



Regulations Affecting ARTBA Members:
What Are They and Where Do They Come From?

1. Environmental Protection Agency (EPA)
 - Air quality—EPA sets levels for ozone and particulate matter (smog and soot). Counties must come into compliance with EPA standards or they risk losing highway funding. EPA is currently considering tightening the smog standard even though counties are still adjusting to the previous standard set in 2008. Between 193 and 328 additional counties could have their highway funding put at risk.
 - National Environmental Policy Act (NEPA)—EPA enforces NEPA, which sets forth the environmental review process all transportation projects must undertake before and during construction. Currently, the NEPA process for major transportation projects takes between 13 and 19 years. Additional NEPA regulations are forthcoming and could prolong an already exhaustive process while providing little or no additional environmental protection.
 - Climate Change—EPA has recently been given the authority to regulate “greenhouse gas” emissions under the federal Clean Air Act (CAA). Concerns have been raised, however, that the CAA is not the proper mechanism to regulate GHG emissions, as the way in which the CAA operates could potentially place the entire country in nonattainment, putting highway funding at risk for all states.
 - Stormwater—EPA regulates the runoff of stormwater (rainfall) from all construction projects, including transportation projects. Recently, EPA proposed a universal standard for stormwater runoff which will be applied to all construction projects impacting areas of 10 acres or more. This will be a problem for transportation projects as applying a single, uniform standard to projects in different areas of the country with differing rainfall patterns (and therefore different stormwater runoff levels) will be impractical and cause delays and extra costs for transportation projects.
2. Department of Defense - Army Corps of Engineers (ACE)
 - Wetlands—Along with the EPA, the Corps sets regulations involving the extent of federal wetlands jurisdiction. Currently, ARTBA members obtain permits from the Corps when their projects impact wetlands and also work with the corps to replenish those wetlands that are

impacts (often at a 2:1 ratio or greater). Efforts have been undertaken to expand Corps jurisdiction to wet areas with little or no environmental value, such as roadside ditches. If this were to happen, the permitting burden on ARTBA members would increase greatly, adding years of delay and hundreds of thousands of dollars in burdens to transportation projects.

3. Department of Transportation (DOT)

- DOT consists of a number of agencies ARTBA deals with quite frequently, including the Federal Highway Administration, Federal Aviation Administration, Federal Transit Administration and the Federal Motor Carrier Safety Administration, Federal Railroad Administration, and the Surface Transportation Board.
- DOT administers regulations concerning the Disadvantage Business Enterprise (DBE) program. The DBE program impacts all ARTBA contractor members who work on federal-aid transportation projects and statutorily requires that smaller, minority-owned contracting firms participate in those projects. DBE program regulations are voluminous and compliance on particular projects can be challenging. Federal authorities frequently investigate and prosecute DBE-related cases.

4. DOT - Federal Highway Administration (FHWA)

- Obviously, FHWA is the DOT agency with which ARTBA interacts on the most regular basis. FHWA sets many different areas of regulation for highway construction, including environmental, planning and funding.
- FHWA has the power to suspend or debar contractors from participating in federal-aid highway construction projects, based on their administrative determination that a contractor lacks "present responsibility."
- In many cases, FHWA must approve innovative or other unusual project delivery methods that states propose to utilize for a federal-aid highway project.
- State-level price adjustment clauses in highway construction contracts must comply with FHWA policy if they are to be used for federal-aid projects.
- A key area of regulations affecting many ARTBA divisions is the Manual on Uniform Traffic Control Devices or "MUTCD." ARTBA is a sponsoring member of the National Committee on Uniform Traffic Control Devices, which meets twice a year to discuss updates and revisions to the MUTCD.

5. DOT - Federal Transit Administration (FTA)

- ARTBA members are also involved in the construction of transit projects, which are overseen by the FTA. The agency is charged with implementing environmental, planning and funding regulations related to new transit projects.

6. DOT - Federal Motor Carrier Safety Administration (FMCSA)

- FMCSA has, for some time, been promulgating and implementing a regulation known as “hours of service,” which addresses the amount of time truck drivers are allowed to operate their equipment. While this rule is intended for truck drivers and long-haul drivers, it also affects drivers of construction equipment and could have negative implications for ARTBA members. Since the rule does not differentiate between a driver who operates his or her vehicle constantly (such as a truck driver) and a driver who works an eight hour shift but does not constantly operate a vehicle (such as a construction equipment driver), employees of ARTBA firms working on transportation projects could be barred from having their drivers work the necessary hours to complete a full shift.
- FMCSA regulates truck transportation of hazardous materials, which ARTBA contractors often use in building projects.

7. DOT - Federal Aviation Administration (FAA)

- Many ARTBA members are involved in the construction of airport related projects (runways, etc.). The FAA implements airport related environmental measures as well as other regulations concerning airport and airport improvement construction.

8. DOT - Federal Railroad Administration (FRA)

- With the development of ARTBA’s new High-Speed Rail Development Council, ARTBA will be increasing its dialogue with the FRA, the agency that implements regulations affecting railroad (and high-speed rail) projects.

9. DOT – National Highway Traffic Safety Administration (NHTSA)

- DOT, through NHTSA, is developing fuel standards for passenger vehicles and light trucks, which will increase the amount of miles per gallon vehicles are able to achieve. This, practically, means people will be purchasing less gasoline. The Highway Trust Fund (HTF) is

financed through the gasoline tax. Thus, as fuel standards increase, HTF revenues will go down, because less gas tax revenue will be collected. ARTBA is engaged in the dialogue over fuel standards to ensure that if stricter standards are enacted, there is some compensation for the loss of revenue to the HTF. Otherwise, while cars will become more efficient, roads will become more dangerous.

10. DOT – Office of the Inspector General (OIG)

- OIG conducts investigations of alleged waste, fraud and abuse in U.S. DOT-related programs. OIG also conducts program audits and reports to Congress and the secretary of transportation, many of which attract considerable attention in the media. Many OIG activities eventually lead to criminal prosecutions.

11. Surface Transportation Board (STB)

- The Surface Transportation Board also implements regulations concerning rail projects. As with the FRA, ARTBA's High Speed Rail Committee will increase the involvement of ARTBA with the Surface Transportation Board.

12. Department of the Interior (DOI)

- The DOI, through the Fish and Wildlife Service, implements regulations concerning the Endangered Species Act. As part of the environmental review process all transportation projects must undergo, endangered species concerns must be taken into account. ARTBA works with DOI to make sure these regulations are based on sound science and do not needlessly delay transportation improvements while providing little or no protection to affected species.

13. Department of Labor (DOL)

- The Department of Labor is a large agency which regulates most aspects of workplace conditions. Program affecting ARTBA members include hours of work and wages, personal and family leave regulations; worker/employer relationships including labor relations and union rules. The agency provides assistance in areas such as worker training, unemployment wages and other worker benefits.

14. Occupational Safety and Health Administration (OSHA)

- OSHA is one of the best known agencies within the U.S. Department of Labor. The agency not only issues and monitors work place safety and health regulations, but also enforces those regulations through a cadre of compliance enforcement officers. Recent regulations

and activities issued by this agency affecting ARTBA members include as high visibility clothing, trenching and excavations, electrical hazards, confined spaces, cranes and derricks, health hazards (including lead, silica and asbestos), and workplace runovers and backovers.

15. Department of Homeland Security (DHS) – U.S. Immigration and Customs Enforcement (ICE)

- ICE enforces federal immigration and customs laws. The agency conducts frequent investigations of employers and high-profile “raids” which generate considerable meeting attention.

14. Department of Health and Human Services (HHS), Center for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH)

- This agency is often referred to as a “sister agency” to OSHA. Yet while OSHA falls under the Department of Labor, NIOSH falls under the jurisdiction of the Department of Health and Human Services. NIOSH is not an enforcement agency; rather it conducts research and testing in areas related to worker safety and health. During the past 10 years, ARTBA has worked closely with NIOSH as they study the causes of worker deaths in roadway construction, particularly those deaths that occur when workers are struck by motor vehicles and construction equipment.

15. United States Coast Guard (USCG)

- The Coast Guard is responsible for approval of the location and plans of bridges and causeways constructed across navigable waters of U.S. In addition, the Coast Guard is responsible for approval of the location and plans of international bridges and the alteration of bridges found to be unreasonable obstructions to navigation. ARTBA members, especially those involved in the Bridge Policy and Promotion Council are particularly affected by the USCG bridge regulations.

16. Department of Justice (DOJ)

- The Justice Department works with all federal agencies, particularly the DOT Office of Inspector General, to bring criminal and civil prosecutions under the federal False Claims Act and other statutes.