



Regulatory and Policy Priorities 2025-29 Presidential Term

Nov. 2024 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 the IIJA has supported more than 80,000 new highway and bridge projects nationwide through August 31, 2024.

However, while the infrastructure law's investments are helping enable mobility and safety improvements, numerous federal agencies have advanced new and expanded federal regulations and policies. Many have the potential to adversely impact the industry's efforts to deliver projects safely, efficiently and cost-effectively.

The regulatory environment should seek to achieve the same objectives as transportation investments themselves—to help move people and products in the safest and most efficient manner possible. Accordingly, the following policy areas represent ARTBA's priorities for regulatory improvements in the coming presidential administration. The ARTBA team is available to provide additional details 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. Implementation of new Buy America requirements has been inconsistent, with the waiver process often dysfunctional. Moreover, the Federal Highway Administration (FHWA) is proposing to roll back its decades-long waiver for manufactured products, which would 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.
- ARTBA [comments](#) on the proposed rollback of the manufactured products waiver.
- [National survey](#) of contractors on proposed rollback of manufactured products waiver.

Recommendations:

- The White House Made in America Office, created by President Biden through executive order and codified in the IIJA, should focus on high level policymaking to advance domestic preference and manufacturing across the federal government. For example, the office should prioritize market research and development of a directory listing Buy America-qualified suppliers and products that contractors can rely upon.
- The Made in America Office should cease its Biden-era practice of micro-managing domestic preference programs across all federal agencies, including its closed-door process of imposing de facto approval or denial of Buy America waiver applications. Non-career appointees of the new administration, such as those at FHWA, can ably manage this day-to-day process and ensure federal-aid projects move forward expeditiously while complying with Buy America.
- FHWA should maintain its current waiver for manufactured products. A blanket rollback of this waiver, as the Biden administration has proposed, would risk numerous project cost increases and delays. State transportation agencies, contractors, and suppliers would be required to trace the origins and value of countless small, inexpensive components within these products, such as electronics, generators and pumps. Instead, FHWA can maintain the existing waiver while extending Buy America coverage to specific manufactured products shown to be readily available in domestic form.

Disadvantaged Business Enterprise (DBE) Program

U.S. Department of Transportation

Summary: A recent U.S. DOT rulemaking addressed 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. In some instances, rule changes will likely increase the administrative burden on contractors, including DBE firms with the least resources to comply. Moreover, the DBE program and similar federal initiatives have been the subject of legal challenges in recent years.

Resources:

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

Recommendation:

- U.S. DOT should undertake a thorough review of the DBE program, incorporating meaningful feedback from the full range of its stakeholders, to help ensure it can better achieve its objectives and remain legally compliant in the long term. This proactive approach will better align the program with the current legal landscape, which includes revisions likely to be imposed because of pending and potential litigation.

Davis-Bacon Act Regulations

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

Summary: U.S. DOL's revised Davis-Bacon Act regulation modifies prevailing wage determinations for federal and federally-assisted construction contracts. The new version of the rule expands 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 District Court 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, change 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: On January 22, a new rule took effect 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 contrasts with previous union-friendly administrations that chose only to encourage the use of PLAs. These agreements require labor on a project to be drawn from particular 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 certain 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.

Resources:

- ARTBA [comments](#) on the proposed rule.

Recommendations:

- The White House should rescind the new PLA mandate.
- Alternatively, the new administration should issue clear guidance under which federal agencies may exempt projects if a PLA would reduce competition, there is little or no union labor available in the area, and/or the project relates to emergency work.
- Such guidance should also allow for a streamlined review process to assess whether the cost and impact of PLAs on competition justify their requirement, and if not, then grant automatic waivers in these cases.

Environmental Stewardship

Greenhouse Gas Performance Measure

U.S. Department of Transportation, Federal Highway Administration (FHWA)

Summary: In December 2023, FHWA finalized a rule requiring state DOTs and metropolitan planning organizations to set greenhouse gas (GHG) emissions targets during the project selection and planning process. However, Congress explicitly excluded such provisions from the IIJA. Twenty-two states challenged the rule across two federal lawsuits, with ARTBA filing amicus briefs in support. Both courts ruled against FHWA's authority, but the agency is appealing.

Resources:

- ARTBA [comments](#) on the proposed rule.
- [Amicus briefs](#) in support of the states' legal challenges.
- [Amicus briefs](#) challenging the federal government's appeals of the courts' rulings.

Recommendation:

- FHWA should initiate formal rulemaking to withdraw the GHG rule, as well as terminate the appeals of the district courts' rulings.

Waters of the United States (WOTUS)

U.S. Environmental Protection Agency (EPA)

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. However, EPA's subsequent final rule leaves ambiguities, necessitating case-by-case determinations of jurisdiction, which can cause project delays and potential overreach.

Resources:

- ARTBA [statement](#) at Feb. 2024 WOTUS stakeholders meeting.
- ARTBA [comments](#) on EPA's final "conforming" rule.

Recommendations:

- EPA should promptly issue interim guidance which fully complies with *Sackett* and take effect immediately, while also seeking public comment that directly addresses and comports with the Supreme Court's *Sackett* decision.

- EPA should also publish an advance notice of proposed rulemaking to solicit public feedback on interpreting and codifying the *Sackett* decision's requirements in future regulations.

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

Summary: In June 2023, the White House and Congress successfully negotiated the Fiscal Responsibility Act (FRA), which included provisions to streamline the NEPA review process through strict page and time limits. However, in its recent “NEPA phase two” rule which took effect on July 1, CEQ allows for indefinite extensions of project reviews and mandates consideration of vague, hard-to-quantify factors. These ambiguities and the potential for prolonged reviews could lead to significant project delays and nuisance litigation, hindering the timely and efficient delivery of critical transportation infrastructure assets.

Resources:

- ARTBA [comments](#) on the proposed rule.
- ARTBA [summary](#) of the final rule.

Recommendations:

- CEQ should rescind the new phase two NEPA rule.
- The agency should initiate a new rulemaking focused on implementing the page and time limit requirements specified in the FRA, while also complying with long-standing court precedents in this area. The rule should also impose a reasonable statute of limitations for bringing a legal claim under NEPA.

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

Summary: FWS has finalized three rulemakings under the Endangered Species Act (ESA) that use broad and ambiguous criteria for designating critical habitats. Additionally, FWS plans 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.

Resources:

- ARTBA [comments](#) on the proposed rules.
- ARTBA [summary](#) of the final rules.

Recommendation:

- FWS should withdraw these rulemakings and work to reinstate prior rules enacted by the Trump administration. The agency can cite historical precedent as legal justification, contrasting with the Biden administration's questionable rationale for rescinding those rules.

Safety and Health

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, 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 proposed rule.
- ARTBA [summary](#) of the final rule.
- [Amicus brief](#) in support of legal challenge to the rule.

Recommendation:

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

Heat Safety Standards

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

Summary: OSHA is proposing new, uniform heat safety standards, 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 ends on December 30, and it appears the Biden administration will not publish a final rule before leaving office.

Resources:

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

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.

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: Recent actions by the White House threaten 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, recently issued several guidance documents (including significantly modifying Executive Order (EO) 12866 and Circular A-4) that will fundamentally alter the purpose and mission of the office, and potentially prohibit the public from participating in what is meant to be an open process. These revisions will particularly affect EPA, which issues voluminous regulations and guidance documents carrying wide-ranging impacts.

Resources:

- ARTBA [comments](#) on Ecosystem Services guidance.
- ARTBA-led coalition [comments](#) on public engagement framework.
- ARTBA-led coalition [comments](#) on OIRA’s process for public engagement.

Recommendations:

- The White House should instruct OIRA and EPA to rescind the new guidance documents, which 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.”

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