

July 13, 2017

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| Agency                     | Regulatory Action Title  | Type of Regulatory Action   | Issue  | AGC Action   | AGC Resources  |
|----------------------------|--|---|--|--|--|
| <b>SAFETY &amp; HEALTH</b> |  |   |  |  |  |
| DOL/ OSHA                  | <a href="#">Permissible Exposure Level (PEL) for Silica</a>                            | Final Rule issued 3/25/16<br><br>On 4/7/17 OSHA enforcement delayed until 9/23/17 | The rule lowers employee exposure limit to silica to unfeasible compliance levels. In coordination with other business organizations, AGC petitioned the Fifth Circuit to review the rule on April 8, 2016. The Fifth Circuit subsequently transferred the case to the D.C. Circuit, where that latter consolidated it with several other challenges to the rule. Oral argument is scheduled for 9/26/2017. A decision will NOT be issued before the September 23 enforcement date. And, given regulatory law under the Administrative Procedures Act, it is highly unlikely that another enforcement delay of the standard is forthcoming or could even stand up in court. In addition, <u>if your construction company operates under OSHA state-plans in one of 26 states or two territories</u> , it is important that you check to see if your OSHA state-plan agency is following the federal OSHA’s lead in delaying enforcement of this rule to September 23, 2017. For example, Virginia did NOT delay enforcement and stick to the June 23, 2017, date. Oregon long ago noted that it would enforce the rule in July 2018. | In 12/16, AGC requested that the presidential transition team end OSHA’s pursuit of legal action challenging this rule. AGC also recommended that OSHA rescind this rule. On 3/10/17, AGC and its coalition partners submitted a letter to the Acting Secretary of Labor request to delay the compliance date to align with general industry – 6/23/18. As a result, OSHA extended the compliance date until 9/23/17. Upon confirmation of Sec. Acosta, the coalition submitted a <a href="#">letter</a> on 5/3/17 requesting OSHA consider a petition for a limited re-opening and administratively stay the rule during this process. AGC brought up its concerns about the rule in a 6/15/17 meeting with Secretary Acosta, who remained tight lipped on the topic. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Educational Resources</a></li> <li>• <a href="#">AGC Coalition Comments 2.11.14</a></li> <li>• <a href="#">AGC News Story 4.4.16</a></li> <li>• <a href="#">AGC News Story 4.7.17</a></li> <li>• <a href="#">AGC News Story 6.16.17</a></li> </ul>          |
| DOL/ OSHA                  | <a href="#">Electronic Tracking of Workplace Injuries and Illnesses (Drug Testing)</a> | Final Rule Issued 5/12/16<br><br>Electronic reporting req. delayed until 12/1/17  | The rule requires electronic reporting of injury and illness records to OSHA and impacts post-incident drug testing and safety incentive programs. Following an AGC meeting in 8/16 with the head of OSHA and an AGC-backed letter from Congress in 10/16, the agency on 10/19/16 published new guidance that recalibrated the agency’s position relating to post-incident drug testing within the context of this rule. Enforcement of the “anti-retaliation” provisions of the rule— under which contractor drug testing programs may fall under additional scrutiny—went into effect on 12/1/16. OSHA announced on 6/28/17 a delay in requiring certain contractors to electronically submit their 2016 Form 300A to 12/1/17. The original submittal deadline was 7/1/17.   | In 12/16, AGC put forth a request for the presidential transition team to end OSHA pursuit of legal action challenging this rule. AGC also recommended that OSHA rescind this rule. In its 6/28/17 proposal, OSHA also announced its intention to issue a separate proposal to reconsider, revise or remove other provisions this rule. The provisions under future consideration could include the anti-retaliation provision that focuses on post-incident drug testing, disciplinary policies and safety incentive programs. AGC will again submit comments to OSHA detailing its concerns with the provision, as it did with the head of OSHA last year.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Coalition Comments 3.10.14</a></li> <li>• <a href="#">Congress Hearing Letter 5.25.16</a></li> <li>• <a href="#">AGC News Story 10.24.16</a></li> <li>• <a href="#">AGC News Story 5.18.17</a></li> <li>• <a href="#">AGC News Story 6.28.17</a></li> </ul> |

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| DOL/ OSHA | <a href="#">Continuing Obligation to Make &amp; Maintain Accurate Record of Recordable Injury &amp; Illness</a> | Final Rule Issued 12/19/16<br><br><b>Repealed on 4/7/17 via CRA</b>                    | The agency's regulation establishes a 5.5 year statute of limitations was found to be unlawful by the DC Circuit Court of Appeals in <a href="#">AKM LLC d/b/a Volks Constructors v. Secretary of Labor</a> , as the OSH Act only statutorily requires a six month SOL for recordkeeping violations. The rule became effective on 1/18/17 and was repealed via the Congressional Review Act on 4/7/17.   | Thanks to AGC advocacy efforts, Congress passed and the president signed into law on 4/7/17 a bill that repeals this regulation under the Congressional Review Act. This rule was not on Congress's radar for repeal until AGC brought it to their attention and helped form a business coalition to repeal it.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Coalition Comments 10.27.15</a></li> <li>• <a href="#">AGC Coalition Testimony 5.25.16</a></li> <li>• <a href="#">AGC News Story 4.7.17</a></li> </ul>   |
| DOL/ OSHA | <a href="#">Consultation Agreements: Proposed Changes to Consultation Procedures</a>                            | Proposed Rule Issued 9/3/10  | Revises the On-site Consultation Program to: clarify OSHA's ability to define sites to receive inspections regardless of Safety and Health Achievement Recognition Program (SHARP) exemption status; allow Compliance Officers to proceed with enforcement visits resulting from referrals at sites undergoing Consultation visits and at sites that have been awarded SHARP status; and limit the deletion period from OSHA's programmed inspection schedule for those employers participating in the SHARP program. The rule is not yet final.   | In 12/16, AGC recommended to the presidential transition team that the rule should never be promulgated in final form. As a proposed rule, it will not likely be finalized until Trump appointees review it. AGC awaits further action. This rule will discourage using OSHA inspectors for preventative safety audits.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 11.23.10</a></li> <li>• <a href="#">Letter from Congress 11.15.10</a></li> </ul>  |
| DOL/ OSHA | <a href="#">Standard Improvement Project (SIP's) IV</a>   | Proposed Rule Issued 10/4/16   | This rulemaking, the fourth in a series, is designed to remove or revise outdated, duplicative, unnecessary, or inconsistent requirements in the agency's safety and health standards. While most of the changes appear to be minor in nature, there are three that raise significant concerns based on AGC's review that involve excavations, personal protective equipment and lockout/tag out.  | AGC worked with a coalition of industry stakeholders to draft and submit comprehensive comments on 1/4/17.  |   |
| DOL/ OSHA | <a href="#">Crane Operator Qualification in Construction</a>  | Pre-Rule Stage<br><br><b>Proposed Rule to further extend cert. under consideration</b> | The proposal seeks to update the current crane operator certification requirements to accept those which do not specify "type and capacity" as being compliant. Currently, approximately 80% of certified operators possess certification by "type" only. If the agency does not address this issue, there is real potential for disruption in construction operations. This certification was previously <a href="#">extended</a> . On 6/6/17, OSHA issued a <a href="#">notice</a> that is considering a proposed rule to further extend the enforcement date for OSHA's crane operator certification requirement in the Cranes and Derricks in Construction standard for an additional year until 11/10/18. OSHA also proposes to extend the existing employer duty to ensure that crane operators are trained and competent to operate equipment safely for the same period of time. | AGC recommended in 12/16 to the transition team that this rulemaking to move forward. To do otherwise would be to jeopardize ongoing construction operations throughout the nation, as they may be shut down. OSHA discussed its proposal with AGC on 6/20/17 to delay this certification until 11/10/18, as AGC is the only construction association to sit on the OSHA Advisory Committee on Construction Safety and Health. AGC supported a delay and expects a formal proposed rule on the delay sometime in summer 2017. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 5.30.13</a></li> <li>• <a href="#">AGC News Story 6.8.17</a></li> <li>• <a href="#">AGC Comments 3.12.14</a></li> <li>• <a href="#">AGC Coalition Effort 10.30.14</a></li> <li>• <a href="#">AGC News Story 6.8.17</a></li> </ul> |

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| DOL/<br>OSHA | <a href="#">Noise in Construction</a>   | Pre-Rule Stage  | Requires employers to implement costly engineering and/or administrative controls that may prove ineffective. It also imposes liability for a diagnosed hearing injury on a current employer without determining that injury was sustained during time of employment with the current employer or even if the injury is work-related.  | AGC recommended in 12/16 to the transition team that OSHA not undertake this new rulemaking. The agency <a href="#">withdrew</a> a previous, similar proposal on noise because it was not feasible.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 1.27.11</a></li> </ul>       |
| DOL/<br>OSHA | <a href="#">Safety and Health Management Program Guidelines</a>                       | Altering voluntary guidance Issued 11/16/15                     | The proposal seeks an update of its voluntary guidelines for safety and health management programs. That proposal includes a new section on coordination and communication among the employers on multi-employer worksites. The new section would not fit the construction industry, and in response, the agency is now attempting to develop guidelines specifically for the construction industry. | After consulting the AGC Safety and Health Committee, AGC submitted comments to OSHA on 2/22/16. As proposed guidance, it will not likely be finalized until Trump appointees review it. AGC awaits further action pending DOL Sec. confirmation.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 2.22.16</a></li> </ul>         |
| DOL/<br>OSHA | <a href="#">Letter Granting Union Reps Walk Around Rights at Non-Union Workplaces</a> | Guidance Issued 2/21/13<br><a href="#">Rescinded on 4/25/16</a> | Under this letter of interpretation, union officials or community organizers are allowed to participate in “walk around” OSHA inspections at non-union workplaces. This letter of interpretation was rescinded on 4/25/17.   | In 12/16, AGC recommended to the presidential transition team that this guidance be rescinded. On 4/25/17, OSHA issued a <a href="#">memorandum</a> rescinding this letter of interpretation.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Coalition Letter 6.12.13</a></li> </ul> |
| DOL/<br>OSHA | <a href="#">Compliance Directive for Roadway and Highway Construction Work Zones</a>  | Guidance Issued 10/16/12  | OSHA issued this compliance directive to provide guidance to its compliance officers addressing the safe inspection of work sites where workers performing construction work on and/or near roadways or highways are exposed to hazards from vehicular traffic. The directive specifically focuses on the OSHA standards regarding the use of signs, signals, and barricades.                        | AGC recommends that OSHA revisit this guidance. AGC has raised concerns with OSHA about its inspectors not having the proper expertise for enforcing Federal Highway Administration’s Manual of Uniform Traffic Control Devices requirements. OSHA has been undertaking compliance reviews at highway construction sites and specifically looking at traffic control implementation, despite their lack of expertise. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 9.27.13</a></li> </ul>       |

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| DOL/ OSHA | <a href="#">Multi-Employer Citation Policy</a>  | Policy<br>12/10/10<br><br>A<br>4/28/2017<br>OSHRC<br>decision<br>puts policy<br>in the<br>crosshairs | Under the policy, OSHA inspectors may cite employers on multi-employer worksites for violations that expose other employers' workers to occupational hazards. For example, a general contractor who controls the worksite may be responsible for violations created by a subcontractor whose workers are exposed to safety or health hazards. As of this date, the policy remains in effect. On 4/28/2017, an Occupational Safety and Health Review Commission Administrative Law Judge <a href="#">found</a> a construction company not liable for an OSHA violation of one of its subcontractors under the multi-employer citation policy where the violation occurs within the jurisdiction of the 5 <sup>th</sup> Circuit, based on 5 <sup>th</sup> Circuit precedent. This case | In 12/16, AGC recommended that the agency adjust its policy to hold that that employers are only legally responsible for protecting the safety and health of their own workers. An Occupational Safety and Health Review Commission <a href="#">decision</a> under the Obama administration overturned a Bush era OSHRC decision on this policy interpretation. Based on the 4/28/2017 Commission case, AGC will seek to move OSHA to abandon its multi-employer citation policy. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 9.2.10</a></li> </ul>  |
| DOJ       | <a href="#">Criminal Prosecutions of Worker Safety and Environmental Law Violations</a> | Guidance Issued<br>9/17/15<br><br><a href="#">MOU b/w DOL and DOJ</a>                                | Environmental and worker safety violations are being merged under DOJ's new " <a href="#">Worker Endangerment Initiative</a> ," which will lead to harsher fines and possible jail time. The initiative encourages DOJ and enforcement agencies to probe beyond areas of reasonableness in their investigations, press for unreasonable penalties of violations, and entangle innocent contractors in unwarranted litigation. Rather than using valuable enforcement resources wisely, these policies encourage fishing expeditions instead of calculated enforcement efforts to address the actions of bad actors. This initiative remains in effect.   | In 12/16, AGC recommended that the incoming Attorney General withdraw this guidance and MOU and revisit the scope of this initiative. AGC will reach out to the Attorney General and DOL Sec., upon the confirmation of the DOL Sec.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 3.29.16</a></li> </ul> |
| DOJ       | <a href="#">Individual Accountability for Corporate Wrongdoing</a>                      | Guidance Issued<br>9/9/15  | Under this guidance, DOJ intends to hold individuals responsible for corporate wrongdoing. As with its Worker Endangerment Initiative, this DOJ guidance encourages fishing expeditions rather than calculated enforcement efforts to address the actions of bad actors. The guidance remains in effect.   | In 12/16, AGC recommended to the presidential transition team that the Trump Attorney General withdraw this guidance. AGC will make a formal request to the incoming Attorney General do so.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 3.29.16</a></li> </ul> |

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| <b>LABOR RELATIONS</b> |   |  |   |  |   |
| NLRB                   | <a href="#">Representation-Case Procedures ("Quickie" or "Ambush" Elections Rule)</a>                   | Final Rule Issued 12/15/14   | The rule expedites and otherwise revises the election process for determining union representation and requires employer disclosure of employee email addresses and phone numbers. The effect is to limit employers' opportunity to communicate information with employees about union representation. The rule enhances unions' ability to organize open-shop contractors and to solidify relationships with 8(f) union contractors.   | AGC recommended in 12/16 to the Trump transition that the rule be rescinded and replaced with a more balanced process such as that set forth in the Workforce Democracy and Fairness Act (H.R. 2776).  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments</a></li> <li>• <a href="#">AGC News Story 12.16.14</a></li> <li>• <a href="#">AGC Webinar Recording 5.18.15</a></li> </ul>        |
| DOL/OLMS               | <a href="#">Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA</a> | Final Rule Issued 3/24/16<br><br>Perm. Injunction Issued 11/16/16<br><br>DOL proposed rule to rescind rule issued on 6/12/17 | The rule expands—beyond reason—the scope of reportable persuader activity for employers and outside labor relations consultants, including lawyers, and association staff who assist employers, and significantly limits the advice exemption from reporting contained in the Labor-Management Reporting and Disclosure Act. The new reporting obligation may have a chilling effect on employers' willingness and ability to seek advice from needed experts. A federal judge issued a permanent injunction halting the rule nationwide on Nov. 16, 2016.<br><br>Secretary of Labor Acosta wrote in an <a href="#">op-ed</a> May 22 that the persuader rule would be the department's first effort under President Donald Trump to undo the Obama administration's regulatory legacy. The DOL issued a <a href="#">proposed rule</a> to rescind the Obama rule on 6/12/17. On 6/15/17, U.S. Court of Appeals for the Fifth Circuit granted DOL's request to stay its appeal of a decision that blocked. As a result, no action on the appeal is required for six months, or 30 days after the DOL issues a final rule rescinding the persuader rule, whichever comes sooner. | AGC recommended that the rule be rescinded by the Trump administration in 12/16. AGC also worked on efforts to block the rule in Congress.<br><br>AGC will comment on the proposed rule to rescind the Obama-era rule. Comments are due 8/11/17. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 9.21.11</a></li> <li>• <a href="#">AGC Newsletter Story 11.18.16</a></li> <li>• <a href="#">AGC News Story 3.29.16</a></li> </ul> |

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| <b>HUMAN RESOURCES &amp; TRAINING, EDUCATION &amp; DEVELOPMENT</b> |  |  |  |   |   |
| EEOC/ OMB  | <a href="#">Increasing Pay Equity Data Reporting in EEO-1 Form</a>   | Required Form Issued 9/29/16<br><a href="#">Pres. Memo</a> 4/8/14      | The data reporting requirements of this new form are—in many ways—redundant and needlessly burdensome for the construction industry that already supplies similar information under the Davis-Bacon Act. Additionally, both the EEOC’s and OFCCP data show that there is no need for the eradication of wage discrimination in construction because there is scant evidence that such discrimination exists. The form must be used in March 2018.  | AGC recommended that the rule be rescinded by the Trump administration in 12/16. On 3/23/17 AGC and coalition allies urged the White House Office of Management and Budget to review and reject the EEOC’s expansion of data reporting in the new EEO-1 form. AGC argues that EEOC’s revisions to the EEO-1 form do not comply with the Paperwork Reduction Act, among other things.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 8.15.16</a></li> <li>• <a href="#">AGC Testimony 9.13.16</a></li> <li>• <a href="#">AGC News Story 9.29.16</a></li> <li>• <a href="#">AGC News Story 3.23.17</a></li> </ul> |
| DOL/ WHD   | <a href="#">Doubling Salary Threshold for Overtime Consideration</a> | Final Rule Issued 5/23/16<br><a href="#">Pres. Memo</a> Issued 3/13/14 | The rule more than doubles the standard overtime salary threshold for exempt employees – from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) effective December 1, 2016. To impose such a large and immediate increase as proposed will result in unintended consequences, particularly for small construction companies, construction employers in lower-wage regions, and construction personnel. On Nov. 22, 2016, a federal judge issued a nationwide preliminary injunction blocking the rule from taking effect as scheduled. No further ruling has been made to date. In its 6/17/17 brief, DOL argues that the Secretary of Labor should have the ability to set a salary basis level but declines to defend the salary level set by the 2016 rule. DOL also notes that it “intends to undertake further rulemaking to determine what the salary level should be” – provided the court upholds the department’s statutory authority to set a salary level in the first place. Prior to submitting the brief, Secretary Acosta sent a “request for information” on the overtime rule to the White House’s Office of Management and Budget for its review and approval. Such a request is typically made when the department intends to seek public input on new rules or changes to existing rules. | AGC testified against the rule before Congress in 9/16. AGC supported legislative efforts to mitigate the impact of the rule during the 114 <sup>th</sup> Congress. Further efforts are to be seen in the 115 <sup>th</sup> Congress. During his confirmation hearing, now-DOL Sec. Acosta expressed support for increasing the salary threshold at which overtime currently must be paid to employees, but criticized the doubling in the rate put in place by the Obama administration. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 9.4.15</a></li> <li>• <a href="#">AGC Coalition Comments 9.4.15</a></li> <li>• <a href="#">AGC Testimony 9.13.16</a></li> </ul>   |

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| DOL/<br>OFCCP | <a href="#">Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Veterans</a>                      | Final Rule Issued 9/24/13 | The rule requires pre-and post-hiring self-ID requirements and implements an unnecessary hiring benchmark when federal data shows that veterans are already more likely to be employees in construction than non-veterans. The rule also requires contractors to collect and maintain additional hiring data that reflects the number the covered veterans. The rule went into effect on March 24, 2014.  | AGC recommended to the Trump Transition that OFCCP replace the hiring benchmark with the requirement that contractors make good faith efforts to hire covered qualified veterans. Additionally, AGC noted its interest in OFCCP eliminating the additional data collection and record-keeping requirements established by the rule, as well as the post-hiring self-ID requirement.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 7.11.11</a></li> <li>• <a href="#">AGC Report 10.5.13</a></li> <li>• <a href="#">AGC News Story 9.24.13</a></li> </ul> |
| DOL/<br>OFCCP | <a href="#">Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities</a> | Final Rule Issued 9/24/13 | The rule requires pre-and post-hiring self-ID requirements and implemented an unnecessary utilization goal when federal data shows that individuals with disabilities are as likely to be employed in construction as people without disabilities. Additionally, the rule requires contractors to collect and maintain additional hiring data that reflects the number of individuals with disabilities hired. The rule went into effect on March 24, 2014. | AGC recommended to the Trump Transition that OFCCP replace the utilization goal with the requirement that contractors make good faith efforts to hire covered qualified individuals with disabilities. Additionally, AGC noted its interest in OFCCP eliminating the additional data collection and record-keeping requirements established by the rule, as well as the post-hiring self-ID requirements, including the requirement to offer existing employees the opportunity to self-certify as an individual with a disability every five years. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 2.21.12</a></li> <li>• <a href="#">AGC News Story 9.24.13</a></li> </ul>   |
| DOL/<br>WHD   | <a href="#">Child Labor Regulations</a>  | Final Rule 5/20/10        | The rule leaves in place an AGC-supported exemption for 16- and 17-year-old apprentices and student learners working in construction, however, modernization is still needed. Several of the tools and processes prohibited by DOL for 16- and 17-year-olds have now been modernized with new technologically advanced and/or injury prevention mechanisms required by OSHA that were not in place when the Fair Labor Standards Act was written.           | AGC recommended in 12/16 that the WHD modernize the regulatory guidance associated with the FLSA's Child Labor provisions in regards to the construction industry; especially the list of occupations and tools prohibited by the regulations and change the interpretation of intermittently, short periods of time, and direct and close supervision.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 7.16.07</a></li> <li>• <a href="#">AGC News Story 6.21.10</a></li> </ul>   |

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|-------------|---|---|--|--|---|
| DOL/<br>ETA | <a href="#">Equal Employment Opportunity in Apprenticeship Training Programs</a>  | Proposed Rule<br>Issued<br>11/6/15                          | The proposal seeks to update the equal employment opportunity regulations that implement the National Apprenticeship Act. If implemented, the proposed rule would add age and disability status to the list of protected classes, as well as specific, mandatory actions that program sponsors must take to ensure equal opportunity in apprenticeship training programs. Among the most significant changes are the requirement for plan sponsors to take affirmative action to recruit individuals in the protected class groups, including the requirement to set a 7% goal for the utilization of individuals with disabilities. The rule also contains specific outreach, record-keeping, training and other compliance requirements. | AGC recommended to the Trump transition in 12/16 that the agency simplify the steps that program sponsors must undertake to ensure equal opportunity; eliminate the 7% utilization goal for individuals with disabilities; eliminate requirement for applicants to self-identify as disabled both pre- and post-acceptance; consider “good-faith efforts” instead of goals that act as quotas; reduce sponsors’ record-keeping burdens and costs of compliance; and clarify and/or provide additional guidance regarding the methods that may be used to select apprentices for program participation. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 1.20.16</a></li> <li>• <a href="#">AGC News Story 1.29.16</a></li> </ul>  |
| DOL/<br>WHD | <a href="#">Joint Employment Under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act</a> | Guidance<br>Issued<br>1/20/16<br><b>Rescinded on 6/7/17</b> | The Wage and Hour Administrator’s Interpretation sets forth a new standard for determining when two or more employers are “joint employers” under the FLSA and MSPA. The intent is to hold companies jointly accountable for FLSA and MSPA violations of their subcontractors, staffing agencies, joint venture partners, and the like through use of an “economic realities” analysis that is even broader than the controversial joint employer analysis recently adopted by the NLRB.   | In 12/16, AGC recommended that the Trump transition team work to rescind this guidance. Following AGC’s recommendation, Sec. Acosta <a href="#">announced</a> on 6/7/17 the withdrawal of this guidance.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 1.28.16</a></li> <li>• <a href="#">AGC News Story 6.8.17</a></li> </ul> |
| DOL/<br>WHD | <a href="#">Application of the Davis Bacon and Related Acts requirement that wages for additional classification</a>            | Guidance<br>Issued<br>3/22/13                               | The process for requested conformed rates outlined in Memorandum No. 213 does not produce a rate that bears a reasonable relationship to the wages in the wage determination. For example, using the DOL's process may cause higher wage rates for lower-skilled positions than rates for higher-skilled positions.  | AGC recommended to the Trump Transition in 12/16 that Memorandum No. 213 be withdrawn and a new practice established for determining wages for missing classifications that is both standard and consistent for WHD administrators.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 5.29.13</a></li> </ul>  |

| Agency             | Regulatory Action Title                          | Type of Regulatory Action   | Issue   | AGC Action  | AGC Resources  |
|--------------------|--|---|---|---|--|
| <b>ENVIRONMENT</b> |  |   |   |   |  |
| EPA/<br>USACE      | <a href="#">Definition of WOTUS</a>              | Final Rule Issued 6/29/15<br><br><b>EO on WOTUS Rule Issued 2/28/17</b> | <p>Redefines the term "Waters of the United States" (WOTUS) across all Clean Water Act programs -- dictating what waters features are covered by the Act's terms, permissions and permit provisions. The new, 2015 definition increases the number of sites that would automatically require Section 404 permits (i.e., no significant nexus determination needed) and decreases the number of sites that can qualify for "nationwide" general permits, for example. A nationwide stay remains in effect. The U.S. Supreme Court is currently considering the case on a procedural issue. As a result, the pending legal challenges will not proceed until 2018, at the earliest.</p> <p>On 2/28/17, the president signed the Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule (issued 2/28/17) calls for a complete review of the WOTUS rule. The EO also directs the agencies to "consider interpreting the term 'navigable waters' . . . in a manner consistent with the opinion of Justice Antonin Scalia in Rapanos v. United States." Subsequently, the agencies have decided to undertake a two-step process, using one rule to repeal the Obama administration's 2015 WOTUS rule, and a second to set its own definition of which streams and wetlands are protected under the Clean Water Act, in line with the principles that Justice Scalia outlined in the Rapanos opinion.</p> | <p>In 12/16, AGC called for the Trump administration to repeal the rule and issue a new rule based on the Scalia opinion in the Rapanos case. On 5/8/17, AGC with the Waters Advocacy Coalition met with EPA Administrator Pruitt's Deputy Chief of Staff and his lead on WOTUS reform efforts to express support of the two-step process and to call to mind the extensive knowledge on this issue represented by the coalition.</p> | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 1.23.17</a></li> <li>• <a href="#">AGC News Story 2.24.16</a></li> <li>• <a href="#">AGC Comments 11.13.14</a></li> <li>• <a href="#">AGC News Story 3.2.17</a></li> <li>• <a href="#">AGC News Story 4.28.17</a></li> <li>• <a href="#">AGC News Story 6.29.17</a></li> </ul> |
| EPA                | <a href="#">2017 Construction General Permit</a> | Final Permit Issued 1/11/17   | <p>EPA's 2012 Construction General Permit (CGP) for stormwater runoff from construction jobsites expired on 2/16/17. The 2017 CGP replaced the 2012 CGP on the same day. The final permit does not require site operators to electronically report their site-specific stormwater pollution prevention plans (SWPPPs) for public examination. The final permit does not require a "group" SWPPP for jobsites where there are multiple operators. There is no court ruling to date that impacts the 2017 CGP.</p>  | <p>AGC submitted comments in May 2016 on EPA's proposed 2017 CGP. AGC met with OMB on Nov. 21, 2016, to reiterate its procedural and substantive concerns with EPA proposal. AGC continues to participate in conference calls and hold face-to-face meetings with the agency leads on the new permit – joint AGC-EPA compliance assistance programs are in the works.</p>   | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 1.25.17</a></li> <li>• <a href="#">AGC News Story 1.19.17</a></li> <li>• <a href="#">AGC Comments 5.26.16</a></li> </ul>   |

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| Agency  | Regulatory Action Title   | Type of Regulatory Action  | Issue   | AGC Action  | AGC Resources   |
|---------|---|----------------------------|---|---|---|
| EPA     | <a href="#">Regulations on Stormwater Permits for Small Cities (MS4s)</a> | Final Rule Issued 12/9/16  | Requires extensive public input and agency review of cities' stormwater management plans - including ordinances for runoff from active construction sites and post-construction developed sites. Results in public debate of what meets CWA "MEP" (max extent practicable) standard. AGC's strong advocacy and outreach efforts helped produce a final rule that maintains the flexibility cities need to manage stormwater pollution on a location-by-location basis — and without being tied to mandatory numeric permit requirements. But AGC Chapters and members should be on the lookout for evolving local stormwater requirements that will be out for comment across the country, per new federal public participation provisions, and take advantage of opportunities to offer construction-specific input. | AGC will consider whether regulatory changes or legislative fixes are available and appropriate to address its concerns.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 12.12.16</a></li> <li>• <a href="#">AGC News Story 4.27.16</a></li> <li>• <a href="#">AGC Comments 3.21.16</a></li> </ul> |
| USACE   | <a href="#">2017 Nationwide Permits Package</a>                           | Final Permit Issued 1/6/17 | Obtaining these federal “general” permits (i.e., 404 permits), which are required for construction activities in “Waters of the United States” (WOTUS), is critical to the completion of the private and public infrastructure that forms the literal foundation of the nation’s economy. Notably, the Corps retained the current half-acre limit for construction activities undertaken pursuant to NWP 12 and 14, as well as other NWPs. AGC members can declare victory that none of the NWPs refer to the 2015 revised definition of WOTUS. The new permits are scheduled to take effect on 3/19/17. On 2/8/17, the Army Corps issued a decision exempting the permits from the regulatory freeze.  | AGC recommended in 12/16 and the new administration followed through with not interfering with this permit from going final.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 1.12.17</a></li> <li>• <a href="#">AGC News Story 8.4.16</a></li> <li>• <a href="#">AGC Comments 8.1.16</a></li> </ul>    |
| EPA/OAR | <a href="#">Exceptional Events</a>  | Final Rule Issued 10/3/16  | Final rule intended to make it easier for states to exclude tainted data from EPA’s future assessments of compliance or non-compliance with its NAAQS. This is critical for states looking for all possible options to help attain EPA’s tighter ozone NAAQS issued in October 2015.  | AGC may consider further action. AGC notes that business groups in the western states are concerned that the revised rule still does not provide a clear path to exclude transported background ozone from future designations. This issue is of particular importance to AGC contractor members in the intermountain states. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 10.26.16</a></li> </ul>   |

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| Agency   | Regulatory Action Title   | Type of Regulatory Action   | Issue   | AGC Action  | AGC Resources   |
|----------|---|-----------------------------|---|---|---|
| EPA/OAR  | <a href="#">NAAQS - Ozone</a>   | Final Rule Issued 10/26/16  | Under this rule, construction companies will feel the effects of tighter ozone limits, mainly via restrictions on equipment emissions in areas with poor air quality (direct impact), as well as additional controls on industrial facilities and planning requirements for transportation-related sources (indirect impact). Notably, nonattainment counties that are out of compliance with CAA ozone standards could have federal highway funds withheld.  | AGC is considering the possibility of a legislative fix to: adjust the schedule for implementation of the 2015 ozone standard; long-term NAAQS reform to move the 5yr review cycle to 10 yrs; expand "Exceptional Events" to cover ozone inversions; provide more "tools" for states to implement compliant SIPs. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Article 10.2.15</a></li> <li>• <a href="#">AGC Comments 3.16.15</a></li> </ul>   |
| FWS      | Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions | Final Rule Issued 9.27.16   | FWS' final rule, effective Oct. 27, 2016, revises the petition process to require petitioners to submit information one species at a time and include a "certification" that state input was sought before anything is sent to FWS. This will reduce the number of petitioned species in coming years. AGC supported reform of the ESA's petition and listing process because citizen actions have increased in recent years, thereby overwhelming FWS resources with multi-species petitions – and ultimately resulting in mega "Sue & Settle" agreements. | <p>AGC recommended to the Trump transition that this rule remain in place to improve implementation and efficiencies of the Endangered Species Act.</p> <p>AGC submitted <a href="#">detailed ESA reform</a> ideas to Congress on May 23, 2017.</p>   | <ul style="list-style-type: none"> <li>• <a href="#">US Chamber Comment Letter 5.23.16</a></li> <li>• <a href="#">AGC News Story 5.25.17</a></li> </ul>                                     |
| EPA/OAR  | <a href="#">Near-Road Nitrogen Dioxide Monitoring Requirements</a>                        | Final Rule Issued 12/30/16  | EPA relaxed a mandate for smaller cities to install near-road nitrogen dioxide (NO2) emissions monitoring stations. Bad data could have pushed more areas into "nonattainment," which puts highway/transit funding and new construction in jeopardy. AGC was also concerned about the increased use of roadway concentration data in future standard-setting processes or to inform transportation planning and decision making.  | AGC recommended to the Trump transition that this rule go final.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 1.12.2017</a></li> <li>• <a href="#">AGC Comments</a></li> </ul>  |
| EPA/OCFO | <a href="#">Administrative Wage Garnishment</a>   | Proposed Rule Issued 7/2/14 | The proposal would give the agency the authority to cut into the paychecks of those who owe it a debt, such as a fine or penalty for an <u>alleged</u> environmental violation. EPA would be allowed to garnish up to 15 percent of the "disposable pay" of delinquent debtors who do not work for the federal government via a process known as administrative wage garnishment – all without a court order.   | AGC recommended to the Trump transition that this rule not go final.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 8.21.14</a></li> <li>• <a href="#">AGC Comments 8.21.14</a></li> <li>• <a href="#">AGC News Story 8.6.14</a></li> </ul> |

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| Agency        | Regulatory Action Title   | Type of Regulatory Action                            | Issue  | AGC Action  | AGC Resources  |
|---------------|---|--|--|---|--|
| EPA/<br>OPPTS | <a href="#">LRRP Program Expansion to Public &amp; Commercial Bldgs</a> | Advanced Notice of Proposed Rulemaking Issued 5/6/10 | EPA continues to attempt to expand the LRRP program to cover all work that disturbed lead-based paint in commercial and public buildings. For years, EPA has been trying to determine whether such work creates a lead-based paint hazard. AGC <a href="#">testified</a> at an EPA public hearing on June 26, 2013, that the existing OSHA standards for lead adequately protects workers and the surrounding public. EPA must make a decision on whether or not to issue a proposal by propose work practice and other requirements by March 31, 2017, pursuant to a legal settlement with enviros.   | AGC recommended to the Trump transition that EPA adopts the OSHA standards. There is a lack of information on the existence of, and any causal impacts from, lead-based paint hazards caused by remodeling activities in commercial buildings.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Coalition Comments 4.1.13</a></li> <li>• <a href="#">AGC News Story 7.3.13</a></li> <li>• <a href="#">AGC Testimony Presentation 6.26.13</a></li> </ul> |
| FEMA          | <a href="#">Floodplain Management and Protection of Wetlands Regs.</a>  | Proposed Rule Issued 8/22/16                         | FEMA proposed updates to its Floodplain Management and Protection of Wetlands regulations to implement EO 13690 and the 2015 Federal Flood Risk Management Standard.   | AGC recommends the Trump administration should revisit and rescind this proposal..  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 10.21.16</a></li> <li>• <a href="#">AGC News Story 8.31.16</a></li> </ul>  |
| EPA/<br>OAR   | <a href="#">Tailoring Rule</a>  | Proposed Rule Issued 8/26/16                         | This proposed rule clarifies when facilities will need to set controls for GHG emissions in order to obtain necessary air permits prior to construction or major upgrades and even to be operated.   | AGC recommends that EPA keep threshold level at 75K or higher.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 10.27.16</a></li> </ul>  |
| EPA/<br>OW    | Post Construction Stormwater Rule                                       | Info. Collection Request Issued 5/1/10               | EPA considered regulating stormwater runoff from completed/developed construction sites, in response to Chesapeake Bay Foundation lawsuit. EPA struggled with the significant cost of this rulemaking, predicted to be one of the mostly costly rules ever considered. Such new federal requirements would increase the cost of construction and present liability issues concerning the contractor's legal/contractual obligations to the site and the owner after the contractor leaves the site. In order to expand its authority to cover such sites, EPA would have to conduct a study pursuant to Section 402(p)(5) and submit it to Congress. | AGC recommends that the rulemaking be shelved indefinitely. The fact remains that developed land, generally, does not meet the definition of point source discharge to WOTUS and it has not been designated for any regulatory program by EPA through the process set forth by Congress. State and local authorities are in a better position to identify the best practices. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 7.25.12</a></li> </ul>   |

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| Agency        | Regulatory Action Title  | Type of Regulatory Action   | Issue   | AGC Action   | AGC Resources   |
|---------------|--|---|---|--|---|
| CEQ           | <a href="#">NEPA GHG Guidance</a><br>"Final Guidance for Federal Dept's & Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate"      | Guidance Issued 8/1/16<br><br>Rescinded on 3/28/17 via <a href="#">EO</a> | NEPA requires an assessment of the impact on the environment of a proposed Federal action including rulemakings, permitting, overarching programmatic decisions, and specific projects – including some construction projects. The guidance encourages agencies to quantify direct and indirect GHG emissions for construction projects (and other actions) where NEPA applies, as well as, short-term and long-term effects, cumulative effects and impacts from connected actions—as well as for all the alternative options being evaluated, including the option of taking no action. | AGC recommended to the Trump transition that the New CEQ Head to Withdraw Guidance; Revoke: Executive Order 13693 -- Planning for Federal Sustainability in the Next Decade.<br><br>On 3/28/17, the president issued an <a href="#">executive order</a> entitled "Promoting Energy Independence and Economic Growth" that rescinded this guidance, per AGC's recommendation. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 8.4.16</a></li> <li>• <a href="#">AGC News Story 3.30.17</a></li> <li>• <a href="#">AGC News Story 4.28.17</a></li> </ul> |
| EPA/OW        | Municipal Separate Storm Sewer System Permits: Compendium of Clear, Specific & Measurable Permitting Examples -- <a href="#">Part 1</a> & <a href="#">Part 2</a> | Guidance Issued 11/1/16   | Contractors will be adversely affected by new guidance ENCOURAGING states to adopt blanket numeric post-construction limits for new and redevelopment. One-size-fits-all post-construction controls can substantially increase the cost of construction, especially in areas with poor soils, steep slopes, or other complicating conditions. Contractors can face numerous obstacles to compliance (lack of available space, poor soils, underlying utilities, etc.).  | AGC will work with the Trump administration on revisiting the guidance; EPA appears to be attempting to regulate through guidance. These MS4 Guides include entire chapters with example language on the "construction site runoff" and "post-construction runoff" minimum control measure.  | <ul style="list-style-type: none"> <li>• <a href="#">EPA's website</a></li> </ul>   |
| FWS/NOAA/NMFS | <a href="#">Changes to Endangered Species Act Critical Habitat Designations and 'Adverse Modification' Definition</a>  | "Services" jointly finalized a policy and two rules imposing 2/11/16      | One rule revises the definition of "destruction or adverse modification" of critical habitat. The other rule clarifies the procedures and standards used for designating critical habitat. The new policy addresses how the Services consider exclusion of areas from critical habitat designations. The result will be more designation of state, local and private land as critical habitat, and increased regulatory burdens and costs on land activities.   | AGC recommended that the Trump administration entirely repeal the rule and policy.<br><br>AGC submitted <a href="#">detailed ESA reform</a> ideas to Congress on May 23, 2017.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Article (Proposal) 5.30.14</a></li> <li>• <a href="#">AGC News Story 5.25.17</a></li> </ul>  |

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| Agency   | Regulatory Action Title   | Type of Regulatory Action  | Issue  | AGC Action   | AGC Resources  |
|----------|---|--|--|--|--|
| USACE    | "Assumable Waters" Determination  | Report due out in 2017   | Subcommittee expected to release report in early 2017 to provide advice to EPA. Central issue: confusion over how Congress intended to divide the responsibility between the states and USACE to issue these 404 permits under two different statutes. Subcommittee is examining status of waters that are "adjacent" to navigable waters, which fall under the Rivers and Harbors Act.  | AGC supports the timely release of a report that would clarify the exact scope of waters for which a state/tribe would "assume" permitting responsibility if/when it takes over the Clean Water Act (CWA) section 404 program.   | <ul style="list-style-type: none"> <li>• <a href="#">EPA Information</a></li> </ul>  |
| EPA/USGS | <a href="#">Draft Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration</a> | Guidance Issued 2/16   | EPA is advising states that they can include regulation of flow in state NPDES permits. At least one federal court told EPA it can't do this in the context of the TMDL program. In this guidance, EPA is telling states how to regulate impervious surface - dictating land use decisions.  | AGC recommends that the EPA withdraw this guidance and peel back fed control to give power back to the states. The statute wasn't intended to regulate water quantity - but rather water quality.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 9.24.14</a></li> </ul>   |
| FWS      | Fish and Wildlife Service Mitigation Policy and <a href="#">ESA Compensatory Mitigation Policy</a>    | Final Mitigation Policy Issued 11.21.16<br>Final Compensatory Mitigation Policy under ESA Issued 12.27.16<br><br>Rescinded on 3/28/17 via <a href="#">EO</a> | On Nov. 21, 2016, the U.S. Fish and Wildlife Service (FWS) finalized its first revision to the Mitigation Policy since the policy was enacted in 1981. The Mitigation Policy is a far-reaching policy that addresses all types of mitigation – avoidance, minimization, and compensatory or offsetting – as it pertains to mitigating the adverse impacts of projects on fish, wildlife, plants and their habitats. It encourages market-based approaches to mitigation – with a preference for conservation banking. On Dec. 27, 2016, FWS published the Compensatory Mitigation Policy to comprehensively address compensatory mitigation under the ESA, for the first time. Both documents use a landscape-scale approach to planning and implementing compensatory mitigation and call for a net-gain/no net loss goal for conservation – <a href="#">per an Obama Presidential Memorandum</a> . Notably, FWS declined to provide specific, quantifiable measures to achieve the goal of no-net loss/net gain. | AGC recommends that the Trump administration revisit these policies. The mitigation principles are presented as "goals" but industry remains concerned that they could be treated as binding requirements. In that regard, FWS could hold up projects until applicants agree to certain mitigation – even though there is a lack of established metrics for credits.<br><br>On 3/28/17, the president issued an <a href="#">executive order</a> entitled "Promoting Energy Independence and Economic Growth" that rescinded this guidance, per AGC's recommendation.<br><br>AGC submitted <a href="#">detailed ESA reform</a> ideas to Congress on May 23, 2017. | <ul style="list-style-type: none"> <li>• <a href="#">Final Mitigation Policy</a></li> <li>• <a href="#">Final ESA Compensatory Mitigation Policy</a></li> <li>• <a href="#">AGC News Story 10.26.16</a></li> <li>• <a href="#">AGC News Story 4.28.2017</a></li> <li>• <a href="#">AGC News Story 5.25.17</a></li> </ul> |

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| Agency     | Regulatory Action Title  | Type of Regulatory Action   | Issue  | AGC Action  | AGC Resources  |
|------------|--|-----------------------------|--|---|--|
| <b>TAX</b> |  |                             |  |   |  |
| IRS        | <a href="#">Section 385 Debt-Equity Rules for Certain Interests in Corporations</a>                              | Final Rule Issued 10/21/16  | These regulations were proposed to target the tax strategy of earnings-stripping by multinational corporations. AGC was successful in minimizing the unintended consequences for regular business activities conducted by S-corporations; Treasury recognized this by exempting debt issued by those companies.  | AGC does not recommend further action at this time.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 6.28.16</a></li> <li>• <a href="#">AGC Additional Comments 7.7.16</a></li> <li>• <a href="#">AGC News Story 6.30.16</a></li> </ul>         |
| IRS        | <a href="#">Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest</a> | Proposed Rule Issued 8/4/16 | The proposed rules would eliminate “lack of control” and “lack of marketability” valuation discounts for family members receiving interest in a family-controlled business. Left as proposed, the rules would increase estate and gift taxes by 30 to 50 percent or more on family-owned businesses, resulting in few family construction companies surviving from one generation to the next. These burdensome regulations would be particularly damaging to family-owned construction companies, which often have illiquid capital assets due to equipment and rolling stock, but maintain relatively modest annual incomes. | AGC recommended to the Trump transition that this rule be withdrawn. The association will work with the new Treasury Sec. to do so. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 11.1.16</a></li> <li>• <a href="#">AGC News Story 12.1.16</a></li> <li>• <a href="#">AGC Letter from 730+ Companies 10.5.16</a></li> </ul> |

| Agency                | Regulatory Action Title   | Type of Regulatory Action                                     | Issue   | AGC Action   | AGC Resources   |
|-----------------------|---|---|---|--|---|
| <b>TRANSPORTATION</b> |   |   |   |  |   |
| DOT                   | <a href="#">Geographic-Based Hiring Preferences in Administering Federal Awards</a> | <a href="#">Pilot Program</a> and Proposed Rule Issued 3/6/15 | Overturns prohibitions against states using local hiring requirements on federal-aid highway contracts. It restricts competition and violates the U.S. Supreme Court ruling in <a href="#">United Building &amp; Construction Trades v. Camden</a> which held that in-state hiring preferences discriminate against non-residents, violating the Privileges and Immunities Clause of the Constitution. USDOT established a pilot program to allow states to use local hire mandates and has issued a Notice of Proposed Rulemaking to make this change permanent. The Obama administration <a href="#">extended</a> the pilot program for 5 years (thru 3/6/22) on 1/17/17. | In 12/16, AGC recommended to the Trump transition team that it discontinue the <a href="#">pilot program</a> and ensure that the rulemaking does not move forward, as it is patently illegal and a blatant example of executive overreach. On 1/31/17, the day of Sec. Chao’s confirmation, AGC urged her to do the same.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 5.1.15</a></li> <li>• <a href="#">AGC News Story 5.7.15</a></li> <li>• <a href="#">AGC Letter to Sec. Chao 1.31.17</a></li> <li>• <a href="#">AGC News Story 1.20.17</a></li> <li>• <a href="#">AGC News Story 3.24.17</a></li> </ul>   |
| DOT                   | <a href="#">DBE Program Implementing Modifications</a>                              | Final Rule Issued 10/2/14                                     | DOT’s approach to increasing DBE participation on DOT assisted contracts is to focus on compliance with achieving numerical goals rather than on business development. Much of the regulatory requirements are paperwork exercises that significantly increase state DOT, prime contractor, and DBE workloads that are costly to implement and carry out. These additional burdens and costs have not increased DBE success.  | <p>AGC has encouraged DOT to explore creating opportunities for giving incentives to contractors for DBE utilization and to focus the program on business development. In a <a href="#">1/31/17 letter</a> to Sec. Chao, we also pressed this issue.</p> <p>On <a href="#">May 16, 2017</a>, the U.S. Court of Appeals for the Ninth Circuit reaffirmed that that the states within that circuit cannot lawfully impose contract goals for DBE participation in federal-aid highway projects unless, and until, they “establish the presence of discrimination within [their] transportation contracting industr[ies].” In May of 2015, AGC of America and its Montana chapter had jointly filed a friend-of-the-court brief in the Ninth Circuit in support of the contractor’s position.</p> | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 12/20/12</a></li> <li>• <a href="#">AGC Supplemental Comments 12/20/13</a></li> <li>• <a href="#">AGC News Story 10.1.14</a></li> <li>• <a href="#">DOT IG Report on Issues with DBE Programs 4.23.13</a></li> <li>• <a href="#">AGC DOT Meeting on IG Report 10.24.14</a></li> </ul> |

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| Agency | Regulatory Action Title  | Type of Regulatory Action   | Issue  | AGC Action   | AGC Resources   |
|--------|--|---|--|--|---|
| FMCSA  | <a href="#">Commercial Truck Driver Hours of Service</a>                           | Final Rule Issued 12/27/11  | The major provisions in the this rule that impacts commercial motor vehicle drivers in the construction industry are as follows: Construction industry drivers transporting construction materials and equipment to and from an active construction site within a 50- air-mile radius of the driver’s normal work reporting location are allowed to restart the on-duty counting period following any off-duty period of 24 or more successive hours. Drivers that do not meet the construction driver definition can restart the weekly on-duty clock following a 34-hour off duty period that includes at least two periods between 1:00 a.m. and 5:00 a.m. The rule limits the use of the “34-hour restart” to once a week thus limiting restarts to one every 168 hours. The practical effect of new on-duty limits result in weekly driving time being reduced from 82 to 70 hours during a seven consecutive day driving period. | AGC recommended to the Trump transition that FMCSA revisit this rule and exempt construction drivers from its application. If no exemption, increase the distance coverage to a 150-air-mile radius for construction industry drivers. AGC put this request forth in a <a href="#">1.31.17 letter</a> to Sec. Chao.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 3.4.11</a></li> <li>• <a href="#">Supplementary AGC Comment 6.8.11</a></li> <li>• <a href="#">Previous AGC Comment 3.17.08</a></li> <li>• <a href="#">AGC News Story 6.21.13</a></li> </ul> |
| FMCSA  | <a href="#">Electronic Logging Devices for Hours of Service Enforcement</a>        | Final Rule Issued 12/16/15  | The rule requires the installation and use of electronic logging devices (ELDs) on commercial motor vehicles used in interstate commerce but does not fully account for the uniqueness of construction truck needs. The effective date of the rule was Feb. 16, 2017, and the compliance date is Dec. 18, 2017, after which there is a two-year phase-in period. Accordingly, beginning Dec. 16, 2019, all drivers and carriers subject to the rule must use certified, registered ELDs that comply with the ELD rule and regulations.   | Exempt the construction industry from this rule. Section 395 of the National Highway System Designation Act allows FMCSA to provide special consideration to construction drivers in the hours-or-service regulations. To date, the Trump Administration has not signaled that it will modify the ELD rule or delay its implementation. Congress initiated the rule in 2012, mandated as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21). | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 6.26.14</a></li> <li>• <a href="#">AGC News Story 12.11.15</a></li> </ul>   |
| FMCSA  | <a href="#">Minimum Training Reqs for Entry-Level Commercial Vehicle Operators</a> | Final Rule Issued 12/8/16<br><b>Delayed effective date until 6/5/2017</b> | The rule sets a core classroom curriculum for those seeking a CDL. It also requires behind-the-wheel training, but it does not require a minimum amount of behind-the-wheel training time. The rule was slated to take effect 2/6/17, however the agency delayed the rule’s effective date to 3/21/17, to comply with Trump’s order to federal agencies to freeze new. On 3/21/17, the agency <a href="#">announced</a> another delay of the rule to 5/22/17. And, on 5/22/17 the agency <a href="#">announced</a> another delay to 6/5/17. The rule’s Feb. 7, 2020, compliance date does <a href="#">not appear</a> to be affected by the delay, however.   | AGC recommended that the final rule drop the 30 hour behind the wheel training requirement that was included in the proposed rule. That provision was dropped.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 4.6.16</a></li> <li>• <a href="#">AGC News Story 4.8.16</a></li> <li>• <a href="#">AGC News Story 2.16.17</a></li> </ul>  |

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| DOT/<br>FHWA | <a href="#">National Performance Management Measures relating to GHG</a>  | Final Rule Issued 1/18/17<br><br>Indefinitely suspended on 5/19/17 | The rule requires state DOTs to establish performance measures for climate-related (greenhouse gas) emissions. The rule goes beyond MAP-21 requirements by attempting to use the rulemaking to address the Obama administration's climate agenda. MAP-21 specified what performance standards were to be adopted and GHG was not included. FHWA also suggested it may include emissions from off road construction equipment as part of this metric. Though the rule was set to take effect on 2.17.17, it is was under a regulatory freeze until 5/20/17. On 5/19/17, FHWA <a href="#">suspended</a> the portions of the rule of concern to AGC and its members. | AGC requested that the Trump transition take action to halt and repeal this rule. We requested similar action in a letter to Sec. Chao on 1/31/17. On 2/13/17, USDOT <a href="#">announced</a> that the rule falls under the regulatory freeze until 3/21/17. Then, on 3/21/17, the agency <a href="#">announced</a> a further delay of the rule until 5/20/17. On 5/19/17, FHWA <a href="#">suspended</a> the portions of the rule of concern to AGC and its members.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 8.19.16</a></li> <li>• <a href="#">AGC-backed letter against proposed rule from House T&amp;I Committee 8.18.16</a></li> <li>• <a href="#">AGC News Story 2.16.17</a></li> <li>• <a href="#">AGC News Story 5.18.17</a></li> </ul>   |
| DOT/<br>FHWA | <a href="#">Buy America Nationwide Waiver Notification for COTS Products With Steel or Iron Components and for Steel Tie Wire Permanently Incorporated in Precast Concrete Products</a> | Notice of Proposed Rulemaking Issued 10/18/16                      | This proposed rule will help contractors with Buy America requirements on Federal-aid Highway contracts that have been expanded to include small components and subcomponents of products that are impossible to monitor. To meet Buy America mandates, contractors must request certifications from their suppliers indicating that products provided fulfill these requirements. Taken to its extreme, manufactured products that incorporate a variety of iron and steel components need to have individual certifications for each of the various component parts. The process is burdensome, costly and not in the public interest.                          | <p>AGC strongly supports this proposed rule. AGC recommends that the final rule: (1) allow FHWA to issue a nationwide waiver for specialized steel lifting devices that are incorporated in precast concrete products; (2) raise the dollar threshold for the minimum amount of steel products that can be exempted from Buy America requirements from \$2,500 to \$20,000 or base it on a PPI escalator; and (3) exempt utility relocation work required as part of highway improvement projects.</p> <p>Given the recent executive actions seeking to narrow and limit Buy America/n waivers, it seems unlikely that further movement on finalizing this rule will occur under this administration.</p> | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 12.2.16</a></li> <li>• <a href="#">AGC Comments on Previous Buy America Waiver Notice 9.9.13</a></li> <li>• <a href="#">AGC News Story 12.2.16</a></li> <li>• <a href="#">AGC News Story 1.14.16</a></li> <li>• <a href="#">AGC Request for FHWA to Clarify Buy America Requirement 2.23.16</a></li> </ul> |

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| DOT          | <a href="#">National Environmental Policy Act Implementing Procedures Update</a>              | Notice & request for comment 12/20/16 | USDOT released for comment updated National Environmental Policy Act (NEPA) implementation procedures for states. Not only did USDOT rush these procedures out for publication with limited (21 days) for comment, the document adds a new level of oversight to the environmental review process. This undermines efforts by Congress in the past three transportation authorization bills and previous administrations to streamline environmental review and shrink the time it takes for project approval. In addition, the document limits the use of “categorical exclusions” which provide an expedited review process for the everyday transportation projects expected to have limited environmental impact. The new procedures also expands requirement for states to consider climate change as part of the review process. USDOT also references in the document that it will be developing additional guidance documents but chose to not wait until these were completed so as to gather additional public comment. | AGC submitted comments on Jan. 10, 2017, after previously filing a request for an extension that was denied. AGC recommended that Sec. Chao rescind this last minute policy update in order to uphold the president’s intent to speed the environmental review process.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 1.10.17</a></li> <li>• <a href="#">AGC News Story 1.13.17</a></li> <li>• <a href="#">AGC Letter to Sec. Chao 1.31.17</a></li> </ul> |
| DOT/<br>FHWA | <a href="#">DBE Prompt Payment and Return of Retainage: Questions and Answers</a>             | Guidance Issued 4/15/16               | FHWA issued new guidance to states regarding the prompt payment requirements in the DBE program. The guidance is not new policy but reemphasizes what is already in the DBE regulations and points out the need for state DOTs to monitor payments to subcontractors. The provision requires primes to pay all subcontractors (DBE and non-DBE) within 30 days of the prime receiving payment from the state. The payment should include any retainage held by the prime on the sub after the sub has successfully completed it subcontract. According to the guidance, states are supposed to accept portions of the work on a contract as completed thereby eliminating the need for the prime to hold retainage.   | AGC has informed the Trump Transition of its opinion on this guidance. Retainage is a standard industry practice used by owners and contractors to ensure that construction work is completed according to the contract specifications and is acceptable to the owner. Contractors should be allowed to withhold retainage on subcontractors until their completed work is formally accepted by the owner and this guidance should explicitly state this notion. | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 5.13.16</a></li> </ul>  |
| DOT/<br>FHWA | <a href="#">Congestion Mitigation and Air Quality (CMAQ) Improvement Program Under MAP-21</a> | Interim Guidance Issued 11/12/13      | The guidance is for implementation of changes made in the Congestion Mitigation and Air Quality (CMAQ) program, which is a special category of highway funding to be used for transportation projects that improve air quality in areas that are not in compliance with air standards.  | AGC recommends FHWA: encourages states to use a greater share of CMAQ funds for diesel retrofits for off-road construction equipment; strike the directive encouraging states to seek as much as a 50/50 split with the private sector to pay for retrofits; direct states to take credit for the air quality improvements from retrofits as part of their transportation air quality conformity process.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 1.13.14</a></li> <li>• <a href="#">AGC News Story 1.17.14</a></li> </ul>  |

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| DOT/<br>FHWA | <a href="#">Model Public Private Partnership Core Toll Concessions Contract Guide</a> | Guidance Issued<br>9/1/14 | P3 model contract documents, developed by FHWA, provide an opportunity to address the relationship and risk allocation between the developer and the design builder which can be a significant cost factor in P3 projects. Risk allocation significantly impacts the P3 market for transportation projects because unbalanced risk will discourage construction contractors from participating on these projects thereby limiting competition. Developer arrangements with design-builders for P3s vary significantly from one concessionaire to the next. Understanding how the business model for these arrangements impacts cost is important. | AGC will work with FHWA to revisit its approach to risk allocation on these model documents.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 10.29.15</a></li> <li>• <a href="#">AGC News Story 9.19.14</a></li> <li>• <a href="#">AGC P3 Website and Resources</a></li> </ul> |
| DOT/<br>FAA  | <a href="#">Operations of Small Unmanned Aircraft Systems Over People</a>             | Pre-Rule Stage            | This rulemaking would address the performance-based standards and means-of-compliance for operation of small unmanned aircraft systems (UAS) over people not directly participating in the operation or not under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling small unmanned aircraft. This rule would provide relief from certain operational restrictions implemented in the Operation and Certification of Small Unmanned Aircraft Systems final rule.  | AGC recommends that this rulemaking go forth to provide more certainty to the industry in how to operate UAVs in a safe and compliant manner.       |   |
| DOT/<br>FAA  | <a href="#">Use of Micro Unmanned Aircraft Systems</a>                                | Pre-Rule Stage            | This rulemaking will help provide clarity for industry on the use of micro Unmanned Aircraft Systems.   | AGC recommends that this rulemaking go forth to provide more certainty to the industry in how to operate micro UAVs in a safe and compliant manner. |   |

| Agency                     | Regulatory Action Title   | Type of Regulatory Action  | Issue  | AGC Action  | AGC Resources   |
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| <b>FEDERAL CONTRACTING</b> |   |  |  |   |   |
| FAR                        | <a href="#">Use of Project Labor Agreements for Federal Construction Projects, FAR Rule</a>             | Final Rule Issued<br><br><a href="#">Exec. Order</a><br>Issued<br>2/6/09   | The rule encourages federal agencies to mandate project labor agreements on projects valued at \$25 million or more. AGC strongly believes that the choice of whether to adopt a project labor agreement should be left to the contractor-employers and their employees, and that such a choice should not be imposed as a condition to competing for, or performing on, a publicly funded project. Government mandates and preferences for PLAs can restrain competition, drive up costs, cause delays, lead to jobsite disputes, and disrupt local collective bargaining. To date, this rule is still in effect.   | AGC recommended that President-elect Trump revoke this rule and the executive order and replace it with former President George W. Bush’s PLA <a href="#">Executive Order 13202</a> in 12/16 to the transition team. AGC joined coalition allies in urging the president to take that action in a letter on 1/10/17. AGC supported the introduction of the Fair and Open Competition Act (S. 622 / H.R. 1522) by Sen Jeff Flake (R-Ariz.) and Dennis Ross (R-Fla.) in 3/17. A House Committee <a href="#">passed</a> the legislation shortly after it was introduced. In a 6/15/17 <a href="#">meeting</a> with the GSA COS, AGC called on the agency to abandoned its bid preference policy for PLA proposals. | <ul style="list-style-type: none"> <li>• <a href="#">AGC PLA Website</a></li> <li>• <a href="#">Recent PLA Letter to Agency</a></li> <li>• <a href="#">AGC News Story 1.12.17</a></li> <li>• <a href="#">AGC Coalition letter to Trump 1.10.17</a></li> <li>• <a href="#">AGC News Story 3.23.17</a></li> </ul> |
| FAR                        | <a href="#">Fair Pay and Safe Workplaces Federal Acquisition Regulation, FAR Rule</a><br>(Blacklisting) | Final Rule Issued<br>8/25/16<br><br><a href="#">Exec. Order</a><br>Issued<br>7/31/14<br><br><span style="background-color: yellow;">Repealed on 3/27/17 via the CRA</span> | The rule establishes an unnecessary, unfounded and unlawful regulatory regime under which federal contracting officers, with the advice of agency labor compliance advisers, may de-facto debar federal contractors for past and alleged violations of federal and state labor laws, in spite of the existing suspension and debarment process. The rule additionally puts forth a system under which enforcement agencies—by requiring federal contractors sign labor compliance agreements—directly insert themselves into procurement agency contracting decisions counter to the Federal Procurement Act. There is no limit to the terms the enforcement agency could include in such compliance agreements. For AGC comments and testimony click <a href="#">here</a> and <a href="#">here</a> , respectively. A federal court issued a temporary injunction on 10/24/16, halting implementation of the rule—with the exception of the paycheck transparency provisions. Those provisions took effect 1/1/17. | AGC <a href="#">urged</a> Congress to use the Congressional Review Act to repeal this rule on 11/14/16. After a concerted AGC <a href="#">advocacy effort</a> , the House and Senate voted for repeal. The president signed the repeal bill into law on 3/27/17.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC Blacklisting Website</a></li> <li>• <a href="#">AGC News Story 11.17.16</a></li> <li>• <a href="#">AGC News Story 4.3.17</a></li> </ul>  |

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| DOL/<br>WHD | <a href="#">Establishing Paid Sick Leave for Federal Contractors, FAR Rule</a> | Final Rule Issued 9/30/16<br><br><a href="#">Executive Order</a> Issued 9/7/15 | <p>The requirements of this rule are ill-fitting and impractical given the project-based, transitory, and seasonal character of construction work and the history of paying craft workers only for time worked. Additionally, the mandate is inconsistent with the Davis-Bacon Act and would increase costs and inefficiency in federal procurement. Furthermore, construction contractors should be allowed to take credit for paid leave toward meeting DBA prevailing wage obligations and meet their paid leave obligations by contributing to a benefit trust fund.</p> <p>There has been no indication to date that the GOP controlled Congress will use the Congressional Review Act (CRA) to block the rule. The optics of the issue are too much for the GOP to overcome: the taking away of a benefit to American workers. There is an effort underway to enact a voluntary opt-in ERISA style safe harbor from state/local mandates for employers who offer a minimum threshold of compensable leave and flexible work arrangements to all employees. The effort would include language to satisfy the EO on sick leave. The bill may be introduced in the next several weeks.</p> | AGC recommended to the Trump transition team in 12/16 that this final guidance and the executive order be rescinded. AGC contractors are not alone in voicing their displeasure with the EO and other mandates. A coalition, Employers for Flexibility (E4F), will be launching in the near future to support a legislative option. Once we see the final legislative language AGC may join and this effort.   | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 4.12.16</a></li> <li>• <a href="#">AGC Testimony 9.13.16</a></li> <li>• <a href="#">AGC News Story 9.30.16</a></li> </ul>   |
| SBA         | <a href="#">Credit for Lower Tier Small Business Subcontracting</a>            | Final Rule Issued 12/23/16   | The rule allows prime contractors to count first tier and lower tier small business contractors towards the prime's small business subcontracting goals. The rule went into effect on 1/23/17. However, credit for lower tier small business subcontractors will not be available until the FAR Council issues a rule implementing the SBA rule.  | AGC was successful in passing legislation forcing this rulemaking in 2013. AGC will continue to work with the FAR Council to work on implementation. AGC met with GSA—a member of the FAR Council—in 2/17 on this issue, during which time the agency noted that it is reviewing how to update the electronic subcontracting reporting system to meet the needs of this rule. It is unclear when the FAR Council will issue a rule to implement this initiative. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments</a></li> <li>• <a href="#">AGC News Story 1.5.17</a></li> <li>• <a href="#">AGC Testimony 9.18.15</a></li> <li>• <a href="#">AGC Testimony 5.23.13</a></li> </ul> |

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| FAR    | <a href="#">FAR Case 2015-024, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation</a> | Final Rule Issued<br>11/18/16 | This rule requires federal contractors with annual gross revenues of \$7.5 million and above to make an annual representation within the System for Award Management indicating if and where they publicly disclose greenhouse gas emissions and greenhouse gas reduction goals or targets.   | AGC recommended to the Trump transition team in 12/16 that this regulation be rolled back.  | <ul style="list-style-type: none"> <li>• <a href="#">AGC News Story 8.31.16</a></li> <li>• <a href="#">AGC Comments 7.25.16</a></li> </ul> |
| FAR    | <a href="#">FAR Case 2008-039; Reporting Executive Compensation and First-Tier Subcontract Awards</a>               | Final Rule Issued<br>7/26/12  | The rule requires federal contractors to report the names and total compensation of the five most highly compensated officers under certain circumstances, as well as awards to first-tier subcontractors above \$25,000. It burdens prime contractors with reporting not only their top five paid executives, but also their first-tier subcontractor's top five paid executives when the subcontract has a value of \$25,000 or more. | AGC recommended that President Trump work to repeal this regulation. It is mandated under the Federal Funding Accountability and Transparency Act. Therefore, a legislative effort would be necessary to help roll back the regulation. Federal agencies are open to rolling back this mandate to reduce costs. | <ul style="list-style-type: none"> <li>• <a href="#">AGC Comments 9.7.10</a></li> </ul>  |