



# 2023 Fourth Quarter Regulatory Report

Oct. 1 - Dec. 31

## Highlights:

### Final Actions

- The Federal Highway Administration (FHWA) issued its final rule mandating that states establish performance measures for greenhouse gas (GHG) emissions. While there is no penalty for not meeting the targets, states will be required to submit a plan outlining steps they will take to reach their goals.
- The White House finalized amendments to the Federal Acquisition Regulations (FAR) requiring the use of project labor agreements on direct federal construction projects costing \$35 million or more.
- The National Labor Relations Board (NLRB) finalized a "joint employer" rule that makes employers jointly liable for employees even when they are merely fulfilling legally required obligations over individuals on their worksite.
- FHWA also released its updates to the Manual on Uniform Traffic Control Devices that sets standards for traffic signs, signals, and markings to ensure a uniform and predictable environment for people who drive, bike and walk.

### Issue Snapshots

#### **Waters of the U.S. (WOTUS)**

The U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers published a new final rule Sept. 8 unresponsive to the Supreme Court's directives in the *Sackett* case, which pointedly narrowed the agencies' jurisdiction under the Clean Water Act. Their action restarted ARTBA's federal litigation in Texas and North Dakota, which now seeks to compel their compliance with the high court ruling. In the latter case, the Florida Transportation Builders' Association and Tennessee Road Builders Association were named as plaintiffs at ARTBA's request. Both cases are set for oral arguments in summer 2024.

#### **Buy America**

FHWA is still reviewing its longstanding Buy America waiver for manufactured products, with the possibility of repealing or scaling it back. Action is expected in early 2024.

#### **Davis-Bacon**

U.S. Department of Labor (DOL) regulations revising prevailing wage requirements under the Davis-Bacon Act took effect on Oct. 23. The rule applies to contractors and subcontractors for direct federal and federal-aid projects, and changes some longstanding practices related to trucking and other personnel. ARTBA held "office hours" with DOL officials and association members to address questions prior to the implementation date. DOL has signaled that they are working on additional implementation guidance. ARTBA remains in contact with DOL and FHWA to ensure our members' concerns are addressed.

## Comments and Meetings

ARTBA filed comments on the following:

- EPA's guidance for implementation of the Supreme Court's Maui decision for national pollutant discharges.
- Occupational Safety and Health Administration (OSHA) Small Business Advocacy Review Panel (SBAR) heat safety standard materials.
- EPA and Army Corps proposed high water mark guidance for WOTUS determinations.
- Department of Homeland Security (DHS) proposal to streamline the H2-B visa process.
- FHWA's proposed work zone safety rule.
- EPA's proposal to modify air emissions reporting requirements.
- OSHA's worker walkaround rule.
- DOL's overtime rule.
- EPA's proposal to modify the National Ambient Air Quality Standards (NAAQs) for particulate matter.

## Summary of Key Meetings

- ARTBA met with EPA to discuss its proposed rule to update air emissions reporting requirements. Separately ARTBA also met to discuss proposed changes to the NAAQs for particulate matter.
- ARTBA held member briefings and office hours with the Federal Aviation Administration to learn more about its contracting opportunities and policies, and DOL officials to address member questions on the Davis-Bacon Act final regulations.
- ARTBA met with FHWA officials and the Florida Transportation Builders' Association to review federal policies on the use of convict labor.

**For more information, please contact ARTBA's Prianka Sharma.**