



Week in Regulation

The Night of the Living Regs

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The first full week of 2020 saw significant “new” regulatory costs, due primarily to a bit of administrative necromancy. A series of Department of Energy (DOE) efficiency standards that were supposed to officially hit in the books at the end of the Obama Administration have since been stuck in limbo. Thanks to a recent court order, however, they officially rose from their grave and landed in the pages of the Federal Register last week. Across all rulemakings, agencies published \$3.1 billion in total net costs and added more than 11.8 million hours of annual paperwork.

REGULATORY TOPLINES

- 2020 Proposed Rules: 28
- 2020 Final Rules: 52
- 2020 Total Pages: 1,726
- 2020 Final Rule Costs: \$2.9 billion
- 2020 Proposed Rule Costs: \$765 million

TRACKING THE REGULATORY BUDGET

The set of zombie DOE regulations presents a peculiar situation in terms of the regulatory budget. The quartet of rules establish efficiency standards for [portable air conditioners](#), [uninterruptible power supplies](#), [air compressors](#), and [commercial packed boilers](#). The agency estimates that they bring combined present value costs of roughly \$2.4 billion (discounted at a 7 percent rate). Normally, this would be a substantial amount in the regulatory column for the fiscal year (FY) 2020 under Executive Order (EO) 13,771, but considering the circumstances we are excluding it from that tally.

Rewind to December 2016. DOE publishes each the four rules on its website, thus making them publicly available. The invocation of a little-known “error correction rule,” however, delayed their official publication in the Federal Register pending further review. That “review” continued onward until a group of interested parties brought a suit challenging DOE’s seemingly indefinite review. In October 2019, the Ninth Circuit Court of Appeals [concurred](#) with their arguments and ordered that the rules finally become officially published. As such, despite their temporal inclusion in the 2020 volume of the Federal Register (and potentially the FY 2020 budget), they were quite clearly *intended* for publication under the Obama Administration in either late December 2016 or early January 2017. The complete absence of any EO 13,771 discussion in their preambles and their “Other” designation in recent Unified Agendas further bolsters this claim.

Since there were no other actions applicable to EO 13,771, the FY 2020 tally remains stagnant for the week. The Trump Administration expects to reach \$51.6 billion in cumulative net savings in [FY 2020](#). To date in the fiscal year, agencies have finalized 35 deregulatory actions and 13 regulatory actions, totaling \$2.6 billion in

quantified total net costs.

THIS WEEK'S REGULATORY PICTURE

This week, the U.S. Department of Transportation (DOT) updates its plan for regulating autonomous vehicles (AVs).

U.S. Government Automated Vehicle Technology Principles

The White House and the U.S. Department of Transportation developed AV 4.0, building upon previous versions of Federal AV guidance, to coordinate efforts across the Federal government and provide high-level guidance to Federal agencies, innovators, and the public on the U.S. posture towards AVs. AV 4.0 establishes Federal principles for the development and integration of automated vehicles, consisting of three core focus areas: Prioritize safety and security, promote innovation, and ensure a consistent regulatory approach.

Protect Users and Communities	Promote Efficient Markets	Facilitate Coordinated Efforts
<ul style="list-style-type: none">■ Prioritize Safety■ Emphasize Security and Cybersecurity■ Ensure Privacy and Data Security■ Enhance Mobility and Accessibility	<ul style="list-style-type: none">■ Remain Technology Neutral■ Protect American Innovation and Creativity■ Modernize Regulations	<ul style="list-style-type: none">■ Promote Consistent Standards and Policies■ Ensure a Consistent Federal Approach■ Improve Transportation System-Level Effects

At the annual Consumer Electronics Show this week, Secretary of Transportation Elaine Chao unveiled DOT's latest [guidance](#) for AVs. The image above displays the broad principles that will drive federal decision making in this area.

Of most interest to those following regulatory policy is the principle of modernizing regulations. According to the report, this principle consists of three main components. The first is to modernize or eliminate federal rules that could unnecessarily hamper the development of AVs. The second is to utilize federal rulemaking authority to ensure consistency of state and local laws — in other words, making sure one state or local government does not set an impossible standard that becomes a *de facto* national standard. The third component is that when regulation is necessary, the United States will aim for performance-based rules with as little prescription as needed.

The clear goal of the Trump Administration is to ensure that it helps foster the development of AVs, rather than unnecessarily impede it. Ultimately, its ability to adhere to this position will likely depend on the public's trust and confidence in AVs and the public's willingness to accept pitfalls, including accidents, that will occur as

technology develops.

TOTAL BURDENS

Since January 1, the federal government has published \$3.7 billion in total net costs (with \$2.9 billion in finalized costs) and 11.8 million hours of net annual paperwork burden increases (with 833 hours cut by final rules). [Click here](#) for the latest Reg Rodeo findings.

