

Trump Administration: Ripe for Regulatory Reform

By Nick Goldstein, ARTBA vice president for regulatory affairs

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."

Check the Regulatory page at www.artba.org for more updates.

Geographic-Based Hiring Preferences:

U.S. Department of Transportation (U.S. DOT) proposal to allow local hiring preferences.

U.S. DOT repealed the rule change and pilot program on Oct. 6, 2017.

WIN!

Hours of Service: The rule limits on-duty time for motor carrier drivers to address fatigue. It applies to transportation construction drivers although they typically don't spend as many hours per day on the road.

Electronic logging device (ELD) requirements took effect Dec. 18, 2017. ARTBA is supporting exemptions for the industry from this and other segments of the Hours of Service rule.

PENDING

Buy America: In late 2016, FHWA proposed a nationwide exemption from Buy America regulations for certain, commercially available, off-the-shelf products.

This exemption was not finalized before the Obama administration left office. On April 18, 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.

PENDING

Overtime Revisions: In 2016, the Obama administration changed the manner in which workers qualify for overtime pay by more than doubling the salary threshold for exempt employees.

On Aug. 29, 2017, a federal court struck down the Obama administration revisions. ARTBA submitted comments a month later advocating for a rule that will allow employers the flexibility to pay salaries appropriate for their geographic locations.

WIN!

Silica Exposure: In March 2016, the Occupational Safety and Health Administration (OSHA) proposed to significantly tighten existing federal standard for allowable worker exposure to crystalline silica dust.

OSHA began enforcing the silica rule on Oct. 23, 2017, and a federal appeals court upheld the regulation two months later. ARTBA and our coalition partners are discussing details of the rule's implementation with OSHA.

PENDING

Recordkeeping: The "Volks Rule" would extend the period that OSHA can cite companies for recordkeeping violations from six months to five years.

President Trump signed ARTBA-supported legislation striking down the "Volks Rule" on April 3, 2017. In May, OSHA suspended new recordkeeping requirements until further notice. OSHA also indicated it will issue a separate proposal to reconsider portions of the recordkeeping rule – including ARTBA concerns about the privacy of employer data.

WIN!

“Fair Play and Safe Workplaces”: Direct federal contractors bidding on solicitations of \$50 million or more would be required to disclose their violations of 14 different federal workplace health and safety laws.

President Trump March 27, 2017, signed ARTBA-supported legislation striking down the “Fair Play and Safe Workplaces” Obama administration EO.

WIN!

EEO-1 Form Revisions: Equal Employment Opportunity Commission (EEOC) Feb. 1, 2016, proposed requiring businesses with 100 or more workers to report salary data.

Aug. 29, 2017: The Office of Management & Budget announced it would stay the new EEO-1 changes.

WIN!

Greenhouse Gas Emissions (MAP-21 performance standard): The Obama administration’s FHWA proposed to evaluate new transportation projects based in part on greenhouse gas (GHG) emissions.

DOT withdrew this requirement in May 2017, but later reinstated it in response to litigation filed by anti-growth groups. On Oct. 6, 2017, the agency published a Federal Register notice taking notice taking comments on the rule’s proposed withdrawal.

PENDING

Corporate Average Fuel Economy (CAFE) Standards: 1970s-era regulation to improve the average fuel economy of cars and light trucks produced for sale in the U.S.

ARTBA remains concerned proposals to increase fuel efficiency without compensating the Highway Trust Fund for accompanying revenue loss would exacerbate the HTF’s structural revenue deficit and create even bigger investment obstacles to transportation infrastructure improvements. President Trump ordered the U.S. Environmental Protection Agency (EPA) to review the latest round of CAFE standards on March 22, 2017.

PENDING

Waters of the U.S (WOTUS): A 2015 rule from EPA and the U.S. Army Corps of Engineers (Corps) would expand the Clean Water Act (CWA) to make roadside ditches subject to federal jurisdiction.

EPA is currently accepting comments on the withdrawal of the WOTUS rule as well as what a revised rule could look like. Both the withdrawal and revision of WOTUS are expected to spur litigation. The WOTUS repeal process is expected to last at least two years.

PENDING

Estate Planning Regulations: A 2016 IRS proposal would have restricted small and family-owned businesses from discounting shareholder stock for estate tax purposes for interests, including “lack of control” or “lack of marketability.”

The IRS withdrew the proposal Oct. 20, 2017.

WIN!

Social Cost of Carbon (SCC): An annual estimate of the monetized damages associated with an incremental increase in carbon developed by 13 federal agencies.

President Trump signed an EO March 28, 2017, prohibiting the use of SCC in the regulatory process.

WIN!

National Environmental Policy Act (NEPA) Greenhouse Gas (GHG) Reviews: In 2016, the Obama Council on Environmental Quality (CEQ) issued guidance requiring all NEPA reviews to consider GHG emissions. ARTBA argued that any such reviews would be open-ended and speculative while also exceeding the scope of NEPA.

President Trump signed an EO March 28, 2017, repealing the Obama CEQ guidance.

WIN!

Sue and Settle: This term refers to when anti-growth groups file litigation against a federal agency, then quickly reach a settlement where new, often cumbersome, regulations are initiated on an expedited timeframe. Often, the businesses and industries regulated the new rules are not given a voice in crafting the settlement.

In an Oct. 16, 2017, memorandum, EPA Administrator E. Scott Pruitt stated that “sue and settle” arrangements “excluded intervenors, interested stakeholders, and affected states” from settlement discussions directly impacting them. He asserted that “[t]he days of this regulation through litigation, or ‘sue and settle’ are terminated.

WIN!