Week in Regulation

Hearing Aids and Meat Labels

DAN GOLDBECK, DAN BOSCH | AUGUST 22, 2022

It was a modestly interesting week in the pages of the Federal Register. There were six rulemakings with some measurable economic impact. A couple of the topics that stood out included over-the-counter (OTC) hearing aid sales and updates to how meat producers must label their products. The former produced the most significant economic impact of any rulemaking from last week. Across all rulemakings, agencies published $477.6 million in total net cost savings but added 1.2 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 33
- Final Rules: 64
- 2022 Total Pages: 51,156
- 2022 Final Rule Costs: $13.7 billion
- 2022 Proposed Rule Costs: $87.2 billion

NOTABLE REGULATORY ACTIONS

The most consequential rule of the week was the Food & Drug Administration (FDA) rule on "Medical Devices; Ear, Nose, and Throat Devices; Establishing Over-the-Counter Hearing Aids." As the title plainly suggests, this rule updates FDA's regulatory standards to allow for the OTC sale of certain hearing aids that previously required a prescription. FDA estimates that this change will streamline the process for "consumers with perceived mild to moderate hearing impairment who wish to buy lower cost hearing aids not bundled with professional services and not requiring professional advice, fitting, adjustment, or maintenance," leading to annual net cost savings of $62 million. Of note, in a move reserved for precious few rules, the Biden Administration heralded the rule with an official presidential announcement.

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.



The hearing aid rule discussed above provided almost the entirety of the modest downward shift in the Biden Administration's final rule cost total. It wasn't the only administration that saw a decline, however. The middle of August 2018 brought yet another bout of significant deregulatory action from the Trump Administration – primarily from this Medicare payment rule. With overall decreases of $377 million and 5.5 million hours in costs and paperwork, respectively, this brought the overall net totals of the Trump Administration to the

negative side of the ledger for the first time during the former president's tenure.

THIS WEEK'S REGULATORY PICTURE

This week, the U.S. Department of Agriculture (USDA) eliminates a labeling requirement for meat and poultry.

On August 17, the Food Safety and Inspection Service (FSIS), an agency within the USDA, finalized a rule that eliminates a labeling requirement for certain meat and poultry products. The rule, "Rescission of Dual Labeling Requirements for Certain Packages of Meat and Poultry," gets rid of a requirement that some meat and poultry products show weights in two formats: ounces followed immediately by pounds and ounces or decimal fractions of a pound (see picture above for an example).

The requirement only applied to packaged products of uniform size between one and four pounds – most "random weight" meats and poultry, such as steaks and chicken legs commonly found in grocery stores, were already exempt from the requirement since they are not of a uniform weight.

The rule is a result of a process kicked off by an executive order from the Trump Administration that directed agencies to form regulatory reform task forces and solicit ideas from the public on possible deregulatory actions. A small meat processor requested the requirement be lifted. FSIS proposed eliminating the requirement in 2017.

FSIS believed the change would be inconsequential to consumers but would provide some benefits to small processors. These benefits include consistent packaging labels across all meat products, no longer having to track which products needed dual weight labeling, and freeing up a small amount of space on the product label.

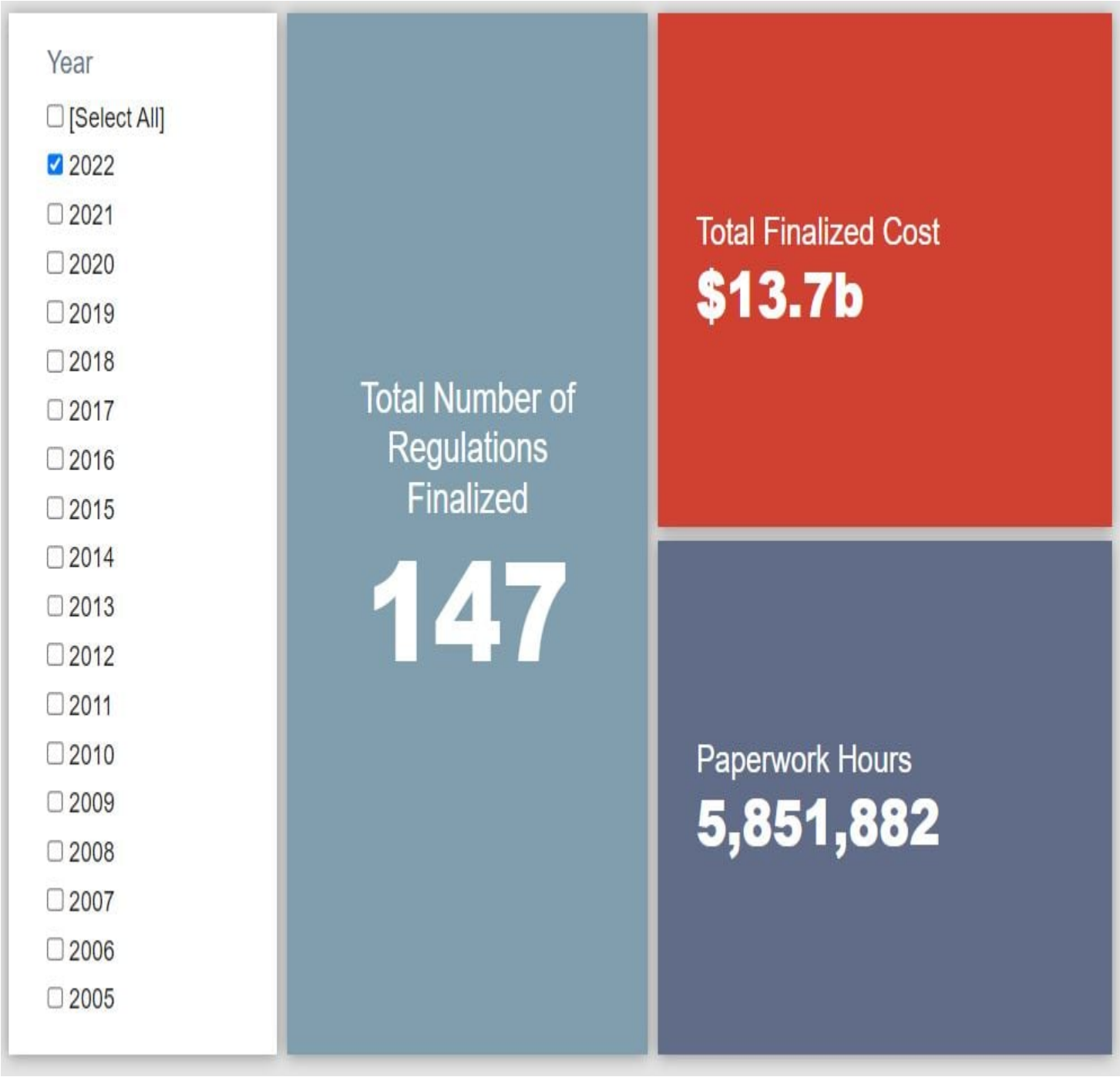
Alas, not everyone was happy with the proposal. Some commenters complained that not having the weight listed in two different formats would be inconvenient, particularly for calculating weights for recipes. These commenters also alleged that it may be helpful for people of other cultures.

FSIS disagreed, asserting that there are many options for consumers to calculate weight conversions and that mandating "two different units of measurement on the same product, for limited products, is unlikely to significantly help inform consumers of different cultural backgrounds about the weights of their purchases."

All told, there was not much controversy regarding the proposal at all; just 22 submissions were received during the public comment period.

TOTAL BURDENS

Since January 1, the federal government has published $100.9 billion in total net costs (with $13.7 billion in new costs from finalized rules) and 83.1 million hours of net annual paperwork burden increases (with 5.9 million hours in increases from final rules).


Year
[Select All]
2022
2021
2020
2019
2018
2017
2016
2015
2014
2013
2012
2011
2010
2009
2008
2007
2006
2005
Total Number of Regulations Finalized
147
Total Finalized Cost
$13.7b
Paperwork Hours
5,851,882