



May 12, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Russell Vought
Director
White House Office of Management and Budget
725 17th Street NW
Washington, DC 20503

RE: Request for Information: Deregulation (Docket No. OMB-2025-003)

Dear Director Vought:

The American Road & Transportation Builders Association (ARTBA), representing over 8,000 members in the transportation construction industry, respectfully submits comments on the White House Office of Management and Budget's request for information on deregulatory priorities.

ARTBA represents members of all sizes from every sector of the transportation construction industry, including construction contractors, materials suppliers, planning and design firms, state and local transportation agencies, and safety and equipment manufacturers. Our members are engaged in constructing and maintaining the nation's highways, bridges, and other critical infrastructure.

Federal regulations should support—not hinder—the transportation construction industry's mission to complete projects safely, efficiently, and cost-effectively. **With that in mind, we've included ARTBA's key priorities for regulatory reform in the attached document.** Additional comments and resources are also available via our website at artba.org.

ARTBA appreciates the chance to offer this input and encourages the agencies to give the enclosed recommendations thorough consideration. Our members are dedicated to moving people and goods safely and reliably. To do so, they need predictable, consistent, and reasonable regulations.

We remain available to collaborate on any of these matters. For additional details, please reach out to Rich Juliano at rjuliano@artba.org or Prianka Sharma at psharma@artba.org.

Sincerely,

/s/

Richard A. Juliano
General Counsel
American Road & Transportation Builders Association

/s/

Prianka P. Sharma
Vice President and Counsel for Regulatory Affairs
American Road & Transportation Builders Association

Enclosures (1)



American Road
& Transportation
Builders Association

Regulatory and Policy Priorities

May 2025 Edition

The Infrastructure Investment and Jobs Act (IIJA) provided a much-needed boost in federal funding to facilitate modernization of the multi-modal U.S. transportation network. ARTBA's [Highway Dashboard](#) details how states have committed \$191 billion in highway and bridge formula funds from the IIJA to support over 92,000 new projects through February 28, 2025.

The related federal regulatory environment should not conflict with the transportation construction industry's efforts to deliver projects safely, efficiently and cost-effectively. Accordingly, ARTBA identified several priorities for regulatory improvements in the new presidential administration. Our association appreciates the progress made on several of these priorities in the early months of 2025, including expeditious rescission of FHWA's greenhouse gas mandate imposed by the previous administration.

The ARTBA team is available to provide additional details on these issues as needed.

Contracting

Buy America

**U.S. Department of Transportation (U.S. DOT) and
White House Made in America Office**

Summary:

- The IIJA (through its "Build America, Buy America Act") reaffirmed the longstanding requirement for iron and steel components in federal-aid highway and transit projects to be domestically produced, while expanding coverage to certain construction materials.
- ARTBA supports Buy America as it seeks to strengthen U.S. manufacturing. However, when certain items are inadequately available or significantly more expensive in domestic form, we urge flexibility through targeted waivers and other short-term strategies to minimize project cost increases and delays.
- However, implementation of new Buy America requirements has been inconsistent, with the waiver process often dysfunctional.

- Of greatest concern, on Jan. 14 the Federal Highway Administration (FHWA) announced a rollback to its decades-long waiver for manufactured products, which will likely add significant new administrative costs to many projects.

Resources:

- [Petition for rulemaking](#) submitted by ARTBA and allied groups to the Office of Management and Budget, detailing deficiencies in Buy America guidance and waiver reviews. (Feb. 2024)
- ARTBA [comments](#) on the then-proposed rollback of the manufactured products waiver. (May 2024)
- [National survey](#) of contractors, quantifying the difficulties in rolling back the manufactured products waiver. (May 2024)

Recommendations:

- The White House Made in America Office, created by President Biden through executive order and codified in the IJA, should focus on high-level policymaking to advance domestic preference and support for manufacturing across the federal government.
- The Made in America Office should cease its Biden-era practice of micro-managing domestic preference programs, including its closed-door negotiations with agencies and imposition of de facto approvals and denials of Buy America waiver applications.
- FHWA should continue its collaboration with the states to develop a directory of Buy America-qualified suppliers and products that contractors can rely upon.
- If the new administration prefers not to revisit President Biden’s rollback of the manufactured products waiver, then FHWA should immediately focus on developing targeted, short-term waivers for specific groups of products difficult or impossible to procure in domestic form without significant cost increases or delays. FHWA should work closely with state DOTs and industry in this process.

Disadvantaged Business Enterprise (DBE) Program
U.S. Department of Transportation

Summary:

- In May 2024, U.S. DOT enacted rule changes addressing approximately 40 aspects of the DBE program, which over several decades has sought to facilitate opportunities for minority- and women-owned businesses on federal-aid transportation projects.

- One particular rule change will require contractors and their subcontractors (including DBE firms) to submit voluminous demographic and financial information at time of bid. State DOTs are to submit this data to U.S. DOT through an on-line portal, which does not yet exist, for analysis. The scope and timing of this data collection will unnecessarily burden industry participants, especially DBE and small firms with the least resources to comply.
- Moreover, the DBE program's constitutionality is being challenged in the U.S. District Court's Eastern District of Kentucky. (*Mid-America Milling Co. v. U.S. DOT*)

Resources:

- ARTBA [summary](#) of U.S. DOT DBE rule changes published in April 2024.

Recommendation:

- U.S. DOT should suspend implementation of the new data collection requirement pending functionality of the new online portal and overall review of the program.
- U.S. DOT should work closely with state DOTs and industry in complying with relevant court orders.

Davis-Bacon Act Regulations

U.S. Department of Labor (U.S. DOL), Wage and Hour Division

Summary:

- Under President Biden, U.S. DOL's revised Davis-Bacon Act regulation modified prevailing wage determinations for federal and federally-assisted construction contracts.
- The new version of the rule expanded coverage and related administrative burdens for contractors, particularly relating to materials suppliers and truck drivers. These firms and implementing agencies must now interpret ambiguous and subjective terms like "de minimis."
- A Federal court in the Northern District of Texas has stayed some of the more problematic provisions pending the outcome of litigation.

Resources:

- ARTBA [comments](#) on the proposed rule, which took effect in October 2023.

Recommendations:

- If the Court invalidates contested provisions of the new rule, then U.S. DOL should comply immediately.
- Moreover, U.S. DOL should issue implementation guidance to clarify confusing scenarios and vague terms under the new rule. This will ensure consistent interpretation by regional U.S. DOL offices and uniform application across states.
- U.S. DOL should also address payroll discrepancies, changes in project scope, and related issues that can unduly burden contractors complying with the rule.

Project Labor Agreements

**U.S. Department of Defense (DoD), General Services Administration (GSA) and
National Aeronautics and Space Administration (NASA)**

Summary:

- In Jan. 2024, the Biden administration enacted a new rule requiring project labor agreements (PLAs) on construction projects directly contracted with federal agencies and costing \$35 million or more. President Biden first established this policy through a 2022 Executive Order, which contrasted with previous union-friendly administrations that chose only to encourage the use of PLAs.
- These agreements require certain labor on a project to be drawn from specific unions. Their terms can create union jurisdiction issues for contractors already participating in collective bargaining agreements or discourage open shop contractors from bidding on a covered project.
- Contractors in particular markets have successfully negotiated PLAs on a voluntary, collaborative basis. However, mandating them across the country based on a project's cost is not practical and will diminish competition in many cases.
- Because of litigation, federal agencies are removing the PLA mandate from contract language.
- For federal-aid highway projects, FHWA continues to allow PLAs, subject to the agency's review and approval early in the procurement process.

Resources:

- ARTBA [comments](#) on the then-proposed PLA rule. (Oct. 2022)

Recommendations:

- The White House should formally rescind the Biden PLA mandate for direct federal construction projects.
- FHWA should approve PLAs for federal-aid projects provided there is 1) meaningful participation in crafting the agreement by industry representatives in that market, and 2) endorsement of the final product by relevant industry groups.
- Moreover, for these approved PLAs, its terms should be finalized and available for review by all bidders on a project at time of procurement. The practice of deferring the PLA and instructing the apparent low bidder to negotiate its terms should be prohibited.

Monthly Employment Data Report
U.S. Department of Labor (U.S. DOL),
Office of Federal Contracting Compliance Programs (OFCCP)

Summary:

- In Nov. 2024, OFCCP announced the reinstatement of its Form CC-257 after 28 years.
- The document requires contractors and subcontractors on all direct federal construction projects and federal-aid projects above \$10,000 to report employee work, race, ethnicity, gender, and trade data. The stated purpose of this mandate was to address employment discrimination.
- The initial reports, covering March 2025, were to be due by April 15.

Resources:

- OFCCP referred interested parties to an [information page](#) which is now dormant.

Recommendation:

- With the purported April 15 deadline now passed, OFCCP should formally rescind its previous directive. Dormant for nearly three decades, Form CC-257 is unnecessary, duplicative, and will only add needless administrative costs to projects.

Environmental Stewardship

Waters of the United States (WOTUS) **U.S. Environmental Protection Agency (EPA),** **Office of Water (OW)**

Summary:

- In May 2023, the U.S. Supreme Court limited the scope of federal jurisdiction over “Waters of the United States” through the Clean Water Act (CWA). The Court's decision in *Sackett v. EPA* definitively omitted roadside ditches, which are critical to highway projects, from WOTUS coverage.
- In March 2025, the new EPA leadership published guidance on the definition of continuous surface connection and invited public comment to inform a new rulemaking.

Resources:

- ARTBA [statement](#) at 2024 WOTUS stakeholders meeting. (Feb. 2024)
- ARTBA [comments](#) on Biden EPA’s final “conforming” rule. (Sept. 2023)
- ARTBA [comments](#) on 2025 request for information. (April 2025)
- ARTBA [statement](#) at recent WOTUS public hearing. (May 2025)

Recommendations:

- EPA should work towards codification that the Clean Water Act’s jurisdiction does not extend to roadside ditches, stormwater control features, ephemeral water bodies, and water bodies connected only via subsurface connections such as roadside culverts.
- EPA should revise the preamble to the 2023 WOTUS rule to better align with the *Sackett* ruling.

National Environmental Policy Act (NEPA) **White House Council on Environmental Quality** **(CEQ)**

Summary:

- In March 2025, CEQ issued an interim final rule removing its implementing regulations for NEPA.

Resources:

- Coalition [comments](#) on CEQ's interim final rule. (March 2025)

Recommendations:

- Streamline and coordinate NEPA reviews by empowering lead agencies to set binding deadlines, expediting reviews for projects with prior state/local assessments, and reducing burdens in the state delegation process.
- Standardize environmental procedures by creating a national inventory of categorical exclusions and ensuring consistency across federal agency NEPA processes.
- Strengthen NEPA relevance by requiring consideration of public safety benefits from proposed transportation construction projects and limiting legal challenges when environmental mitigation requirements are fulfilled.

Endangered Species Act Regulations

**U.S. Department of the Interior,
Fish and Wildlife Service (FWS)**

Summary:

- The Biden administration finalized three rulemakings under the Endangered Species Act (ESA) that use broad and ambiguous criteria for designating critical habitats. Additionally, FWS planned to expand the scope of the Migratory Bird Treaty Act (MBTA) to include incidental takes (i.e. unintentional killing or harming) of birds.
- The rulemakings represent a significant departure from established interpretations and applications of the ESA and MBTA. Collectively, these revisions will undermine crucial certainty as to when and how contractors can work on projects, while often requiring costly precautions that far outweigh the risks to the natural environment and its inhabitants.
- In April the Services proposed to rescind the definition of “harm” and instead return to a case-by-case approach where habitat modification only qualifies as harm if it directly causes injury or death to the listed species.

Resources:

- ARTBA [comments](#) on the then-proposed rules. (Aug. 2023)
- ARTBA [summary](#) of the final rules. (May 2024)

Recommendations:

- FWS should reinstate a definition for critical habitat pursuant to the U.S. Supreme Court's opinion in *Weyerhaeuser v. FWS*.
- FWS should strengthen the economic balancing test in the ESA, where the agency would have the option of demonstrating through science that the area under consideration for critical habitat would not lead to growth of the species.
- New rulemakings should require that critical habitats encompass the entire range of the species, future outcomes be evidence-based, expanded categorical exclusions for low-impact activities, binding timelines for Section 7 (Interagency Cooperation) consultations, and reduced statute of limitations for challenges.

Safety and Health

Heat Safety Standards

U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

Summary:

- Under President Biden, OSHA proposed a new, uniform heat safety standard, covering a variety of industries and encompassing both indoor and outdoor work settings.
- The proposal includes two nationwide temperature triggers, which would invoke prescriptive measures, extensive recordkeeping requirements and work stoppages. However, these standards would not account for regional differences in climate, related distinctions in workers' acclimatization to heat, the specific demands of certain industries (such as the need for continuous activity and mobility in many transportation construction projects), and the lesser instances of heat illness in the transportation construction industry compared to other sectors.
- The comment period for the proposed rule ended shortly before the Biden administration left office, however, the agency had scheduled a public hearing to take place starting in June 2025. The public hearing is currently still taking place on June 16.

Resources:

- ARTBA [comments](#) on the advance notice of proposed rulemaking. (Jan. 2022)
- ARTBA [comments](#) on the Small Business Advocacy Review panel materials. (Dec. 2023)
- [Testimony](#) from one of ARTBA's small business members. (Sept. 2023)
- ARTBA [fact sheet](#) on the pre-publication proposed rule. (Aug. 2024)
- ARTBA [comments](#) on the proposed rule. (Jan. 2025)

Recommendations:

- OSHA should withdraw the rule as currently proposed and instead formulate a new proposal that accounts for varying conditions across geographic regions and industries, as described above.
- The proposal should eliminate prescriptive recordkeeping and reporting requirements, instead allowing greater flexibility for employers in unique settings, such as transportation construction.

- OSHA should enable employers who have taken proactive measures to prevent heat illness – such as many in the transportation construction industry – to continue implementing these safeguards tailored to their specific work environments, rather than imposing sweeping mandates with no demonstrable health and safety benefits.

Worker Walkaround Rule
U.S. Department of Labor,
Occupational Safety and Health Administration (OSHA)

Summary:

- OSHA's recent expansion of its worker walkaround rule, which took effect May 31, 2024 permits virtually any third party to accompany inspectors on jobsites, rather than the previous requirement for specific expertise or good cause.
- The new rule gives inspectors broad discretion to authorize these individuals – such as union representatives, lawyers, or the media – to participate in inspections regardless of adverse intentions or inadequate expertise, potentially resulting in misunderstanding of or compromises to important safety measures.
- ARTBA and allied groups filed an amicus brief supporting a legal challenge to the rule.

Resources:

- ARTBA [comments](#) on the then-proposed rule. (Nov. 2023)
- ARTBA [summary](#) of the final rule. (May 2024)
- [Amicus brief](#) in support of legal challenge to the rule. (July 2024)

Recommendation:

- OSHA should withdraw this rule, as the agency has not shown instances where third parties were unjustly barred from accompanying inspectors.

Regulatory Reform

Public Participation and Transparency in Federal Rulemaking **White House Office of Information and Regulatory Affairs (OIRA) and** **U.S. Environmental Protection Agency (EPA)**

Summary:

- Actions by the Biden White House threatened to undermine objective oversight and transparency in the federal rulemaking process, limit public participation, and facilitate the imposition of overreaching and excessive regulations.
- OIRA, which reviews all federal rules before they are finalized, issued several guidance documents (including significantly modifying Executive Order (EO) 12866 and Circular A-4) fundamentally altering the purpose and mission of the office, and potentially prohibiting the public from participating in what is meant to be an open process. The administration has since rescinded the more problematic guidance documents, but more can be done to enhance the rulemaking process.
- These revisions particularly affect EPA, which issues voluminous regulations and guidance documents carrying wide-ranging impacts.

Resources:

- ARTBA [comments](#) on Ecosystem Services guidance. (Sept. 2023)
- ARTBA-led coalition [comments](#) on public engagement framework. (May 2024)
- ARTBA-led coalition [comments](#) on OIRA's process for public engagement. (Feb. 2024)

Recommendations:

- The White House should instruct OIRA and EPA to rescind any remaining guidance documents pertaining to public participation etc. These documents express preference for particular groups during public comment opportunities, distort the cost-benefit process in rulemaking and modify the definition of "significant rules" relating to those with novel issues or significant interest to the public.
- The Administration should reinstate President Trump's executive order from October 2019, "Promoting the Rule of Law Through Improved Agency Guidance Documents" ([EO 13891](#)). Doing so will provide an added layer of transparency and accountability for agencies, many of whom have recently attempted to circumvent administrative procedures (including meaningful public input) by conducting unilateral, de facto rulemaking through so-called "guidance."

ARTBA Contacts

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