He Did What?

Regulatory Review, Expectations and Predictions for the Trump Administration

2017 VTCA Annual Meeting
July 14, 2017
ARTBA Report - Ripe for Reform

Ripe For Reform:
Federal Regulatory Issues
Impacting Transportation Project Delivery

January 2017
Federal Agencies Have Been Very Busy

Detailed timeline and regulatory changes for EPA rulemaking from 2013 to 2017.
2016 in Regulations

- 97,110 pages in the Federal Register
- A new record!
- 3,853 Final Rules (400 more than last 2015)
- 2,391 Proposed Rules
- 24,557 Notices
In “Other Words”


• Reading more than 50 books, 10 times each in one year!!!
Regulations and Transportation

Federal Environmental Requirements Affecting Transportation

[Diagram showing the timeline and regulations affecting transportation]
Where Does ARTBA Come In?

• ARTBA Activities:
  
  – 30-40 Regulatory filings per year
  
  – Meet with agency officials
  
  – Testimony before Congress
  
  – Continuing to represent the industry in court

• Getting input from YOU
Reducing Regulations is Bipartisan

• Bipartisan support in Congress

• February 2014 poll shows a majority of Americans agree reviews of infrastructure projects can be shortened without harming the environment.

  – 52% of Democrats
  – 72% of Republicans
  – 59% of Independents
Types of Regulatory Actions

• Executive Orders
• Guidance
• Proposed Rule
• Final Rule
Regulatory Issues – Project Delivery

- NEPA
- Length and time for EIS, EA, CE
- Average time for review and approval – 9 to 19 years, 200 steps
- Conflicting/counterproductive agency schedules
- Regulations going beyond the scope of MAP-21 & FAST Act
- Lawsuits
MAP-21 & FAST Act Relief

• New CEs
  – Emergency situations
  – Existing right-of-way
  – Minimal federal contribution

• Guidance for permit deadlines, fines, simplifying EIS
  – An EIS in 4 years – Mazel Tov!

• State delegation of NEPA for CA, TX, OH
  – FL, UT, AK all applying, NE interested
Success Stories

• New CEs
  – I-5 Skagit River Bridge
  – TX used existing right-of-way **343 times** over the past year!
  – Minimal federal contribution

• Delegation
  – CA saves an average of **10 years** on a full EIS
  – TX estimates **25% reduction** in delay
  – OH estimates a **$45 million** savings to ODOT program
Environmental Regulations

• Clean Air Act standards
  • “moving the goalposts”

• Endangered Species Act “critical habitat” & listing decisions
  • Long eared bat
  • Rusty Patch Bumble Bee
  • More listings on the way

• Waters of the United States
  • Efforts underway in court and by new administration to withdraw
Current Regulations are Working
Clean Air Act – Current Situation

8-Hour Ozone Nonattainment Areas (2008 Standard)

Nonattainment areas are indicated by color. When only a portion of a county is shown in color, it indicates that only that part of the county is within a nonattainment area boundary.
WOTUS – 2015 Rule adds 134,000 miles
The “Waters” of Maryland
Imaginary Water = A Real $31 Million Cost
How Do You Get Rid of Regulations?

- EOs & Guidance – “stroke of the pen, law of the land”
- Proposed Regulations – withdraw, depending on timing
  - GHG provisions of MAP-21 freight/CMAQ performance measure
- Final Rules – withdraw with notice & comment
  - Clean Air Council v. EPA shows delaying rules can be difficult
- Congressional Review Act
  - Used to repeal 14 regulations (last used in 2001)
  - “Blacklisting” EO, “Volks” Rule, MPO Rule
Notable Presidential Actions So Far

• January 20 – Regulatory Freeze Memo

• January 24 – High Priority Infrastructure EO
• January 24 – Memos on Keystone XL and Dakota Access Pipelines
• January 24 – Memo on Reducing Burdens to Domestic Manufacturing

• January 30 – “2 for 1” EO

• February 24 – Regulatory Task Force EO

• February 28 – Withdrawal of WOTUS
Notable Presidential Actions So Far

• March 27 – Repeal of “Blacklisting” EO
  – Use of CRA as well

• March 28 – Energy Independence and Economic Growth
  – Repeals Social Cost of Carbon
  – Repeals Guidance on climate change & NEPA

• April 18 – Buy American, Hire American

• April 29 – EO Establishing Office of Trade and Manufacturing Policy

• June 15 – EO on Expanding Apprenticeships in America
WOTUS – Example of Possible Timeline

• EO Issued to Withdraw published in Federal Register (3/1)

• Intent to Withdraw published in Federal Register (3/3)

• Withdrawal Notice (pre-publication version announced 6/27)
  – Comments
  – Litigation likely

• Replacement
  – Comments
  – Litigation likely

• Final Rule
Contracting Regulations Pt. 1

- DBE Program
- “Buy America” Regulations  
  - New executive order
- Local Hire Program at FHWA
- EE0-1 Revisions
Contracting Regulations Pt. 2

• Project Labor Agreements

• Prior Administrations EO’s on sick leave, overtime

• OSHA Silica, recordkeeping regulations (compliance deadlines for both extended – VA may still go with original silica deadline).

• Success using CRA on “Blacklisting Rule,” “Volks” Rule
ARTBA in the Courts

• The “Perry Mason of Transportation”

• 24\textsuperscript{th} year of advocacy in court!

• Seek out cases of national importance

• Ensure transportation construction has a seat at the table

• Over $52 Billion in transportation projects allowed to move forward
Anti-Growth, Anti-Subtlety

“Facts and reason are much less important than the amount of noise you can make...Officials who support [highway projects] should be mercilessly abused, shamed, ridiculed and otherwise made to suffer pain...The objective should be to cleave a division through the community so painful that people will remember it for decades afterward.”

– Jay Kardon, Conservation Chairman, Sierra Club, Virginia Chapter, 1999
Current ARTBA Litigation

• OSHA Silica Rule – U.S. Court of Appeals for the D.C. Circuit will hear the case. Awaiting Argument.
  – ARTBA feels current standards are working, OSHA’s new rule is based on flawed data and will hurt existing safety efforts.

• EPA WOTUS rule – Trying to determine who has jurisdiction. Supreme Court will hear the case, arguments in October.
  - Still trying to determine which court will hear the case
  - Prior rule has been stayed nationwide pending litigation
  - Resolving this issue will take multiple years

• Maryland “Purple Line” project – NEPA abuse, waiting to file.
Nick Goldstein
Vice President of Regulatory Affairs
American Road & Transportation Builders Association
ngoldstein@artba.org
202-289-4434 ext. 207