



ARTBA Regulatory 101

The federal rulemaking process is complex, aiming to balance oversight with transparency and public input. This guide offers ARTBA members a concise overview of engagement touchpoints with federal agencies and tips for members to weigh in on these issues. Your participation will help empower us to advocate even more effectively for the transportation construction industry.



WHY DO COMMENTS MATTER?

Establishing a comprehensive regulatory record is vital to the process. Agencies must consider public comments in drafting the final rule. If compelling arguments arise, the agency may choose to end or adjust the rulemaking. In addition, if the agency disregards ARTBA's input and the association chooses to challenge the rule in court, then maintaining this comment record is crucial.



THE REGULATORY PROCESS

Federal regulations are initiated primarily in one of four ways:

- Congress passes legislation and an agency drafts a rule to implement it.
- An agency seeks to amend or withdraw an existing rule.
- A member of the public or a group petitions for a rulemaking.
- A court orders an agency to issue, modify, or withdraw a rule.

Opportunities for Engagement

Throughout the process there are several touchpoints for public participation.

Pre-Rule Stage:

- Prior to a rulemaking, an agency may issue a notice seeking preliminary data and information.
- The agency may issue an "advance notice of proposed rulemaking" for initial public comment.
- Sometimes agencies host public listening sessions on a broad policy topic that later informs rulemaking.

Proposed Rule Stage:

- Once drafted, the proposed rule goes to the White House Office of Information and Regulatory Affairs (OIRA); ARTBA and members can meet with OIRA on the rule.
- Then the proposed rule is published in the *Federal Register*, initiating a public comment period typically lasting 30 to 60 days.

Final Rule Stage:

- The agency submits a draft of the final rule to OIRA. ARTBA and members often meet with OIRA at this stage to reiterate key concerns.
- The agency publishes the final rule in the *Federal Register* with its effective date.
- NOTE: The "final rule" may either be finalized as proposed with no changes, or may be revised to incorporate public input.

Post-rulemaking Stage:

The agency may conduct outreach activities regarding implementation to help inform guidance.

Examples of federal rules important to the industry:

- Buy America
- Davis-Bacon (Prevailing Wage)
- Disadvantaged Business Enterprise (DBE) program
- National Environmental Policy Act (NEPA)
- Waters of the United States
- OSHA Heat Safety Standards
- OSHA Worker Walkaround Rule

Note: Many states and localities have their own versions of these rules as well.



QUESTIONS TO CONSIDER WHEN SHARING FEEDBACK

ARTBA members can provide valuable feedback about the "real world" implications of proposed rules. Your written comments should communicate these thoughts in a first-hand, straightforward way. Comments do not need to be lengthy or elaborate. Good comments are often just one page and make one or two key points.

Practical Implications:

- What will it take to implement this rule on the ground?
 - Time required.
 - Staff required.
 - New equipment, technology, training etc.
- Is this in direct tension with another regulation?
 - State or local rules
 - Existing collective bargaining agreement, contract, etc.
- What constructive feedback do you have?
 - Are there things you can live with so that we can focus on the "deal breakers?"
 - What alternatives are available that may satisfy the problem the agency identified?
 - Do you have success stories that demonstrate there is no need for this rule?
 - Are there confusing or misleading parts that could be clarified instead of removed from the rule?

Costs:

These can be basic estimates and do not need to be precise. Don't share proprietary information!

- How much does it cost now to comply?
- What would it cost if the rule were implemented?
- Could projects be delayed because of it? What costs are associated?
- Are there costs the agency overlooked?
 - Staff time for recordkeeping and reporting.
 - Paperwork.