

# Trump Administration: Ripe for Regulatory Reform

By Nick Goldstein, ARTBA vice president of regulatory & legal issues

This scorecard tracks more than a dozen rules and proposals, and what action is being taken by ARTBA, the Trump administration, federal agencies and the courts. "EO" stands for "executive order." Newest items are **highlighted**.

Check the Regulatory page at [www.artba.org](http://www.artba.org) for more updates.

**Geographic-Based Hiring Preferences:** U.S. Department of Transportation (U.S. DOT) proposal to allow local hiring preferences.

U.S. DOT repealed the rule change and pilot program in October 2017.

WIN!

**Hours of Service:** The federal rules limit on-duty motor carrier driver time to address fatigue. It applies to transportation construction drivers although they typically don't spend as many hours per day on the road.

On Aug. 14, the Federal Motor Carrier Safety Administration proposed multiple changes to these rules. Significant changes include expanding the "short haul" exemption from 100 to 150 air miles and allowing non-driving activities to satisfy mandatory break requirements.

PENDING

**Buy America:** In late 2016, FHWA proposed a nationwide exemption from Buy America regulations for certain, commercially available, off-the-shelf products.

This exemption was not finalized before the Obama administration left office. In April 2017, President Trump signed the "Buy American, Hire American" EO directing all agency heads to examine their use of Buy America waivers. ARTBA continues to encourage FHWA to finalize and implement the 2016 proposal.

PENDING

**Overtime Revisions:** In 2016, the Obama administration changed the manner in which workers qualify for overtime pay by more than doubling the salary threshold for exempt employees.

A federal court in 2017 struck down the Obama administration revisions. The U.S. Department of Labor March 7 proposed raising the threshold for employees exempt from overtime pay to \$35,308 per year from \$23,660 per year.

PENDING

**Silica Exposure:** The Occupational Safety and Health Administration (OSHA) in October 2017 began enforcing rules to tighten existing federal standard for allowable worker exposure to crystalline silica dust.

On Aug. 15 OSHA, at the urging of ARTBA and industry allies, asked the regulated community to help clarify various aspects of the rule to clarify the activities included in "Table 1", which lists 18 specific construction industry tasks that generate silica exposure and the requirements necessary for compliance.

PENDING

**Recordkeeping:** The "Volks Rule" would extend the period that OSHA can cite companies for recordkeeping violations from six months to five years.

President Trump in 2017 signed ARTBA-supported legislation striking down the "Volks Rule." In May 2018 OSHA suspended new recordkeeping requirements indefinitely. Two months later, OSHA issued a proposal to reconsider portions of the rule – including ARTBA concerns about the privacy of employer data.

WIN!

**“Fair Play and Safe Workplaces”:** Direct federal contractors bidding on solicitations of \$50 million or more would be required to disclose their violations of 14 different federal workplace health and safety laws.

President Trump in March 2017 signed ARTBA-supported legislation striking down the “Fair Play and Safe Workplaces” Obama administration EO.

WIN!

**EEO-1 Form Revisions:** Equal Employment Opportunity Commission (EEOC) Feb. 1, 2016, proposed requiring businesses with 100 or more workers to report salary data.

In 2017, the Office of Management & Budget said that it would stay the EEO-1 changes. In March 2019, a federal court ordered the EEOC to proceed with implementing the changes. The agency began collecting EEO-1 data for 2017 and 2018 in July. On Sept. 12, EEOC announced it would re-evaluate the new changes in light of new information on the cost of implementing them.

PENDING

**Greenhouse Gas Emissions (MAP-21 performance standard):** The Obama administration’s FHWA proposed to evaluate new transportation projects based in part on greenhouse gas emissions.

FHWA repealed the rule in May 2018.

WIN!

**Endangered Species Act (ESA):** Reforming ESA’s “critical habitat” provisions will prevent areas not essential for species survival from being regulated unnecessarily.

On Aug. 12, the Trump administration announced an overhaul of the ESA, reforming the critical habitat process by placing a priority on areas where species are present, protecting their survival, but without burdening other areas where the species does not exist.

WIN!

**Waters of the U.S (WOTUS):** A 2015 EPA and U.S. Army Corps of Engineers rule subjects roadside ditches to Clean Water Act jurisdiction. A December 2018 replacement proposal would exempt most roadside ditches from federal oversight.

Litigation is ongoing over the 2015 regulation, which is being enforced in more than 20 states. Two separate federal courts, in May and August of 2019, found the WOTUS rule to be illegal and sent it back to EPAA and the Corps. The agencies formally repealed the 2015 rule on Sept. 12.

WIN!

**Proprietary Products Rule:** A 1916 regulation prohibits use of patented or proprietary products on federal aid highway and bridge projects unless they qualify for limited exceptions. Stifles innovation and increases costs.

FHWA, responding to an ARTBA petition, in November announced it will either amend or repeal the rule. Over 100 comments were submitted to FHWA, the majority supporting ARTBA’s petition to repeal the rule. There is no timetable for FHWA’s final decision.

PENDING

**National Ambient Air Quality Standards (NAAQS) Reform:** The Clean Air Act requires EPA to evaluate standards for six different pollutants every five years. Counties not meeting these standards can have federal highway funds withheld.

In April 2018, President Trump directed the EPA to examine the NAAQS process in an effort to reduce delays. EPA also opted not to tighten the standards for Oxides of Nitrogen.

WIN!

**Reducing Delay in Transportation Project Delivery:** Streamlining the environmental review & approval process was a priority of the last three reauthorization bills and Trump administration priority.

In April 2018, the heads of 12 federal agencies signed an agreement to streamline environmental reviews and decisions for major infrastructure projects, setting a goal of completing the process within a two-year average. On Aug. 22, DOT proposed page limits for all NEPA documents and requiring a lead agency to be identified for all transportation projects.

WIN!

**Guidance review:** The U.S. DOT is conducting an agency-wide review of all guidance documents. Regulated industries may submit comments on any guidance document published by the agency.

ARTBA is currently reviewing existing U.S. DOT guidance and plans to comment on a number of topics. ARTBA filed comments May 8 addressing areas including the Disadvantaged Business Enterprise (DBE) program, Buy America, and fiscal constraint policies.

PENDING