Week in Regulation

EPA Emissions Rule Highlights Modest Week

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Last week saw 10 rulemakings with some measurable economic impact come across the pages of the Federal Register. Especially when compared to the week before, however, those regulatory impacts were relatively light. An Environmental Protection Agency (EPA) rule on emissions standards for boilers and process heaters was the most significant measure of the week. Across all rulemakings, agencies published $376.2 million in total net costs and added 1.2 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 31
- Final Rules: 56
- 2022 Total Pages: 61,114
- 2022 Final Rule Costs: $107.8 billion
- 2022 Proposed Rule Costs: $124.4 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking (in terms of quantifiable impact) was an EPA rule regarding "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters." In particular, the rule "finalizes amendments to the national emission standards for hazardous air pollutants (NESHAP) at major sources from new and existing industrial, commercial, and institutional (ICI) boilers and process heaters." This set of amendments is the result of a long and winding trail of judicial proceedings dating back to an initial Obama-era rule promulgated in 2011. EPA estimates that the rule's requirements will impose $265 million in compliance costs for affected facilities.

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 EPA emissions rule provided the bulk of the Biden Administration's increase in costs. Meanwhile, the administration's paperwork total increased by nearly 1 million hours, due primarily to a Department of Agriculture rule regarding how states share data related to the Supplemental Nutrition Assistance Program. For the other two covered administrations, there was little new to report. Trump-era costs increased by merely $4.9 million while paperwork decreased by nearly 17,000 hours. The Obama-era increases were similarly minimal:

$27 million and 24,400 hours.

THIS WEEK'S REGULATORY PICTURE

This week, administrative destruction.

On October 7, the Food and Drug Administration (FDA) published a proposed rule in the Federal Register with the ominous moniker "Administrative Destruction." Lest one think the agency may be exploring the removal of unnecessary red tape, the proposed rule pertains to the agency destroying certain banned medical devices. The proposal will implement a provision of the Safeguarding Therapeutics Act (STA), a 2021 law that gave the FDA "the authority to administratively destroy certain refused devices without providing the owner or

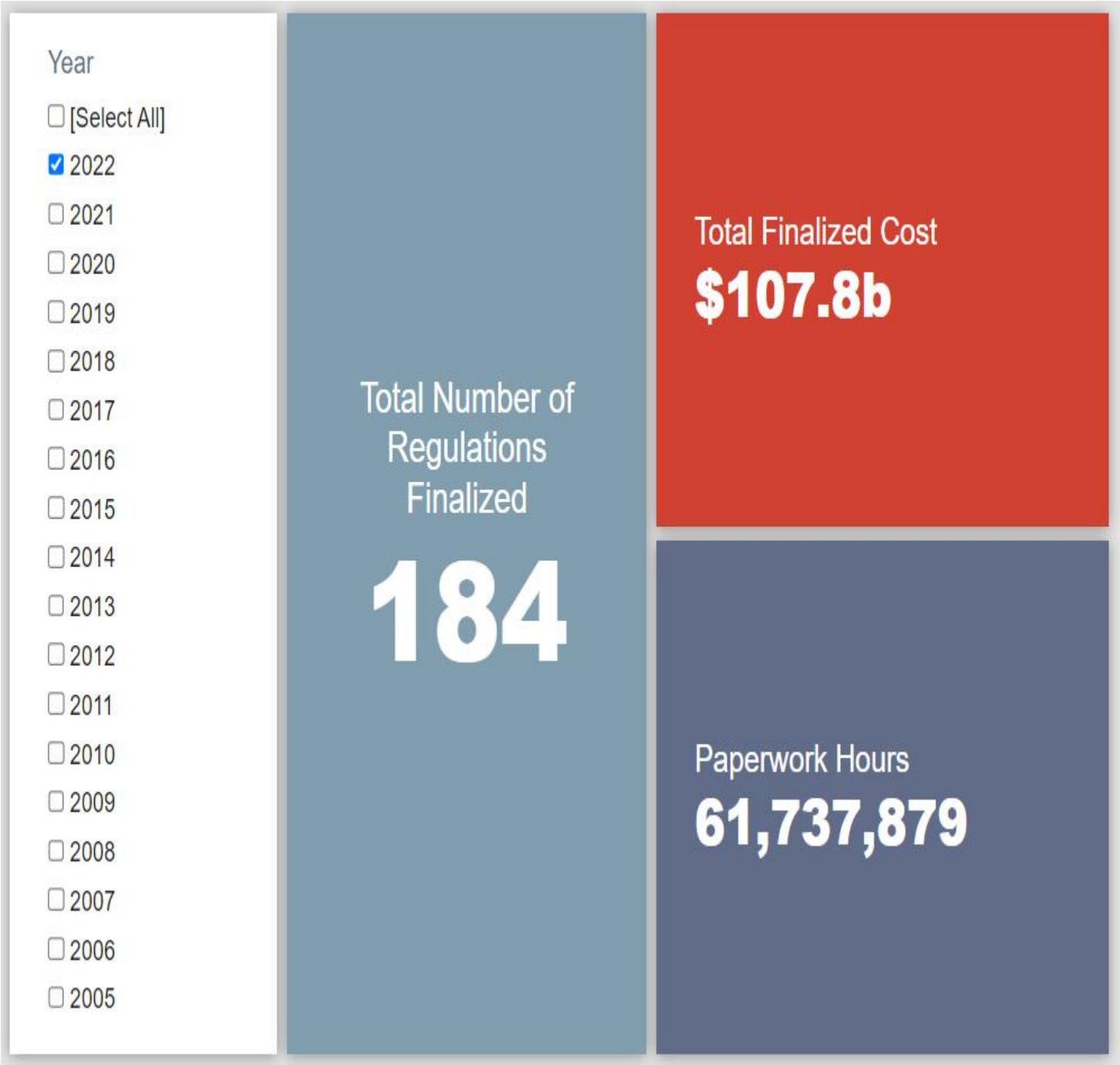
consignee with the opportunity for export." The STA was enacted in response to counterfeit products to deal with COVID-19, such as masks, test kits and respirators. The STA amends existing law that allows the FDA to destroy drugs that have been refused for entry into the United States. The proposed rule spells out under what circumstances the FDA can destroy devices not allowed under the Federal Food, Drug, and Cosmetic Act.

The proposal will allow the FDA to destroy any covered device valued at $2,500 or less, though the STA gives the Treasury secretary the authority to increase the value amount. It will also allow the owner of the device an opportunity to provide evidence to the FDA prior to destroying the device in question.

The FDA estimates the cost of the rule to be $454,000 annually over 10 years. While it also expects monetized benefits of $397,000 annually over the same period, the unquantifiable benefits (and a specific mandate from Congress) justify the rule, according to the agency.

TOTAL BURDENS

Since January 1, the federal government has published $232.2 billion in total net costs (with $107.8 billion in new costs from finalized rules) and 136.7 million hours of net annual paperwork burden increases (with 61.7 million hours in increases from final rules).


Year
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2022
2021
2020
2019
2018
2017
2016
2015
2014
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2012
2011
2010
2009
2008
2007
2006
2005
Total Number of Regulations Finalized
184
Total Finalized Cost
$107.8b
Paperwork Hours
61,737,879