2026 REGULATORY ADVOCACY REPORT

Quarter 3



WHAT TO KNOW

ARTBA made progress on two longstanding regulatory priorities during the third quarter:

- Federal agencies finalized changes to Endangered Species Act (ESA) regulations.
- The Federal Highway Administration (FHWA) revised Form 1273, seeking to resolve significant federal policy inconsistencies.

KEY ISSUES

Environment

Endangered Species Act: Federal agencies finalized ARTBA-supported changes to ESA regulations, narrowing the definition of "harm" under the law's prohibition on taking protected species. Additional changes restored species-specific protections and a process for evaluating critical habitat exclusions. Together, the changes aim to improve regulatory certainty for transportation construction projects while maintaining protections for listed species.

Safety

Respirator Medical Evaluation: OSHA proposed eliminating mandatory medical evaluations for employees using certain respirators. ARTBA supported the change in testimony and written comments, while recommending that medical evaluations remain a nonmandatory best practice to preserve worker protections and employer flexibility.

Contracting

FHWA Form 1273: The agency has long required physical incorporation of this document, a compilation of many federal requirements, into contracts for federal-aid highway projects. While FHWA has now made the form voluntary for state DOTs, ARTBA repeatedly raised concerns that several terms in Form 1273 conflicted with new administration policies on employment, on-the-job training and other areas, putting contractors in potential legal jeopardy. FHWA revised the form as ARTBA had advocated.

DBE: U.S. DOT finalized revisions to the Disadvantaged Business Enterprise (DBE) program regulations that began in Oct. 2025, clarifying certification criteria and setting a Dec. 24 deadline for states to complete reevaluations of previously certified firms. ARTBA continues working with federal officials and chapters to address implementation questions.

Regulatory Comments & Legal Filings

ARTBA submitted comments and legal briefs on the following:

- **OMB:** Procedures for Federal Financial Assistance
- **FAR:** Overhaul of procurement regulations
- **EPA:** National Environmental Policy Act (NEPA); Construction General Permit (CGP)
- **OSHA:** Medical evaluation for use of certain respirators
- **USDOT:** Virginia Department of Transportation NEPA assignment application
- **Minnesota Supreme Court:** Legal brief on the Spearin Doctrine, with state affiliate AGC of Minnesota

Federal Agency Engagement

ARTBA met with federal officials to discuss the following regulatory initiatives:

- **EPA:** WOTUS, Clean Water Act permitting, DBE
- **FHWA:** DBE, UAS, Form 1273, Every Day Counts
- **Fish and Wildlife Service:** ESA regulations
- **OMB:** WOTUS, NPDES, Clean Water Act permitting
- **OSHA:** Respirator medical evaluations

ARTBA American Road & Transportation Builders Association

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