one additional crew member would need to be hired.

Moreover, FRA argues that since the development of the 2016 NPRM having at least two crew members has already become more common practice, so the marginal cost of rule compliance would be lower. For the same reason, the volume of railroads’ requests to get an approval on operating with one crew member is expected be lower; thus, FRA expects the administrative costs of risk assessment and approval will also be lower.

TOTAL BURDENS

Since January 1, the federal government has published $98.1 billion in total net costs (with $13.8 billion in new costs from finalized rules) and 79.2 million hours of net annual paperwork burden increases (with 4.1 million hours in increases from final rules).