### Ripe for Regulatory Reform Scorecard

**By ARTBA Vice President of Regulatory & Legal Issues Nick Goldstein, ngoldstein@artba.org**

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 for more updates.

<table>
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<tr>
<th>Geographical-Based Hiring Preferences</th>
<th>U.S. DOT repealed the rule change and pilot program in October 2017.</th>
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<td><strong>WIN!</strong></td>
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<td><strong>Geographic-Based Hiring Preferences:</strong></td>
<td>U.S. Department of Transportation (U.S. DOT) proposal to allow local hiring preferences.</td>
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<td><strong>Hours of Service:</strong> 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.</td>
<td>In August 2019, 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.</td>
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<td><strong>Buy America:</strong> In late 2016, FHWA proposed a nationwide exemption from Buy America regulations for certain, commercially available, off-the-shelf products.</td>
<td>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.</td>
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<td><strong>Transportation Conformity Reform:</strong> Disputes between California and the U.S. Environmental Protection Agency (EPA), including an agency threat of withholding federal highway funding, highlight the need to overhaul the federal Clean Air Act’s (CAA) transportation conformity process.</td>
<td>In a September 2019 letter to the EPA, ARTBA wrote “transportation conformity has become a top-heavy bureaucratic exercise that puts more emphasis on administrative details than on real-world outcomes. The fact that needed highway funds hang in the balance of this dubious process should be a concern for all states.”</td>
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<td><strong>Silica Exposure:</strong> 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.</td>
<td>In August 2019, 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.</td>
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<td><strong>National Environmental Policy Act (NEPA):</strong> President Trump’s Council on Environmental Quality (CEQ) Jan. 9 proposed an overhaul of the regulations, which have not been updated since 1986.</td>
<td>The proposal makes significant revisions to NEPA, including setting deadlines and page limits for review documents. ARTBA has supported the proposal with both written comments and public testimony. CEQ is finalizing the rule.</td>
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### Migratory Bird Treaty Act (MBTA):

The U.S. Fish and Wildlife Service (FWS) in February 2017 proposed that only actions "directed at migratory birds, their nests or their eggs" that result in injury or death will be considered violations of MBTA. **WIN!**

If approved, the change would codify a 2017 U.S. Department of the Interior legal opinion and help reduce transportation construction project delays by preventing unnecessary MBTA penalties when there was no intent to kill or injure protected birds. ARTBA submitted comments supporting the change.

### EEO-1 Form Revisions:

In February 2016, the Equal Employment Opportunity Commission (EEOC) proposed requiring businesses with 100 or more workers to report salary data. **WIN!**

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. In September 2019, EEOC announced it would re-evaluate the new changes in light of new information on the cost of implementing them.

### 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. **WIN!**

FHWA repealed the rule in May 2018.

### Endangered Species Act (ESA):

Reforming ESA’s "critical habitat" provisions will prevent areas not essential for species survival from being regulated unnecessarily. **WIN!**

In August 2019, 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.

### 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. In January, the EPA and Corps issued a replacement rule exempting most roadside ditches from federal jurisdiction. **WIN!**

Litigation is ongoing over the 2015 regulation, which is being enforced in more than 20 states. Opponents of the replacement rule say they have initiated additional litigation. ARTBA will continue to defend both the repeal and rewrite of the rule in federal court. The replacement rule is effective June 22.

### 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. **WIN!**

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. FHWA repealed the rule in September 2019.

### 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. **WIN!**

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. The EPA April 29 also proposed to retain the current standards for particulate matter.

### 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. **WIN!**

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. In August 2019, DOT proposed page limits for all NEPA documents and requiring a lead agency to be identified for all transportation projects.

### 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. **PENDING**

ARTBA filed comments in May 2019 addressing multiple areas including the Disadvantaged Business Enterprise (DBE) program, Buy America, and fiscal constraint policies.